

# IDAHO ADMINISTRATIVE BULLETIN

October 2, 2013 -- Volume 13-10

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# IDAHO ADMINISTRATIVE BULLETIN

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# 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 rulemaking actions and must invite public input once proposed rulemaking procedures have been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized 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 - Proposed Rule” for each proposed rule that is published in the Bulletin.

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

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

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

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

## **NEGOTIATED RULEMAKING**

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

## **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 for or is occasioning 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 web site or post this information on its own web site, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s web site.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may adopt the pending rule. Because a proposed rule is not enforceable, it has no effective date, even when published in conjunction with a temporary rule that is of full force and effect. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the

Bulletin officially stops the formal rulemaking process.

### **TEMPORARY RULEMAKING**

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) protection of the public health, safety, or welfare; or
- b) compliance with deadlines in amendments to governing law or federal programs; or
- c) conferring a benefit.

If a rulemaking meets one or more of the above legal criteria and the governor determines that it is necessary that a rule become effective prior to receiving legislative authorization and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows an agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. The agency must publish a notice of rescission to effectively rescind the temporary rule. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

### **PENDING RULEMAKING**

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

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Rulemaking - Pending Rule." This includes:

- a) a statement giving the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

- (f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the pending rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the sections or their subparts that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Rulemaking - Adoption of Pending Rule" is published.

## **FINAL RULEMAKING**

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

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

## **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

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

## **SUBSCRIPTIONS AND DISTRIBUTION**

For subscription information and costs, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

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

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

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

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering schematic. Each state agency has a two-digit identification code number known as the “**IDAPA**” number. (The “IDAPA” Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit “TITLE” number is assigned. There are “CHAPTER” numbers assigned within the Title and the rule text is divided among major sections that are further subdivided into subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.200.02.c.ii.**

“**IDAPA**” refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

“**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administrations’s Division of Purchasing

“**01.**” refers to Chapter **01** of Title 05, “Rules of the Division of Purchasing”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection 200.02.

“**c.**” refers to Subsection 200.02.c.

“**ii.**” refers to Subsection 200.02.c.ii.

## DOCKET NUMBERING SYSTEM

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

### **“DOCKET NO. 38-0501-1201”**

“**38-**” denotes the agency’s **IDAPA** number; in this case the Department of Administration.

“**0501-**” refers to the **TITLE AND CHAPTER** numbers of the agency rule being promulgated; in this case the Division of Purchasing (**TITLE 05**), Rules of the Division of Purchasing (**Chapter 01**).

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

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section “200” appears before Section “345” and so on). Whenever the sequence of the numbering is broken the following statement will appear:

**(BREAK IN CONTINUITY OF SECTIONS)**

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2013**

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

**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	<b>*November 29, 2013</b>	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	<b>**August 29, 2014</b>	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.***

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<b>IDAPA 38</b>	<b>Administration</b> , Department of
<b>IDAPA 44</b>	<b>Administrative Rules Coordinator</b> , Office of the
<b>IDAPA 02</b>	<b>Agriculture</b> , Idaho Department of
<b>IDAPA 40</b>	<b>Arts</b> , Idaho Commission on the
<b>IDAPA 03</b>	<b>Athletic Commission</b>
<b>IDAPA 04</b>	<b>Attorney General</b> , Office of the
<b>IDAPA 53</b>	<b>Barley Commission</b> , Idaho
<b>IDAPA 51</b>	<b>Beef Council</b> , Idaho
<b>IDAPA 07</b>	<b>Building Safety</b> , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
<b>IDAPA 43</b>	<b>Canola and Rapeseed Commission</b> , Idaho
<b>IDAPA 28</b>	<b>Commerce</b> , Idaho Department of
<b>IDAPA 06</b>	<b>Correction</b> , Board of
<b>IDAPA 19</b>	<b>Dentistry</b> , Board of
<b>IDAPA 08</b>	<b>Education</b> , State Board of and State Department of
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<b>IDAPA 45</b>	<b>Human Rights Commission</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>
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**ALPHABETICAL INDEX OF STATE AGENCIES  
AND CORRESPONDING IDAPA NUMBERS**

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

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.06.09 - RULES GOVERNING INVASIVE SPECIES**

**DOCKET NO. 02-0609-1301**

**NOTICE OF PUBLIC HEARING**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing. The action is authorized pursuant to Section 22-1907, Idaho Code.

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

**October 9, 2013, 1:00 p.m. (MDT)**

**Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
Boise, ID 83712**

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

**DESCRIPTIVE SUMMARY:** The summary of this action is found in the August 7, 2013, Idaho Administrative Bulletin, [Vol. 13-8, pages 16 through 28](#).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Matt Voile, Section Manger, at (208) 332-8620.

DATED this 28th 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

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.22 - RULES GOVERNING NOXIOUS WEEDS

DOCKET NO. 02-0622-1301

#### 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 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2403, 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:

This rulemaking amends Subsection 100.01, Statewide EDRR Noxious Weed List, adding one species: Water Hyacinth, *Eichhornia crassipes*. It also removes Subsection 100.04, Statewide Monitor List, from rule.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 7, 2013 Idaho Administrative Bulletin, [Vol. 13-8, pages 29 through 33](#).

**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 Matt Voile, Section Manager, (208) 332-8620.

DATED this 28th 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

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.23 - RULES GOVERNING NOXIOUS WEED FREE GRAVEL AND ROCK PRODUCTS

#### DOCKET NO. 02-0623-1301 (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 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 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2403 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 new rule will provide for inspection and certification of gravel and rock products as noxious weed free.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 7, 2013 Idaho Administrative Bulletin, [Vol. 13-8, pages 34 through 41](#).

**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 Matt Voile, Section Manger, (208) 332-8620.

DATED this 28th 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

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.25 - RULES GOVERNING THE PLANTING OF BEANS,**  
**OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO**  
**DOCKET NO. 02-0625-1301 (NEW CHAPTER - FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule will require that all lots of soybean seed, and as a result of public input from two negotiated rule-making meetings, seed from other related plant species for planting in Idaho to be tested for bean diseases of concern and nematodes that do not occur in Idaho. Soybeans and other bean species such as mung or azuki beans are known to carry a complex of bacterial blights and other diseases that could affect the long standing and well established bean seed (*Phaseolus* sp.) production industry in the state. Laboratory testing and at least one inspection will occur during the growing season.

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

Pursuant to Section 22-2006, Idaho Code, the Department proposes to charge a minimum of \$250 for laboratory analysis on a per sample basis. ISDA proposes to charge \$3.50 per acre for field inspections, with a \$50 minimum. These fees are consistent with the fee structure for laboratory analysis and the current Rules Governing the Planting of Beans (IDAPA 02.06.06). Based on recent acreages planted (<1,000 acres) we do not expect this rule to generate more than \$10,000 in dedicated funds per year. Charges for nematode and soil testing will be at the prevailing rates of those labs capable and approved for that testing.

**FISCAL IMPACT:** The following is a specific 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 26**. Negotiated Rulemaking was held on July 23 and 29, 2013, in Boise, 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 the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd, Boise, ID

PO Box 790, Boise, ID 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0625-1301

IDAPA 02  
TITLE 06  
CHAPTER 23

02.06.25 - RULES GOVERNING THE PLANTING OF BEANS,  
OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 20, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.25, "Rules Governing the Planting of Beans, other than *Phaseolus* Species, in Idaho." ( )

**02. Scope.** These rules will govern the planting of beans in Idaho, other than *Phaseolus* Species, which are regulated under IDAPA 02.06.06. The official citation for this Chapter is IDAPA 02.06.25.000 et seq. For example, this section's citation is IDAPA 02.06.25.001. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

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

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

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

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

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the Department and the State law library. ( )

**007. -- 010. (RESERVED)**

**011. DEFINITIONS.**

The Department adopts the definitions set forth in Section 22-2005, Idaho Code. In addition, as used in this chapter:

- ( )
- 01. Department.** Idaho State Department of Agriculture. ( )
- 02. Department Approved Tag (Yellow Tag).** A tag issued by the Department to seed lots produced outside of Idaho and imported into Idaho for planting. The seed lot must be certified by the seed certification agency of the state of origin and be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin. Seed lots must pass laboratory testing performed by the Department, or Department approved laboratories, on samples drawn in Idaho by the Department and found free from regulated pest(s) and soil as listed in Sections 012 and 013 of this rule. ( )
- 03. Department In-State Planting Tag (Green Tag).** A tag issued by the Department to seed lots grown in Idaho in compliance with growing season and pre-harvest or windrow inspections in Idaho. ( )
- 04. Director.** Director of the Idaho State Department of Agriculture or his duly authorized representative. ( )
- 05. Farmstead.** All land farmed in common with the land upon which a trial ground is located. ( )
- 06. In-State Planting Tag Number (State Number).** A number assigned by the Department to each lot which has successfully passed the Department's inspection requirements, as defined in Section 200 of this rule, in which no regulated pests were found. ( )
- 07. Oregon Department of Agriculture Inspection Tag.** A tag issued to seed lots produced in Malheur County, Oregon which were inspected in the growing season and pre-harvest or windrow by the Oregon Department of Agriculture for the regulated pests defined in Section 012 of these rules. ( )
- 08. Rill Irrigation.** A method of applying non-pressurized irrigation water to crops in a free flow manner by using a series of ditches, canals, siphon tubes, and gated pipe utilizing gravity as means of conveyance within the field. ( )
- 09. Seed Borne.** Pest(s) that can be found on the seed or within the seed coat but do not necessarily result in the transfer of the pest to the resulting plant. ( )
- 10. Seed Lot.** A definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for factors that appear in the labeling. ( )
- 11. Seed Transmitted.** Pest(s) that can be transferred from the seed into the resulting plant. ( )
- 12. Sprinkler Irrigation.** An overhead water delivery system used to disperse irrigation water to crops in a designated pattern utilizing a pump, a network series of pipes and delivering water under a controlled pressure in a predetermined quantity. ( )
- 13. True Identity of Seed Lot.** True identity of seed lot is recorded using information provided by the applicant on the application for field inspection or on the detailed varietal planting plan and harvest records. The true identity of the seed lot is maintained by the Department after the applicant has finalized the harvest information and provided such to the Department. ( )
- 14. Windrow Inspection.** An inspection procedure performed on a seed crop prior to harvest but after the crop has been cut and allowed for curing or drying. ( )
- 012. REGULATED PESTS.**
- 01. Anthracnose.** Caused by (*Colletotrichum lindemuthianum*), (*Glomerella lindemuthiana*). ( )
- 02. Bacterial Wilt.** Caused by (*Curtobacterium flaccumfaciens* pv. *flaccumfaciens*), (*Corynebacterium flaccumfaciens*). ( )



- 03. Brown Spot.** Caused by (*Pseudomonas syringae* pv. *syringae*), (*P. syringae*). ( )
- 04. Common Blight.** Caused by (*Xanthomonas axonopodis* pv. *phaseoli*), (*X. phaseoli*), (*X. phaseoli* var. *fuscans*). ( )
- 05. Halo Blight.** Caused by (*Pseudomonas savastanoi* pv. *phaseolicola*), (*P. phaseolicola*). ( )
- 06. Soybean Cyst Nematode.** (*Heterodera glycines*). ( )
- 07. Asian Soybean Rust.** Caused by (*Phakopsora pachyrhizi*). ( )
- 013. SOIL.**  
There shall be a zero (0) tolerance for soil in any lot of a regulated article destined for planting in Idaho. ( )
- 014. -- 049. (RESERVED)**
- 050. REGULATED ARTICLES.**  
All seed of soybean (*Glycine max*), mung bean (*Vigna radiata*), and azuki bean (*Vigna angularis*) and any other plant species capable of spreading a regulated pest as a contaminant or in a seed borne or seed transmitted manner, from any source and being planted within the state of Idaho, unless otherwise exempted in this rule. ( )
- 051. -- 099. (RESERVED)**
- 100. AUTHORITY TO ENTER AND INSPECT.**  
The Department has the authority to enter onto lands and conduct inspections pursuant to Section 22-2007, Idaho Code. ( )
- 101. -- 149. (RESERVED)**
- 150. REQUIREMENTS FOR PLANTING REGULATED ARTICLES IN IDAHO.**  
In order to be eligible for planting seed in Idaho: ( )
- 01. Idaho Origin Seed to be Replanted.** Seeds planted must be from a lot that was produced in accordance with these rules and has an in-state planting tag number (state number) assigned by the Department based on growing season and pre-harvest or windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag). ( )
- 02. Malheur County, Oregon Grown Seed.** Seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and pre-harvest or windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. ( )
- 03. Imported Seed From Other Than Malheur County, Oregon.** Imported seed must: ( )
- a.** Be certified by the seed certification agency of the state of origin and be accompanied by a state phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests and soil as defined in Sections 012 and 013 of these rules; or ( )
- b.** Each seed lot shall successfully pass laboratory tests on untreated seed for regulated pests and soil conducted by the Department (in the case of nematodes and soil by a Department approved lab) from samples officially drawn in the state of Idaho by the Department; and ( )
- c.** Must bear a Department Approved Tag (Yellow Tag) at the time of planting; and ( )
- d.** Be submitted for a growing season inspection in compliance with Section 200 of this rule; and ( )

e. If intended for replanting for future seed or commercial production, be submitted for a growing season inspection in accordance with Section 200 of this rule; and ( )

f. If intended for seed production, not be planted under sprinkler irrigation for the first growing season. ( )

**04. Contaminated Seeds.** The seeds from any field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, or soil as defined in Section 013, shall not be planted in Idaho. ( )

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

**06. Tags.** Seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: ( )

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

b. Department approved tag (yellow tag); ( )

c. Oregon Department of Agriculture inspection tag. ( )

**151. -- 199. (RESERVED)**

**200. INSPECTION.**

All imported or Idaho origin seeds intended for planting or replanting in Idaho shall be submitted to the Department for growing season inspections, in accordance with Section 150 of this rule. ( )

**01. Application for Inspection.** ( )

a. Deadline for Submission. Received by the Department on or before July 1 of each year. ( )

b. Application Forms. Forms will be provided by the Department or may be company generated. Company generated application forms must be approved by the Department prior to submission. ( )

c. Additional or Substitute Acreage. Applications for additional or substitute acreage may be submitted until September 1 and will be accepted on a case by case basis and the cost of inspection to be determined by the Director. ( )

**02. Growing Season Inspection.** Unless the Director, at his sole discretion, deems additional inspections are necessary, the bean seed for planting will be inspected as follows: ( )

a. Fields under rill or sprinkler irrigation -- at least once; ( )

b. Pre-Harvest or Windrow Inspection -- at least once. ( )

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

**300. SPECIAL SITUATIONS.**

The Director may grant specific exemptions for research purposes for the planting of regulated articles that do not meet the requirements of Section 150 of this rule. Regulated articles not meeting the requirements of Section 150 must be planted only in counties where commercial beans and bean seed are not produced, as determined by the Director. ( )

**301. -- 349. (RESERVED)**

**350. DETECTION, IDENTIFICATION, AND REPORTING OF REGULATED PESTS.**

- 01. Reporting.** Any person may report to the Department the detection of any of the regulated pests. ( )
- 02. Observation.** Detection of regulated pests will be based on the observance of symptoms in the field. ( )
- 03. Disagreement.** In case of disagreement concerning the identity of the regulated pest or the virulence of the pathogen to its host, the Department will submit cultures of the suspected pathogen to a plant pathologist appointed by the Dean of the College of Agriculture, University of Idaho. The results and findings obtained by the approved pathologist are final. ( )
- 04. Release of Information.** When the presence of a regulated pest is confirmed, information regarding the location and acres involved will be released upon request. ( )

**351. -- 399. (RESERVED)**

**400. DISPOSITION OF DISEASED SEED AND INFECTED FIELDS.**

- 01. Quarantine.** Any field in which there is a disagreement concerning the identity of the regulated pest or the virulence of the pathogen to its host, the field will be placed under quarantine. Entry to the quarantined area will be restricted to the grower or his agents, Department officials, University of Idaho plant pathologists, and persons authorized in writing by the Director. Persons granted entry to the quarantined area will be required to take all necessary sanitary precautions prescribed by the Director. ( )
- 02. Destruction.** Upon the confirmation of a regulated pest, infected fields within the boundaries of the state shall be destroyed in part or in total, as required by the Director, to eliminate the pest at the expense of the grower and his landlord. The Director will notify the grower or his landlord of the method and extent of the destruction and safeguards against pest spread in order for the parties to comply. ( )
- 03. Threshing and Segregating.** When the symptoms of a regulated pest are first detected during pre-harvest inspection and laboratory confirmation is necessary, the Director may allow the regulated articles to be harvested and held until laboratory results are obtained. ( )

**401. -- 499. (RESERVED)**

**500. PENALTY.**

Any person violating any of the provisions of these rules will be subject to the penalty provisions of Title 22, Chapter 20, Idaho Code. ( )

**501. -- 549. (RESERVED)**

**550. FEES AND CHARGES.**

- 01. Tags.** Green tags or Yellow tags for In-State Planting Purposes -- Eighteen cents (\$0.18) per hundred weight. ( )
- 02. Applications.** ( )
- a.** Application for Field Inspection -- Five dollars (\$5) each. ( )
- b.** Late Application for Field Inspection -- Ten dollars (\$10) each. ( )
- 03. Field Inspections.** ( )
- a.** Active Growth and pre-harvest / windrow Inspection Fees. ( )

- i. Three dollars and fifty cents (\$3.50) per acre, per inspection, fifty dollar (\$50) minimum. ( )
- ii. Requests for pre-harvest inspections after office hours, on weekends, or holidays will be charged at cost plus mileage. ( )

**04. Laboratory Seed Sampling.** Official Sample -- twenty dollars (\$20) per sample. Sample size requirements for imported seed:

<b>Lot size</b>	<b>Sample Size</b>
<10 pounds	Negotiable
10 - 14 pounds	0.5 pounds
15 - 25 pounds	1.0 pounds
26 - 50 pounds	1.5 pounds
51 - 200 pounds	2.0 pounds
201 - 1,000 pounds	3.0 pounds
>1,000 pounds	5.0 pounds for every 10,000 pounds or portion thereof

( )

**05. Plant Pathological Laboratory Services.** Fees will be charged at current laboratory rates and are available upon request. ( )

**06. Soil Analysis.** Testing for the presence of soil shall be performed by the Idaho State Seed Laboratory or other seed laboratory approved by the Department. The cost of soil analysis shall be at the normal rates as is charged by those approved laboratories. ( )

**07. Nematode Analysis.** Nematodes testing shall be performed by the University of Idaho Nematology Laboratory or other laboratory approved by the Department. The cost of analysis for nematodes shall be at the normal rates for testing as is charged by those approved laboratories. ( )

**08. Confirmation Fees.** The party disputing the Department's determination of the presence of a regulated pest per Subsection 350.03 will be responsible for the payment of fees charged by the University of Idaho. ( )

**09. Special Project Fee.** Special projects not covered by existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects, include but are not limited to, research, lot history verification, data entry, sales and purchases, transfer of lots into ISDA database, ISDA training of private company personnel, or any other circumstance approved by the Director. ( )

**551. -- 999. (RESERVED)**

## IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

### 05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

DOCKET NO. 05-0102-1301

#### 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 20-504(3) and 20-504(12), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 proposed rules provide clarification on Prison Rape Elimination Act (PREA) standards and how detention standards and PREA standards relate.

**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 juvenile detention centers in Idaho are already familiar with the changes being proposed through discussions and committee work.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Harrigfeld, Director. (208) 334-5100x404.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this August 23, 2013.

Sharon Harrigfeld, Director  
Idaho Department of Juvenile Corrections  
954 W. Jefferson, Boise, ID 83702  
PO Box 83720, Boise, ID 83720-0285  
Phone: (208) 334-5100  
FAX: (208) 334-5120

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0102-1301  
(Only those Sections being amended are shown.)

**010. DEFINITIONS.**

As used in this chapter: (4-5-00)

- 01. Adult.** A person eighteen (18) years of age or older. (4-5-00)
- 02. Body Cavity Search.** The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. (4-5-00)
- 03. Chemical Agent.** An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. (4-5-00)
- 04. Classification.** A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. (~~4-5-00~~)(    )
- 05. Commit.** Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (3-30-07)
- 06. Community-Based Program.** An in-home detention program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county. (3-30-07)
- 07. Contact Visiting.** A program that permits juvenile offenders to visit with designated person(s). The area is free of obstacles or barriers that prohibit physical contact. (3-30-07)
- 08. Contraband.** Any item not issued or authorized by the detention center. (3-30-07)
- 09. Corporal Punishment.** Any act of inflicting punishment directly on the body, causing pain or injury. (4-5-00)
- 10. Court.** Idaho district court or magistrate's division thereof. (3-30-07)
- 11. Day Room/Multi-Purpose Room.** That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)
- 12. Department.** The Idaho Department of Juvenile Corrections. (3-30-07)
- 13. Detention.** Detention means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-07)
- 14. Detention Center.** A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. (3-30-07)
- 15. Detention Records.** Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, head counts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. (3-30-07)
- 16. Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)
- 17. Director.** The Director of the Idaho Department of Juvenile Corrections. (3-30-07)

- 18. Electroshock Weapons.** Weapons used for subduing a person by administering an electric shock which disrupts muscle function. (3-29-12)
- 19. Emergency Care.** Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)
- 20. Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)
- 21. Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)
- 22. Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)
- 23. Health-Trained Employee.** A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments. (3-29-12)
- 24. Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)
- 25. Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-30-07)
- 26. Judge.** A district judge or a magistrate. (4-5-00)
- 27. Juvenile.** A person less than eighteen (18) years of age. (3-30-07)
- 28. Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)
- 29. Juvenile Offender.** A person who was under the age of eighteen (18) at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (3-30-07)
- 30. Legal Custody.** The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (3-30-07)
- 31. Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-5-00)
- 32. Mechanical Restraints.** Devices used to restrict physical activity. (3-30-07)
- 33. Medical Employee.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. (3-29-12)

- 34. Medical Records.** Separate records of medical examinations and diagnoses maintained by the health authority. (4-5-00)
- 35. Intake Medical Screening.** A system of structured observation/initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. (3-29-12)
- 36. Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juvenile offenders. (3-30-07)
- 37. Pat Search.** The touching or feeling of a subject's clothed body to detect contraband. (4-5-00)
- 38. Perimeter Security.** A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)
- 39. Perimeter Security Check.** Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas as designated by detention center policy and procedures. (3-30-07)
- 40. Petition for Exemption.** A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. The petition for exemption must contain written justification why the petitioner should be relieved from enforcement of specific detention standard(s). (3-30-07)
- 41. Physical Intervention.** Appropriate physical control used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. (3-30-07)
- 42. Policy and Procedures.** Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)
- a.** Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)
- b.** Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)
- 43. Prison Rape Elimination Act (PREA). A federal act promulgating standards that promote zero (0) tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or PREA.** ( )
- 434. Rated Capacity.** The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)
- 445. Renovation.** The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. (3-30-07)
- 456. Rule Infraction.** A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. (3-30-07)
- 467. Safety Equipment.** Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler



systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. (4-5-00)

**478. Secure Perimeter.** The outer portions of a detention center that provide for secure confinement of juvenile offenders. (3-30-07)

**489. Security Devices.** Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. (3-30-07)

**4950. Staffing Plan.** A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. (3-30-07)

**501. Standards.** Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. (3-30-07)

**512. Strip Search.** A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (3-29-12)

**523. Volunteer.** A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for the services or time. Volunteers are supervised by direct care staff. Volunteers shall not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.**

**01. Twenty-Four Hour Supervision.** The detention center shall be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. (3-30-07)

**02. Staffing.** The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the department prior to licensing and renewal. The following staffing plan is a recommendation only, and is not mandatory. It is recommended that ~~the staffing plan have at least two (2) staff awake and on duty through sleeping hours and the following staff during waking hours as governed by the one (1) direct care staff to eight (8) juvenile offenders, plus one (1) staff rule:~~ each secure juvenile facility shall maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. (3-30-07)( )

**a.** If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. (3-30-07)

**b.** If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. (3-29-12)

**03. Gender of Employees.** At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. An employee of the same gender as the juvenile offender being detained shall be on duty at the time of intake. (3-30-07)

**04. Minimum Qualifications.** (3-30-07)

**a.** Direct care staff, at the time of employment, shall meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

**b.** Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

**c.** The agency shall conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. ( )

**05. Training and Staff Development Plan.** Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

**a.** All new direct care staff shall be provided orientation training. The orientation and training plan shall address areas including, but not limited to: (3-29-12)

i. First aid/CPR; (3-30-07)

ii. Security procedures; (3-30-07)

iii. Supervision of juvenile offenders; (3-30-07)

~~iv.~~ ~~Signs of suicide risks;~~ (~~3-30-07~~)

~~iv.~~ Suicide ~~precautions~~ prevention; (~~3-30-07~~)( )

~~v.~~ Fire and emergency procedures; (3-30-07)

~~vi.~~ Safety procedures; (3-30-07)

~~vii.~~ Appropriate use of physical intervention; (3-30-07)

~~ix.~~ Report writing; (3-30-07)

~~x.~~ Juvenile offender rules of conduct; (3-30-07)

~~xi.~~ Rights and responsibilities of juvenile offenders; (3-30-07)

~~xii.~~ Fire and emergency procedures; (3-30-07)

~~xiii.~~ Safety procedures; (3-30-07)

~~xiii.~~ Key control; (3-30-07)

~~xiv.~~ Interpersonal relations; (3-30-07)

~~xv.~~ Social/cultural life styles of the juvenile population; (3-30-07)

~~xvi.~~ Communication skills; (3-29-12)

- ~~xviii. Counseling techniques; and (3-29-12)~~
- ~~xix. Inappropriate sexual contact. (3-29-12)~~
- xvii. Mandatory reporting laws and procedures; ( )
- xviii. Professional boundaries; and ( )
- xix. All training as outlined in section 115.331 of the PREA Standards. ( )
- b. Ongoing training shall be provided at the minimum rate of twenty-eight (208) hours for each subsequent year of employment, which shall include, but not be limited to: (3-30-07)( )
  - i. A total of eight (8) hours of appropriate use of force; and ( )
  - ii. All other trainings that require recertification. ( )
- c. Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. (3-29-12)
- d. Each facility shall maintain accurate training documentation. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**216. DOCUMENTATION.**

- 01. **Shift Log.** The detention center shall maintain documentation including time notations on each shift which includes the following information, at a minimum: (3-30-07)
  - a. Direct care staff on duty; (3-30-07)
  - b. Time and results of security or well-being checks and head counts; (4-5-00)
  - c. Names of juvenile offenders received or discharged with times recorded; (3-30-07)
  - d. Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; (3-30-07)
  - e. Time of meals served; (4-5-00)
  - f. Times and shift activities, including any action taken on the handling of any routine incidents; (3-29-12)
  - g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)
  - h. Notations and times of unusual incidents, problems, disturbances, escapes; (3-29-12)
  - i. Notations and times of any use of emergency or restraint equipment; and (4-5-00)
  - j. Notation and times of perimeter security checks. (4-5-00)

**02. Housing Assignment Roster.** The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)

**03. Visitor's Register.** The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)

- a. Name of each visitor; (4-5-00)
- b. Time and date of visit; (4-5-00)
- c. Juvenile offender to be visited; and (3-30-07)
- d. Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)

**04. Juvenile Detention Records.** The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)

- a. Booking and intake records; (4-5-00)
- b. Record of court appearances; (4-5-00)
- c. Documentation of authority to hold; (4-5-00)
- d. Probation officer or caseworker, if assigned; (4-5-00)
- e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)
- f. Record of deposits/withdrawals from the juvenile offender's account; (3-30-07)
- g. Classification records; ~~if any and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident;~~ (4-5-00)( )
- h. ~~Records of participation in programs and services~~ Documentation of education as outlined in PREA Standard Section 115.333; (4-5-00)( )
- i. Rule infraction reports; (4-5-00)
- j. Records of disciplinary actions; (4-5-00)
- k. Grievances filed and their dispositions; (4-5-00)
- l. Release records; (4-5-00)
- m. Personal information and emergency contact information; (4-5-00)
- n. Documentation of a completed intake medical screening; (3-29-12)
- o. Visitor records; (4-5-00)
- p. Incident reports; (4-5-00)
- q. Photographs. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

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

**01. Sexual Abuse of Juvenile Offenders.** The detention center ~~in accordance with Public Law 108-79, also known as the Prison Rape Elimination Act of 2003 (PREA);~~ shall have written policy and procedures ~~that promote mandating~~ zero (0) tolerance toward ~~the sexual abuse of juvenile offenders by staff or by other juvenile offenders all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.~~ The policy and procedures shall contain, at a minimum, the following provisions: (3-29-12)( )

**a.** The prohibition of any sexual abuse or sexual harassment as defined by PREA Standards or as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code; (3-29-12)( )

**b.** The appointment of a PREA Coordinator, as required outlined by PREA Standard Section 115.311(c), to be determined by the detention center administrator; (3-29-12)( )

**c.** The restrictions for cross-gender viewing and searches Procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks as outlined by PREA Standard Section 115.315(d); (3-29-12)( )

**d.** The process that will be in place to inform juvenile offenders of their right to be safe from sexual abuse and the means available to safely report sexual abuse The requirement of staff of the opposite gender to announce their presence when entering a resident housing unit or any area where residents are likely to be showering, performing bodily functions, or changing clothing as outlined by PREA Standard Section 115.315(d); (3-29-12)( )

**e.** The provision of two (2) or more avenues for a juvenile offender to report sexual abuse The process that will be in place to provide age appropriate education to juvenile offenders as outlined by PREA Standard Section 115.333; (3-29-12)( )

**f.** The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization The provision of multiple avenues for a juvenile offender or a third party to report sexual abuse and sexual harassment, at least one of which must be external to the agency as outlined by PREA Standard Section 115.351; (3-29-12)( )

**g.** The handling of all information regarding sexual abuse with confidentiality The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization as outlined by PREA Standard Section 115.342; (3-29-12)( )

**h.** The handling of all information regarding sexual abuse or sexual harassment with confidentiality as outlined by PREA Standard Section 115.361(c); ( )

**hi.** The process which will be in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when sexual abuse is suspected to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior as outlined by PREA Standard Section 115.322; (3-29-12)( )

**ij.** The process to employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims Policies to protect all residents and staff who report sexual abuse or sexual harassment from acts of retaliation as outlined by PREA Standard Section 115.367; (3-29-12)( )

**jk.** The provision of timely and unimpeded access to crisis intervention services, and medical, and

mental health care to victims as outlined by PREA Standard Section 115.382(a); (3-29-12)( )

~~l.~~ The provision and documentation of at least one (1) hour of annual training for staff concerning the statutory prohibition of sexual abuse or sexual contact with a juvenile offender, including criminal prosecution as outlined by PREA Standard Section 115.331; (3-29-12)( )

~~l.~~ The provision and documentation of training for all volunteers and contractors who have contact with residents on the agency's zero tolerance policy regarding sexual abuse, sexual harassment, and reporting duties, based on the level of contact that they have with juveniles; (3-29-12)

~~m.~~ The detention center's participation in the yearly "Survey on Sexual Violence" from the Bureau of Justice Statistics; and Within thirty (30) days of the conclusion of every sexual abuse investigation, the facility shall conduct a sexual abuse incident review as outlined in PREA Standard 115.386. (3-29-12)( )

~~n.~~ The detention center's compliance with the promulgated Rules and Standards of the Prison Rape Elimination Act of 2003. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**227. SEARCH AND SEIZURE.**

**01. Detention Center Search Plan.** The detention center shall have written policy and procedures which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. (3-30-07)

**02. Personal Searches.** The detention center shall have written policy and procedures governing the searching of juvenile offenders for the control of contraband and weapons which includes, at a minimum, the following provisions: (3-30-07)

**a.** Search of juvenile offenders upon entering the security perimeter; (3-30-07)

**b.** Search of newly admitted juvenile offenders; (3-30-07)

**c.** Periodic unannounced and irregularly timed searches of juvenile offenders; (3-30-07)

**d.** Provision for strip searches and body cavity searches at such times when there exists reasonable belief that the juvenile offender is in the possession of contraband or weapons or other prohibited material and shall only be conducted as described in Subsections 227.02.f. and 227.02.g.; (3-30-07)

**e.** Pat searches. Except in cases of emergency, pat searches shall be conducted by direct care personnel of the same sex; (3-29-12)

**f.** Strip searches. All strip searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. All strip searches shall be conducted by direct care personnel of the same sex as the juvenile offender or by the health authority or medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during the strip search; and (3-30-07)

**g.** Body cavity searches. All body cavity searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. Body cavity searches shall be conducted only by the health authority or by a medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during body cavity searches. (3-30-07)

h. Prohibition on searches or physical examinations of transgender or intersex residents for the sole purpose of determining genital status; ( )

i. Prohibition of cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners; ( )

j. Prohibition of cross-gender pat-down searches except in exigent circumstances; ( )

k. The documentation and justification for all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches. ( )

**03. All Body Cavity Searches Shall Be Documented.** Documentation of body cavity searches shall be maintained in detention center records and in the juvenile offender's record. (3-30-07)

**04. Seizure and Disposition of Contraband.** The detention center shall have written policy and procedures to govern the handling of contraband. All contraband found during detention center or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**256. MAIL, VISITING, TELEPHONE.**

**01. Written Policy and Procedures.** The detention center shall have written policy and procedures which shall govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders shall have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. (3-30-07)

**02. Resident Access to Outside Support Services.** The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse as outlined by PREA Standard Section 115.353. ( )

**023. Mail Service.** Mail, other than sent to or received from public officials, judges, attorneys, courts, government officials and officials of the confining authority, may be opened and inspected for contraband. (4-5-00)

**034. Telephone Service.** All juvenile offenders, except those restricted as a result of disciplinary action, shall be provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. (3-30-07)

**a.** Telephone calls shall not be monitored, except where legitimate reason exists in order to maintain security and order in the detention center. Notification that the juvenile offender's phone calls may be monitored should be posted in the detention center. (3-30-07)

**b.** The detention center may require that any costs for telephone calls be borne by the juvenile offender or the party called. (3-30-07)

**c.** Written policy and procedures shall grant all juvenile offenders the right to make at least one (1) local or collect long distance telephone call to family members, attorneys, or other approved individuals during the admissions process. (3-30-07)

**d.** Juvenile offenders shall be allowed to make a reasonable number of telephone calls to their attorneys. (3-30-07)

i. Telephone calls to attorneys shall be of reasonable duration. (4-5-00)

ii. Telephone calls to attorneys shall not be monitored. (4-5-00)

iii. Telephone calls to attorneys shall not be revoked as a disciplinary measure. (4-5-00)

**045. Visitation Restrictions.** The parents or legal guardians, probation officer, parole officer, detention center administrator or the court of jurisdiction may impose restrictions on who may visit a juvenile offender. (3-30-07)

**056. Search of Visitors.** Written policy and procedures shall specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. (3-30-07)

**067. Confidential Visits.** The detention center shall provide juvenile offenders adequate opportunities for confidential access to courts, attorneys and their authorized representatives, probation and parole officers, counselors, caseworkers and the clergy. (3-30-07)

**078. Visitation.** Attorneys, probation and parole officers, counselors, caseworkers and clergy shall be permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. (3-30-07)

**a.** Visits with attorneys, probation and parole officers, counselors, caseworkers and clergy shall not be monitored, except that detention center employees may visually observe the visitation as necessary to maintain appropriate levels of security. (3-30-07)

**b.** Visits with attorneys, probation and parole officers, counselors, caseworkers or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**262. RELEASE.**

**01. Release.** Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to: ( )

**a.** +Verification of juvenile offender's identity; ( )

**b.** +Verification of release papers; ( )

**c.** eCompletion of release arrangements, including the person or agency to whom the juvenile offender is being released; ( )

**d.** +Return of personal effects; and ( )

**e.** eCompletion of any pending action, ~~and instructions on forwarding mail.~~ (3-30-07) ( )

**02. Community Leaves.** Written policy and procedures shall govern escorted and unsecured day leaves into the community. (3-30-07)



**03. Personal Property Complaints.** Written policy and procedures shall govern a procedure for handling complaints about personal property. (4-5-00)

**04. Disposal of Property.** Property not claimed within four (4) months of a juvenile offender's discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. (3-29-12)

**263. -- 264. (RESERVED)**

**265. PROGRAMS AND SERVICES AVAILABLE.**

**01. Written Policies and Procedures Governing Available Programs and Services.** The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services shall include, at a minimum, the following: (3-29-12)

- a.** Access or referral to counseling; (3-29-12)
- b.** Religious services on a voluntary basis; (3-29-12)
- c.** One (1) hour per day, five (5) days per week of large muscle exercise; (3-29-12)
- d.** Passive recreational activities; (3-29-12)
- e.** Regular and systematic access to reading material; (3-29-12)
- f.** Work assignments; and (3-29-12)
- g.** Educational programs according to the promulgated rules of the Idaho State Department of Education. (3-29-12)

**02. Records of Participation in Programs and Services.** Records of participation in programs and services must be recorded in daily shift log or juvenile offender's file or program records. ( )

**023. Limitations and Denial of Services.** Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services must be documented. (3-29-12)

**266. -- 274. (RESERVED)**

**275. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.**

**01. Applicability.** All standards in this section, except where exceptions are stated, shall apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. (3-29-12)

**02. Code Compliance.** In addition to these rules, all new construction and renovation shall comply with the applicable ADA, building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal, and state law. Standards herein which exceed those of the local authority shall take precedence. (4-5-00)

**03. Site Selection.** Juvenile detention centers should be located to facilitate access to community resources and juvenile justice agencies. If the detention center is located on the grounds or in a building with any other correctional facility, it shall be constructed as a separate, self-contained unit in compliance with Title 20, Chapter 5, Section 20-518, Idaho Code. (3-30-07)

**04. General Conditions.** All newly constructed or renovated juvenile detention centers shall conform

to the following general conditions: (3-30-07)

**a.** Light levels in all housing areas shall be appropriate for the use and type of activities which occur. Night lighting shall permit adequate illumination for supervision; (3-30-07)

**b.** All living areas shall provide visual access to natural light; (3-30-07)

**c.** HVAC systems shall be designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; (3-30-07)

**d.** All locks, detention hardware, fixtures, furnishings, and equipment shall have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; (3-30-07)

**e.** Juvenile offenders' rights to privacy from unauthorized or degrading observation shall be protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; (3-30-07)

**f.** The detention center shall have a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; (3-30-07)

**g.** The security area of the detention center shall have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television shall not be used to routinely monitor the interior of sleeping rooms; and (3-30-07)

**h.** All newly constructed or renovated detention centers shall provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. (3-30-07)

**i.** When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse as outlined by PREA Standard Section 115.318. ( )

**05. Admission and Release Area.** The detention center shall have an intake and release area which should be located within the security perimeter, but apart from other living and activity areas. (3-30-07)

**a.** Adequate space shall be allocated for, at least but not limited to; (3-30-07)

i. Reception; (3-30-07)

ii. Booking; (3-30-07)

iii. Search; (3-30-07)

iv. Shower and clothing exchange; (3-30-07)

v. Medical screening; (3-30-07)

vi. Storage of juvenile offender's personal property and detention center clothing; (3-30-07)

vii. Telephone calls; (3-30-07)

viii. Interviews; and (3-30-07)

- ix. Release screening and processing. (3-30-07)
- b.** If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple occupancy and shall provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender at capacity (3-30-07)
- c.** Temporary holding rooms shall have access to a toilet and wash basin with hot and cold water. (3-30-07)
- 06. Single Occupancy Rooms.** Single occupancy sleeping rooms or cells shall have a minimum of thirty-five (35) square feet of unencumbered space and shall be equipped with at least a bed above the floor. (4-5-00)
- 07. Multiple Occupancy Rooms.** Multiple occupancy sleeping rooms or cells shall have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room's rated capacity and shall be equipped with at least a bed off the floor for each juvenile offender. (3-30-07)
- 08. Sanitation and Seating.** All single or multiple occupancy sleeping rooms shall be equipped with, or have twenty-four (24) hours per day access without detention center staff assistance to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: (3-30-07)
- a.** One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; (3-30-07)
- b.** One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and (3-30-07)
- c.** Tables and seating sufficient for the maximum number expected to use the room at one (1) time. (3-30-07)
- 09. Day Room and Multi-Purpose Room.** The detention center shall have at least one (1) day room and multi-purpose room which provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. (3-30-07)
- 10. Program Space.** Adequate space shall be allocated for, but not limited to: (3-30-07)
- a.** Educational programs; (3-30-07)
- b.** Individual and group activities; (3-30-07)
- c.** Exercise and recreation, indoor and outdoor; (3-30-07)
- d.** Visitation; (3-30-07)
- e.** Confidential attorney and clergy interviews; and (3-30-07)
- f.** Counseling. (3-30-07)
- 11. Interview Space.** A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials shall be provided. At least one (1) confidential interview area is required. (4-5-00)
- 12. Medical Service Space.** Space shall be provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. (4-5-00)
- 13. Food Service.** The kitchen or food service area shall have sufficient space for food preparation,

serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area shall be properly equipped and have adequate storage space for the quantity of food prepared and served. (3-30-07)

**14. Laundry.** Where laundry services are provided in-house, there shall be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. (4-5-00)

**15. Janitor's Closet.** At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment shall be provided within the security perimeter of the detention center. (3-30-07)

**16. Security Equipment Storage.** A secure storage area shall be provided for all chemical agents, weapons, and security equipment. (4-5-00)

**17. Administration Space.** Adequate space shall be provided which includes but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. (4-5-00)

**18. Public Lobby.** A public lobby or waiting area shall be provided which includes sufficient seating and toilets. Public access to security and administrative work areas shall be restricted. All parts of the detention center that are accessible to the public shall be accessible to, and usable by, persons with disabilities in compliance with ADA standards. (3-30-07)

## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

#### DOCKET NO. 07-0106-1301

#### 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 54-1001 and 54-1006(5), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Currently, the 2008 edition of the National Electrical Code (NEC) is the standard by which all electrical installations in Idaho must be performed. The 2014 edition of the NEC will be adopted with this rulemaking. Adoption and amendment of the 2014 NEC was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the electrical industry, local building officials, code development officials, board members, and other interested stakeholders. The board skipped the adoption of the 2011 NEC in favor of resolving code issues within the industry through a collaborative and negotiated rulemaking process. Specifically, the 2014 NEC provides for arc fault circuit interrupter (AFCI) breakers to be installed for all circuits supplying outlets in dwelling unit family rooms, dining rooms, living rooms, parlors, dens, bedrooms, recreation rooms, closets, hallways, or similar rooms or areas. However, since 2008 the Board has only required AFCI breakers to be utilized for circuits supplying dwelling unit bedrooms as reflected in existing administrative rule amendment. At numerous board and collaborative meetings conducted over the past several years, the Board considered the input of contractors, manufacturers, consumers, and other affected industry participants before determining to retain the existing rule amendment regarding AFCI breakers. This rulemaking would result in adoption of 2014 NEC and retain the existing amendment that requires the use of such AFCI circuit breakers to be utilized only in dwelling unit bedrooms. The proposed rule would adopt the 2014 edition of the National Electric Code (NEC) along with several amendments to that code related to circuits and receptacles located near sinks, in laundry rooms and kitchens, and on decks and porches. The proposed rule would also eliminate earlier amendments to the bonding requirements which have been adequately addressed in the 2014 NEC.

**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 adoption of the 2014 National Electrical Code is expected to cost DBS approximately \$5,000. This cost includes the cost of new code books and training associated with the implementation of the new code. Local jurisdictions will encounter similar costs.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 57 and 58](#).

**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 54-1001, Idaho Code, requires all electrical installations in the state of Idaho to be made substantially in accord with the National Electrical Code as newer editions shall be adopted from time to time by the Idaho Electrical Board. Currently, the 2008 edition of the National Electrical Code (NEC) is the standard by which all electrical installations in Idaho must be performed. The 2014 edition of the NEC will be adopted with this rulemaking. The

proposed rule will also adopt the 2014 edition of the National Electric Code (NEC) along with several amendments to that code related to circuits and receptacles located near sinks, in laundry rooms and kitchens, and on decks and porches.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 27th day of August, 2013.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
Meridian, ID 83642  
PO Box 83720, Boise, ID 83720-0048  
Phone: (208) 332-8986  
Fax: 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0106-1301**  
**(Only those Sections being amended are shown.)**

**011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, 2008~~14~~ EDITION.**

**01. Documents.** Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2008~~14~~ Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2008~~14~~, with the *exception of the* following **amendments:** ~~(4-2-08)~~( )

**a.** Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks - located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. ( )

**b.** Article 210.8(A)(10). Delete article 210.8(A)(10). ( )

**c.** Article 210.8(D). Delete article 210.8(D). ( )

**d.** Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. ( )

**e.** Where the height of a crawl space does not exceed one ~~point~~ and four tenths (1.4) meters or four ~~point five~~ and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two ~~point~~ and one tenth (2.1) meters or seven (7) feet of crawl space

access shall comply with Article 320.23.

~~(3-29-10)~~( )

**bf.** Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located.

~~(5-3-03)~~( )

**eg.** Article 550.32(B). Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992.

(5-3-03)

**fh.** Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC.

(4-6-05)

**ei.** Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. (4-2-08)

i. Definition. Arc-Fault Circuit-Interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected. (4-2-08)

ii. Dwelling Unit Bedrooms. All one hundred twenty (120)-volt, single phase, fifteen (15)-ampere and twenty (20)-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. (4-2-08)

~~**f.** Compliance with Article 680.26 Bonding. (4-2-08)~~

~~i. Performance. The bonding required by this section shall be installed to eliminate voltage gradients in the pool area as prescribed. FPN: This section does not require that the eight (8) AWG or larger solid copper bonding conductor be extended or attached to any remote panelboard, service equipment, or any electrode. (4-2-08)~~

~~ii. Bonded Parts. The parts specified in 680.26(B)(1) through (B)(5) shall be bonded together. (4-2-08)~~

~~(1) Metallie Structural Components. All metallic parts of the pool structure, including the reinforcing metal of the pool shell, coping stones, and deck, shall be bonded. The usual steel tie wires shall be considered suitable for bonding the reinforcing steel together, and welding or special clamping shall not be required. These tie wires shall be made tight. If reinforcing steel is effectively insulated by an encapsulating nonconductive compound at the time of manufacture and installation, it shall not be required to be bonded. Where reinforcing steel is encapsulated with a nonconductive compound, provisions shall be made for an alternate means to eliminate voltage gradients that would otherwise be provided by unencapsulated, bonded reinforcing steel. (4-2-08)~~

~~(2) Underwater Lighting. All forming shells and mounting brackets of no niche luminaries (fixtures) shall be bonded unless a listed low voltage lighting system with nonmetallic forming shells not requiring bonding is used. (4-2-08)~~

~~(3) Metal Fittings. All metal fittings within or attached to the pool structure shall be bonded. Isolated parts that are not over one hundred (100) mm (four (4) inches) in any dimension and do not penetrate into the pool structure more than twenty five (25) mm (one (1) inch) shall not require bonding. (4-2-08)~~

~~(4) **Electrical Equipment.** Metal parts of electrical equipment associated with the pool water circulating system, including pump motors and metal parts of equipment associated with pool covers, including electric motors, shall be bonded. Metal parts of listed equipment incorporating an approved system of double insulation and providing a means for grounding internal nonaccessible, non-current carrying metal parts shall not be bonded. Where a double-insulated water pump motor is installed under the provisions of this rule, a solid eight (8) AWG copper conductor that is of sufficient length to make a bonding connection to a replacement motor shall be extended from the bonding grid to an accessible point in the motor vicinity. Where there is no connection between the swimming pool bonding grid and the equipment grounding system for the premises, this bonding conductor shall be connected to the equipment grounding conductor of the motor circuit. (4-2-08)~~

~~(5) **Metal Wiring Methods and Equipment.** Metal sheathed cables and raceways, metal piping, and all fixed metal parts except those separated from the pool by a permanent barrier shall be bonded that are within the following distances of the pool: (4-2-08)~~

~~(a) Within one and five tenths (1.5) meters (five (5) feet) horizontally of the inside walls of the pool. (4-2-08)~~

~~(b) Within three and seven tenths (3.7) meters (twelve (12) feet) measured vertically above the maximum water level of the pool, or any observation stands, towers, or platforms, or any diving structures. (4-2-08)~~

~~iii. **Common Bonding Grid.** The parts specified in 680.26B shall be connected to a common bonding grid with a solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. Connection shall be made by exothermic welding or by pressure connectors or clamps that are labeled as being suitable for the purpose and are of stainless steel, brass, copper, or copper alloy. The common bonding grid shall be permitted to be any of the following: (4-2-08)~~

~~(1) The structural reinforcing steel of a concrete pool where the reinforcing rods are bonded together by the usual steel tie wires or the equivalent. (4-2-08)~~

~~(2) The wall of a bolted or welded metal pool. (4-2-08)~~

~~(3) A solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. (4-2-08)~~

~~(4) Rigid metal conduit or intermediate metal conduit of brass or other identified corrosion resistant metal conduit. (4-2-08)~~

~~iv. **Connections.** Where structural reinforcing steel or the walls of bolted or welded metal pool structures are used as a common bonding grid for nonelectrical parts, the connections shall be made in accordance with 250.8. (4-2-08)~~

~~v. **Pool Water Heaters.** For pool water heaters rated at more than fifty (50) amperes that have specific instructions regarding bonding and grounding, only those parts designated to be bonded shall be bonded, and only those parts designated to be grounded shall be grounded. (4-2-08)~~

**02. Availability.** ~~This document~~ [A copy of the National Electrical Code](#) is available at the offices of the Division of Building Safety at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, [1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814](#), and [2055 Garrett Way, Suite 7, Pocatello, Idaho 83201](#). ~~(4-2-08)~~



## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.01.10 - RULES GOVERNING CERTIFICATION AND APPROVAL OF ELECTRICAL PRODUCTS AND MATERIALS

DOCKET NO. 07-0110-1301

#### 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 54-1001 and 54-1006(5), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 existing rule uses incorrect terminology to identify an appropriate testing laboratory which certifies and lists products. Additionally, the existing rule does not adequately describe who may perform a field evaluation, nor the standards of what constitutes an adequate field evaluation. Finally, amendment is necessary to provide additional flexibility for the installation of industrial machinery by allowing an evaluation of such by a licensed professional engineer. The proposed rule would provide that approval of all electrical products and materials for installation in Idaho may be achieved either through certification and listing by a nationally recognized testing laboratory, or through a field evaluation process. The rule would require that field evaluations be performed by approved evaluation bodies that meet minimum requirements, and that such evaluations be performed in accordance with recognized practices and procedures. Further, in the case of industrial machinery only, the rule would allow as an alternate method that such evaluation may be performed by a qualified electrical engineer not involved in the design or installation of the equipment.

**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 or dedicated funds. Positive impact through cost savings is expected for those who may install non-listed industrial machinery through the use of a field evaluation process that includes the ability to utilize a professional engineer.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Although formal negotiated rulemaking did not occur prior to the promulgation of this rulemaking, the matter was formally designated as an agenda topic before the Electrical Board at six (6) different board meetings over the course of two years. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process. The final proposed rule is the product of the input of multiple stakeholders; although not all favored its adoption.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 27th day of August, 2013.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
Meridian, ID 83642  
PO Box 83720, Boise, ID 83720-0048  
Phone: (208) 332-8986  
Fax: 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0110-1301**  
**(Only those Sections being amended are shown.)**

**011. CERTIFICATION AND APPROVAL OF ELECTRICAL PRODUCTS AND MATERIALS.**

In the state of Idaho, all materials, devices, fittings, equipment, apparatus, ~~fixtures~~ luminaires, and appliances installed or to be used in installations that are supplied with electric energy shall be approved as provided in one (1) of the following methods: ~~(2-26-93)~~(    )

**01. Testing Laboratory.** Be tested, examined, and certified (Listed) by ~~an accredited electrical product~~ Nationally Recognized ~~Testing~~ Laboratory (NRTL). ~~The Division of Building Safety, Electrical Bureau, shall maintain an up to date list of products and equipment approved by such testing laboratories as well as an updated list of accredited products which shall be used and installed in accordance with the certification (Listing).~~ ~~(12-17-92)~~(    )

**02. Approval of Electrical Inspector.** ~~Be approved by the electrical inspector provided such an assembly, product, or equipment is installed under an electrical permit issued by the Division of Building Safety, Electrical Bureau, and conforms to the National Electrical Code and recognized industry standards. Where in the judgment of the Electrical Bureau a field evaluation is necessary to determine the acceptability of the assembly, product, or equipment to recognized industry standards, this field evaluation shall be completed by an accredited electrical product testing laboratory. The Division of Building Safety, Electrical Bureau, shall maintain a list of accredited electrical testing laboratories approved to complete such field evaluations. Such approval shall not be required for types of products that are regularly certified (Listed) or for certified (Listed) products as determined by the list maintained by the Division of Building Safety, Electrical Bureau. Such approval shall be obtained prior to installation. If approval is denied, the particular reasons for denial shall be stated through issuance of a notice of defects pursuant to Section 54-1004, Idaho Code.~~ Field Evaluation. Non-listed electrical equipment may be approved for use through a field evaluation process performed in accordance with recognized practices and procedures such as those contained in the 2012 edition of NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA). Such evaluations shall be conducted by: ~~(12-17-92)~~(    )

**a.** The authority having jurisdiction (AHJ): (    )

**b.** A field evaluation body (FEB) approved by the authority having jurisdiction. The field evaluation body shall meet minimum recognized standards for competency, such as NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies, 2012 edition, published by the National Fire Protection Association (NFPA); or (    )

**c.** In the case of industrial machinery only, as defined by NFPA 79 - Electrical Standard for Industrial Machinery, 2012 edition, a field evaluation may be performed by a professional engineer currently licensed to

practice electrical engineering by the state of Idaho and who is not involved in the design of the equipment being evaluated or the facility in which the equipment is to be installed. ( )

**03. Availability of NFPA Standards.** The most recent edition of NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies, and NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA) are available at the Division of Building Safety offices located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. ( )

## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-1301

#### 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 54-1907 and 54-1910, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule requires that an applicant for licensure as a public works contractor submit a written application accompanied by a notarization. This rulemaking will provide flexibility to the administrator to accept applications submitted via electronic means other than facsimile. In accordance with the statutory requirement applicants will still be required to submit a sworn statement or attestation as to the truthfulness and accuracy of the information provided in the application. It also clarifies that an extension of time in which to renew a license shall be granted only until such time as the application is acted upon by the administrator. The rulemaking would clarify that acceptable formats for communications with the Division and applications for public works contractor licensure include electronic submissions by an applicant. It also provides that an extension of time in which to renew a license shall authorize operation as a licensed contractor only until such time as the administrator completes action on the renewal application.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is administrative in nature and provides the Division with the ability to accept and process applications for licenses electronically via an on-line method.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 27th day of August, 2013.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
Meridian, ID 83642

PO Box 83720  
Boise, ID 83720-0048  
Phone: (208) 332-8986  
Fax: 1-877-810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0501-1301  
(Only those Sections being amended are shown.)**

**100. BOARD OFFICE -- LOCATION, HOURS, MAILING ADDRESS, TELEPHONE NUMBER, FACSIMILE NUMBER.**

The address of the Board office, and its mailing address, is 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. Office hours are from 8 a.m. until 5 p.m., daily. The office is closed on weekends and holidays. The Board telephone number is (208) 334-4057, and the facsimile number is (208) 855-9666. ~~(3-20-04)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. COMMUNICATION.**

All written communications, forms and documents concerning any matter covered by the Act or these rules shall be addressed to the administrator and not to members of the Board or staff. All communications are deemed officially received only when delivered to the ~~Board~~ office of the administrator. Documents may be submitted ~~by facsimile but not by other~~ in electronic or computerized means format acceptable to the administrator. ~~(3-20-04)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. LICENSE RENEWAL -- FILING DEADLINES; PETITIONS FOR EXTENSION OF TIME TO FILE; LAPSED LICENSES.**

**01. Filing Deadline.** Applications for renewal of a license shall be filed by the last working day of the month in which the license expires. (3-20-04)

**02. Extension of Time.** A petition for an extension of time in which to renew shall be filed by the last working day of the month in which the license expires. The petition shall be accompanied by a fee in the amount of the prorated portion of the annual license fee for the class of license applied for, with a minimum fee of at least fifty dollars (\$50). The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and shall be paid to the Division at the time of application for licensure. Petitions not accompanied by the required fees or filed after the license has expired will not be honored. (3-21-12)

- i. The petition shall specify the number of days for which the extension is being requested. (3-20-04)
- ii. Under no circumstances shall an extension exceed sixty (60) days. Petitions for more than sixty (60) days will not be honored. (3-20-04)

**03. Approval of Petition.** Approval of a petition for an extension of time shall authorize operation as a contractor until ~~actual issuance of such~~ the administrator completes action on the renewal ~~license for the ensuing licensing period~~ application, provided the application for renewal is filed with the Board within the extended time specified. ~~(3-19-99)~~(\_\_\_\_)

**04. Failure to File.** If the licensee fails to file a timely application for renewal or petition for extension, the license shall lapse and expire on the last day of the license period. Licenses not renewed in a timely manner shall be considered delinquent for a period of one (1) year from the last day of the license period and may be renewed at any time during that year. Licenses delinquent for more than a period of one (1) year must be reinstated and the applicant for reinstatement must apply as if for a new license. (3-20-04)

**05. Expedited Licensure.** Upon an applicant's request and payment of a fee of one hundred dollars (\$100), the Division shall expedite its review and determination of a license application. The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and shall be paid to the Division at the time of application for licensure. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. APPLICATION FOR LICENSURE -- DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.**

**01. Application Documentation.** To obtain a license, the applicant shall submit to the administrator, on such forms and in a format as the administrator shall prescribe, including electronically, accompanied by the required fee for the class of license applied for, a complete written, ~~notarized~~ application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: (3-20-04)( )

**a.** A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (3-20-04)

**b.** A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; (3-20-04)

**c.** A general description of applicant's machinery and equipment; and (3-30-07)

**d.** An annual financial statement, as herein defined, that covers a period of time ending no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the Board may prescribe by rule. The applicant's financial statement may be supplemented with: (4-4-13)

**i.** Bonding. As authorized by Section 54-1910(e), Idaho Code, a letter from applicant's bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, including supporting documentation; (3-30-07)

**ii.** Guaranty. Documentation, satisfactory to the administrator, of the existence of a written guaranty agreement between the applicant and a third-party in which the third-party guarantor agrees to assume financial responsibility for payment of any obligations of the applicant for any particular project as may be determined by a court of competent jurisdiction. The guaranty agreement, along with financial statements meeting the requirements of Paragraph 110.01.e. of this rule, shall be submitted with the license application. (3-30-07)

**e.** For Class A, AA, AAA, and Unlimited license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For Class B and CC license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For Class C and Class D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. (3-27-13)

**f.** The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee.

(3-20-04)

**g.** Applicants requesting a licensing class higher than that for which the applicant is currently licensed shall provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. The monetary value of those jobs must fall within a range not less than ~~thirty~~ thirty percent (30%) below that for which the applicant is currently licensed. ~~(4-11-06)~~( )

**02. Application for Change in Licensing Class.** Requests for a licensing class higher than that for which the applicant is currently licensed shall be accompanied by the information in Subsection 110.01 of these rules, and the applicable fee. Licenses granted under Subsection 110.02 of these rules shall be valid for a period of twelve (12) months from the date of issuance. (4-11-06)

**03. Extension of Time to File Financial Statement.** The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application shall be filed prior to the first day of such renewal licensing period. In the event an extension is granted, the renewal license shall be valid for a period of twelve (12) months from the date of the issuance of the renewal license. (3-20-04)

**04. Appraisals.** The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. (3-20-04)

**05. References.** The administrator may require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications. (3-20-04)

## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-1301

#### 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 54-5001, 54-5004(1) and 54-5005(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 HVAC codes published by the International Code Council are adopted by the state of Idaho pursuant to Idaho Code and they represent the standards by which all HVAC installations are made throughout the state. Currently, the 2009 editions of the codes are used as the standard; however, newer versions have been published in the form of the 2012 editions and would be adopted with this rulemaking. Adoption and amendment of the 2012 editions of the HVAC codes was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the HVAC and building industry, local building officials, code development officials, board members, and other interested stakeholders. This rulemaking adopts the 2012 editions of the International Mechanical Code, the International Fuel Gas Code, and Parts V and VI of the International Residential Code related to HVAC installations. Amendments to the International Mechanical Code and International Residential Code reflect changes agreed to in the course of developing a consensus among stakeholders. Amendments include an exception relating to the gauge of sheet metal in certain circumstances and related amendments for the support of such exhaust ducts. Additionally, amendments are made providing alternative prescriptive methods addressing the methodology for satisfying make-up air ventilation requirements. Finally, existing amendments providing alternatives to equipment sizing requirements are also eliminated.

**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 the Division and jurisdictions enforcing the codes for obtaining new code materials and training of inspectors. No significant additional costs to the industry of conformance with the new editions 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 62 and 63](#).

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

The HVAC codes published by the International Code Council are adopted by the State of Idaho pursuant to Idaho Code, and they represent the standards by which all HVAC installations are made throughout the state. Currently, the 2009 editions of the codes are used as the standard; however, newer versions have been published in the form of the 2012 editions. This rulemaking adopts the 2012 editions of the International Mechanical Code, the International Fuel Gas Code, and Parts V and VI of the International Residential Code related to HVAC installations, with amendments. Section 54-5001, 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 October 23, 2013.

DATED this 23rd day of August, 2013.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1301**  
**(Only those Sections being amended are shown.)**

**004. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL MECHANICAL CODE, 2009~~12~~ EDITION.**

**01. International Mechanical Code.** The 2009~~12~~ Edition, including appendix "A," (herein IMC) is adopted and incorporated by reference with the following amendments: (4-7-11)( )

**a.** Where differences occur between the IMC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the ~~Uniform~~ Idaho State Plumbing Code (~~ISPC~~) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)( )

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d.** Section 109. Delete. (7-1-10)

~~**e.** Section 312. Sizing requirements shall be as established by the authority having jurisdiction.~~ (4-11-06)

**f.** Section 401.1 Scope. Add the following: Exception: The principles specified in ASHREA 62-2010 may be used as an alternative to this chapter to demonstrate compliance with required ventilation air for occupants. (4-7-11)

**f.** Section 504.6.1 Material and size. Add the following exception: Dryer duct may be constructed of 0.013 (30 gage) or equivalent if prefabricated 0.016 (28 gage) ducts and fittings are not available. ( )

**g.** Table 603.4 Duct Construction Minimum Sheet Metal Thickness for Single Dwelling Units. Add the following exception to the Table: Round duct, enclosed rectangular ducts and fittings less than fourteen (14) inches may be constructed of 0.013 (30 gage) or equivalent if prefabricated 0.016 (28 gage) ducts and fittings are not available. ( )

**02. Availability of the International Mechanical Code.** The 2009~~12~~ Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (4-7-11)( )

**005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2009~~12~~ EDITION.**

**01. International Fuel Gas Code.** The 2009~~12~~ Edition, including appendixes "A, B, C, and D," (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-7-11)( )

**a.** Where differences occur between the IFGC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Idaho State Plumbing Code (~~US~~IPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)( )

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d.** Section 109. Delete. (7-1-10)

**e.** Section 406.4. Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)

**f.** Section 406.4.1. Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)

**g.** Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)

**h.** Section 408.4. Sediment Trap. Delete the last sentence and replace it with the following: Illuminating appliances, ranges, clothes dryers, outdoor grills, decorative vented appliances for installation in vented fireplaces, and gas fireplaces need not be so equipped. (4-7-11)

**i.** Add a new section 503.4.1.2 as follows: Testing. All plastic pipe within a dwelling used for venting flue gases shall be tested at five (5) psi for fifteen (15) minutes. (4-4-13)

**j.** Section 505.1.1. Addition. An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems. (4-11-06)

**02. Availability of the International Fuel Gas Code.** The 2009~~12~~ Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (4-7-11)( )

**006. ADOPTION AND INCORPORATION BY REFERENCE OF PART V (MECHANICAL) AND PART VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE (1)- AND TWO (2)- FAMILY DWELLINGS, 2009~~12~~ EDITION.**

**01. Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One (1)- and Two (2)-Family Dwellings.** The 2009~~12~~ Edition, including appendixes “A, B, C, and D,” (herein IRC) is adopted and incorporated by reference with the following amendments: ~~(4-7-H)~~( )

**a.** Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code, and IDAPA 07, Title 07, Chapter 01, the provisions in Idaho Code and IDAPA rules shall apply. (4-7-11)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Idaho State Plumbing Code (~~U~~ISPC) as adopted and amended by the Idaho State Plumbing Board. ~~(4-7-H)~~( )

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-7-11)

**d.** Add the following as section M1201.3 and section G2402.4 (201.4): Alternative materials, design and methods of construction equipment. The provisions of this part of the code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the authority having jurisdiction finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code. Compliance with the specific performance-based provisions of this part of the code in lieu of specific requirements of this code shall also be permitted as an alternate. (4-4-13)

**e.** Add the following as section M1201.3.1 and section G2402.4.1 (201.4.1): Tests. Whenever there is insufficient evidence of compliance with the provisions of this part of the code, or evidence that a material or method does not conform to the requirements of this part of the code, or in order to substantiate claims for alternative materials or methods, the authority having jurisdiction shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the authority having jurisdiction shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the authority having jurisdiction for the period required for retention of public records. (4-4-13)

**f.** Add the following as section M1203.1: Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages. (4-4-13)

**g.** Add the following as section M1203.2: Where required in existing dwellings. Where work requiring a permit occurs in existing dwellings that have attached garages or in existing dwellings within which fuel-fired appliances exist, carbon monoxide alarms shall be provided in accordance with Subsection 006.01.f. of these rules. (4-4-13)

**h.** Add the following as section M1203.3: Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer’s installation instructions. (4-4-13)

**i.** Section ~~M1401.3. Sizing requirements shall be as established by the authority having jurisdiction~~ M1502.4.1 Material and size. Add the following exception: Dryer duct may be constructed of 0.013 (30 gage) or equivalent if prefabricated 0.016 (28 gage) ducts and fittings are not available. ~~(4-7-H)~~( )

**j.** Delete Section M1502.4.2 Duct Installation and replace with the following: Exhaust ducts shall be supported at four (4) foot (1,219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. ( )

**k.** Section M1507.3.1 System Design. Add the following to the end of the section: Outdoor air shall be ducted predominantly horizontal to avoid chimney effect. Outdoor air ducts will contain an accessible back draft damper and be designed to have an open cross section of twenty (20) square inches per one thousand (1,000) square feet of conditioned space. ( )

**l.** Table M1601.1.1 (2) Gages of Metal Ducts and Plenums Used for Heating or Cooling. Add the following exception: Round duct, enclosed rectangular ducts and fittings less than fourteen (14) inches may be constructed of 0.013 (30 gage) or equivalent if prefabricated 0.016 (28 gage) ducts and fittings are not available. ( )

**jm.** Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-7-11)

**kn.** Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (one hundred forty (140) kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (seventy (70) kPa gauge), not less than sixty (60) psig (four hundred twenty (420) kPa gauge) test pressure shall be required. For systems over ten (10) psig (seventy (70) kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-7-11)

**lo.** Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-7-11)

**mp.** Add a new section G2427.4.1.2 as follows: Testing. All plastic pipe within a dwelling used for venting flue gases shall be tested at five (5) psi for fifteen (15) minutes. (4-4-13)

**02.** **Availability of the International Residential Code for One (1)- and Two (2)-Family Dwellings.** The 20~~09~~<sup>12</sup> Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (~~4-7-11~~)( )

# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.01 - RULES GOVERNING ADMINISTRATION

### DOCKET NO. 08-0201-1302

#### 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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, and 33-107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

IDAPA 08.02.01, Section 650 sets out the requirements for students who have not completed high school to take the GED® Assessment or earn their High School Equivalency Certificate. The GED® Testing Service is a collaboration between the American Council on Education (ACE) and Pearson. In 2011 they started an initiative to redo the GED test and bring it into alignment with 21st Century Skills Initiative. The new exam will be given starting in January of 2014. Previously the GED Testing Service was a program of ACE, who developed, delivered, and safeguarded the GED test. The exam was only administered through state entities, the US military, and federal correctional institutions. In Idaho the Division of Professional-Technical Education manages/administers the program and public schools institutions were authorized to administer the exam. The new GED Testing Service will be a partnership between ACE and Pearson, the exam will become a completely on-line exam and will be allowed to also be administered by private higher education institutions as well. This is a change at the national level made by the company who owns the right to the GED assessment. The proposed changes would divide the section on GED testing from the high school equivalency section more clearly, specify that state set's the fee currently being paid by each individual who takes the GED exam (not the private institution administering the exam), clarifies that the minimum score to pass the exam is set by the GED Testing Service, removes the requirement that test takers have to be Idaho residents, and requires that test takers show proof of identification using government issued identification.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no change to the current fee being charged.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted due to the non-controversial nature of the changes being proposed.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED the 30th day of August, 2013.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
(208)332-1582, fax: (208)334-2632

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0201-1302  
(Only those Sections being amended are shown.)

**650. GENERAL EDUCATION DEVELOPMENT TESTS/IDAHO HIGH SCHOOL EQUIVALENCY CERTIFICATE.**

The primary objective of the State Board of Education is to have all students complete their formal education and graduate from high school. However, students who drop out of school and believe it is in their best interest to take the (General Education Development) G.E.D. test may do so under the following conditions and, upon successful completion of all G.E.D. requirements, may apply for an Idaho High School Equivalency Certificate. (4-1-97)

**01. General Education Development Tests.** General Education Development (GED) tests are given by approved testing centers ~~for a statewide fee set by the Idaho Division of Professional-Technical Education. Fees are set by the testing centers. For successful completion, the test taker must earn a standard score of at least forty (40) on each of the five (5) tests and must earn an average standard score of forty-five (45) on all five (5) tests. The testing centers will provide an American Government test for individuals who do not have credit in American Government and who plan to apply for an Idaho High School Equivalency Certificate.~~ Candidates must make the minimum score for passing the GED test as established by the GED Testing service. (4-1-97)(\_\_\_\_)

~~**02. Resident Eligibility Requirement.** To be eligible to take the GED tests, the applicant must be a bona fide resident of the state of Idaho at the time of application. Residency is not gained or lost by reason of military service.~~ (4-1-97)

~~**03.2. Age Criteria.** The applicant must satisfy one (1) of the following age criteria:~~ (4-1-97)

**a.** The applicant must be at least eighteen (18) years of age; (4-1-97)

**b.** The applicant may be sixteen (16) or seventeen (17) years of age and be one (1) year or more behind in credits earned, expelled, recommended by the school, pregnant, or a parent. In such cases, the applicant is eligible if the applicant's school verifies in writing that the student meets one of the above criteria and this verification is on file at the testing center prior to any testing. The school may give its verification only after the applicant and his or her parent or guardian submit in writing a request for the applicant to take the GED tests and the applicant and the applicant's parent or guardian have met with school officials to review and discuss the request. (In cases where the applicant is not living with a parent or guardian, the parent or guardian's verification is not necessary.); (4-1-97)

**c.** The applicant may be sixteen (16) or seventeen (17) years of age and be entering college, the military, or an employment training program ~~(such as the Job Training Partnership Act (JTPA) or other state or federally approved program)~~, enrolled in an Adult Basic Education Program, enrolled in the Job Corps, or incarcerated. In such cases, the applicant is eligible if the institution involved applies in writing for the applicant to take the GED tests and this application is on file at the testing center prior to any testing. (4-1-97)(\_\_\_\_)

**03. Proof of Identity.** Test takers must present proof of identification that shows legal name, date of birth, signature, address and photograph. Valid drivers' licenses, passports, military, and other forms of government-

issued identification are acceptable. Two (2) forms of identification may be provided to meet these criteria. ( )

**04. Idaho High School Equivalency Certificate.** The State Department of Education will issue an Idaho High School Equivalency Certificate to eligible applicants. The normal fee for issuing a certificate is ten dollars (\$10); however, this fee will be waived for military service personnel and veterans. To be eligible, an applicant must submit the following documents to the State Department of Education: (4-1-97)

**a.** An official report of GED test results showing successful completion of all requirements. Test scores are accepted as official only when reported directly by official GED Testing Centers, the Transcript Service of the Defense Activity for Non-Traditional Education Support (DANTES), Veterans Administration hospitals and, in special cases, the GED Testing Service. (4-1-97)

**b.** An official transcript showing completion of a course in American Government including study of the U.S. Constitution and principles of state and local government. This requirement may be met by resident study in high school or college, correspondence study from an accredited university, DANTES, or by successfully passing the American Government test furnished by the testing center. (4-1-97)

**c.** A completed form DD295 on all service personnel. This form is not required of veterans and non-veteran adults. (4-1-97)

**d.** A copy of a discharge if the applicant is a veteran of military service. (4-1-97)

**e.** Once eligibility is established, the State Department of Education will furnish the applicant with a special application form. After the applicant completes this form and pays the ten dollar (\$10) processing fee, the applicant will be awarded an Idaho High School Equivalency Certificate. (4-1-97)

# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1301

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is August 16, 2013. 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 33-1511(2), Idaho Code.

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

The revisions to IDAPA 08.02.02.120 and the addition of IDAPA 08.02.02.121 are based on the recommendations and work of the Educator Evaluation Task Force. The rules have gone out for public comment following the State Boards initial approval and have been revised based on those public comments.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the State Department of Education amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 5, 2013, Idaho Administrative Bulletin, [Vol. 13 - 6, pages 29 through 33](#).

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

These changes result in no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Christina Linder by email at [clinder@sde.idaho.gov](mailto:clinder@sde.idaho.gov), or by phone at 208-332-6814, or at the address listed below.

DATED this 19th day of August 16, 2013.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
Phone: 208-332-6800  
Fax: 208-334-2228



DOCKET NO. 08-0202-1301 - ADOPTION OF PENDING RULE  
AND AMENDMENT TO TEMPORARY 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.  
Italicized green text that is underscored and struck through is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending rule text.

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

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, Volume 13-6, June 5, 2013, pages 29 through 33.

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

THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE  
AMENDED TEXT OF THE PENDING RULE FOR DOCKET NO. 08-0202-1301

*[Due to extensive changes, Section 120 is being reprinted in its entirety]*

**120. LOCAL DISTRICT EVALUATION POLICY -- TEACHER AND PUPIL PERSONNEL CERTIFICATE HOLDERS.**

Each school district board of trustees will develop and adopt policies for teacher performance evaluation using multiple measures in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, and teachers, and parents. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written.

~~(3-29-10)~~ (8-16-13)T

**01. Standards.** Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)

- a. Domain 1 - Planning and Preparation: (3-29-10)
  - i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)
  - ii. Demonstrating Knowledge of Students; (3-29-10)
  - iii. Setting Instructional Goals Outcomes; ~~(3-29-12)~~ (8-16-13)T
  - iv. Demonstrating Knowledge of Resources; (3-29-10)
  - v. Designing Coherent Instruction; and (3-29-10)

- vi. Designing Student Assessments. (3-29-12)
- b.** Domain 2 - The Classroom Environment: (3-29-12)
  - i. Creating an Environment of Respect and Rapport; (3-29-10)
  - ii. Establishing a Culture for Learning; (3-29-10)
  - iii. Managing Classroom Procedures; (3-29-10)
  - iv. Managing Student Behavior; and (3-29-10)
  - v. Organizing Physical Space. (3-29-10)
- c.** Domain 3 - Instruction and Use of Assessment: (3-29-10)
  - i. Communicating with Students; (3-29-12)
  - ii. Using Questioning and Discussion Techniques; (3-29-10)
  - iii. Engaging Students in Learning; (3-29-10)
  - iv. Using Assessment in Instruction; and (3-29-12)
  - v. Demonstrating Flexibility and Responsiveness. (3-29-12)
- d.** Domain 4 - Professional Responsibilities: (3-29-10)
  - i. Reflecting on Teaching; (3-29-10)
  - ii. Maintaining Accurate Records; (3-29-10)
  - iii. Communicating with Families; (3-29-10)
  - iv. Participating in a Professional Community; (3-29-12)
  - v. Growing and Developing Professionally; and (3-29-10)
  - vi. Showing Professionalism. (3-29-10)

~~**02.** *Parent Input.* Input from the parents and guardians of students shall be considered as a factor in the evaluation of any school-based certificated employees. For such certificated employees on a Category A, B or grandfathered renewable contract, this input shall be part of the first portion of the evaluation (as stipulated in 33-514(4), Idaho Code,) that must be completed before February 1 of each year (Section 33-513 and 33-514, Idaho Code).~~ (3-29-12)

**02.** *Professional Practice.* For evaluations conducted on or after July 1, 2013, all certificated instructional employees must receive an evaluation in which at least sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Charlotte Danielson Framework for Teaching Second Edition. The measures included within the Professional Practice portion of the evaluation shall include a minimum of two (2) documented observations annually, with at least one (1) observation being completed by January 1 of each year. District evaluation models shall also include at least one (1) of the following as a measure to inform the Professional Practice portion of all certificated instructional employee evaluations: (8-16-13)T

- a.** Parent/guardian input; (8-16-13)T

b. Student input; and/or (8-16-13)T

c. Portfolios. (8-16-13)T

~~03.~~ ~~Student Achievement. For evaluations conducted on or after July 1, 2012, all certificated employees must receive an evaluation in which at least fifty percent (50%) of the evaluation results are based on objective measures of growth in student achievement as determined by the board of trustees. This student achievement portion of the evaluation shall be completed by the end of the school year in which the evaluation takes place (Section 33-513 and 33-514, Idaho Code).~~ (3-29-12)

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (8-16-13)T

~~024.~~ Participants. Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 16, ~~and each school nurse and librarian.~~ Evaluations shall be differentiated for certificated non-instructional employees and pupil personnel certificate holders in a way that aligns with the Charlotte Danielson Framework for Teaching Second Edition to the extent possible. Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for nonrenewable contract personnel and renewable contract personnel. (3-29-12)(8-16-13)T

~~025.~~ Evaluation Policy - Content. Local school district policies will include, at a minimum, the following information: (4-1-97)

a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional improvement, personnel decisions. (4-1-97)

b. Evaluation criteria -- statements of the general criteria upon which certificated personnel will be evaluated. (4-1-97)

c. Evaluator -- identification of the individuals responsible for appraising or evaluating certificated ~~personnel performance instructional staff and pupil personnel performance.~~ The individuals assigned this responsibility ~~should shall~~ have received training in evaluation and prior to September 1, 2018, shall demonstrate proof of proficiency in conducting observations and evaluating effective teacher performance by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement. (4-1-97)(8-16-13)T

d. Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. ~~For classroom teaching personnel, classroom observation should be included as one (1) source of data. For certificated instructional staff, a minimum of two (2) documented classroom observations shall be included as one (1) source of data. At least one (1) of those observations must be completed prior to January 1 of each year. Parent/guardian input, student input and/or portfolios shall be considered.~~ (4-1-97)(8-16-13)T

e. Procedure -- description of the procedure used in the conduct of certificated personnel evaluations. (4-1-97)

f. Communication of results -- the method by which certificated personnel are informed of the results of evaluation. (4-1-97)

**g.** Personnel actions -- the action, ~~if any,~~ available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate, school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. ~~(4-1-97)~~(8-16-13)T

**h.** Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of certificated personnel evaluations. (4-1-97)

**i.** Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (4-1-97)

**j.** Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's personnel evaluation system. (4-1-97)

**k.** Professional development and training -- a plan for ongoing training for evaluators/administrators and teachers on the districts evaluation standards, tool and process. (3-29-10)

**l.** Funding -- a plan for funding ongoing training and professional development for administrators in evaluation. (3-29-10)

**m.** Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Aggregate data shall be considered as part of the district and individual schools Needs Assessment in determining professional development offerings. ~~(3-29-10)~~(8-16-13)T

**n.** Individualizing teacher evaluation rating system -- A plan for how evaluations will be used to identify proficiency and ~~define a process that identifies and assists teachers in need of improvement.~~ record growth over time. No later than July 1, 2013, districts shall have established an individualized teacher evaluation rating system with a minimum of three (3) rankings used to differentiate performance of teachers and pupil personnel certificate holders including: ~~(3-29-10)~~(8-16-13)T

i. Unsatisfactory being equal to "1"; ~~(8-16-13)T~~

ii. Basic being equal to "2"; and ~~(8-16-13)T~~

iii. Proficient being equal to "3". ~~(8-16-13)T~~

**o.** A plan for including all stakeholders including, but not limited to, teachers, board members, ~~and~~ administrators, and parents in the development and ongoing review of their teacher evaluation plan. ~~(3-29-10)~~(8-16-13)T

**046.** **Evaluation Policy - Frequency of Evaluation.** The evaluation policy shall include a provision for evaluating all certificated personnel on a fair and consistent basis. ~~All contract personnel shall be evaluated at least once annually.~~ ~~(3-29-12)~~(4-18-13)T

**057.** **Evaluation Policy - Personnel Records.** Permanent records of each certificated personnel evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. ~~(4-1-97)~~(8-16-13)T

**08.** Evaluation System Approval. Each school district board of trustees will develop and adopt

policies for teacher and pupil personnel certificated performance evaluation in which criteria and procedures for the evaluation are research based and aligned with the Charlotte Danielson Framework for Teaching Second Edition. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (8-16-13)T

**121. LOCAL DISTRICT EVALUATION POLICY - SCHOOL PRINCIPAL.**

For principal evaluations conducted on or after July 1, 2014, each school district board of trustees will develop and adopt policies for principal performance evaluation using multiple measures in which criteria and procedures for the evaluation of administratively certificated personnel serving as school principal are research based and aligned to the standards and requirements outlined in Subsections 121.01 through 121.07 of this rule. Districts must, at a minimum, pilot such an evaluation during the 2013-2014 school year and report the results of that pilot to the State Department of Education no later than July 1, 2014, in a format determined by the Department. The process of developing criteria and procedures for principal evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers and parents. The evaluation policy will be a matter of public record and communicated to the principal for whom it is written. (8-16-13)T

**01. Standards.** Each district principal evaluation model shall be aligned to state minimum standards based on the Interstate School Leaders Licensure Consortium (ISLLC) standards and include proof of proficiency in conducting teacher evaluations using the state's adopted model, the Charlotte Danielson Framework for Teaching Second Edition. Proof of proficiency in evaluating teacher performance shall be required of all individuals assigned the responsibility for appraising, observing, or evaluating certificated personnel performance. Proof of proficiency in evaluating performance shall be demonstrated by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement prior to September 1, 2018. Principal evaluation standards shall additionally address the following domains and components: (8-16-13)T

**a.** Domain 1: School Climate - An educational leader promotes the success of all students by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development. An educational leader articulates and promotes high expectations for teaching and learning while responding to diverse community interest and needs. (8-16-13)T

**i.** School Culture - Principal establishes a safe, collaborative, and supportive culture ensuring all students are successfully prepared to meet the requirements for tomorrow's careers and life endeavors. (8-16-13)T

**ii.** Communication - Principal is proactive in communicating the vision and goals of the school or district, the plans for the future, and the successes and challenges to all stakeholders. (8-16-13)T

**iii.** Advocacy - Principal advocates for education, the district and school, teachers, parents, and students that engenders school support and involvement. (8-16-13)T

**b.** Domain 2: Collaborative Leadership - An educational leader promotes the success of all students by ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs. The educational leader uses research and/or best practices in improving the education program. (8-16-13)T

**i.** Shared Leadership - Principal fosters shared leadership that takes advantage of individual expertise, strengths, and talents, and cultivates professional growth. (8-16-13)T

**ii.** Priority Management - Principal organizes time and delegates responsibilities to balance administrative/managerial, educational, and community leadership priorities. (8-16-13)T

iii. Transparency - Principal seeks input from stakeholders and takes all perspectives into consideration when making decisions. (8-16-13)T

iv. Leadership Renewal - Principal strives to continuously improve leadership skills through, professional development, self-reflection, and utilization of input from others. (8-16-13)T

v. Accountability - Principal establishes high standards for professional, legal, ethical, and fiscal accountability for self and others. (8-16-13)T

c. Domain 3: Instructional Leadership - An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The educational leader provides leadership for major initiatives and change efforts and uses research and/or best practices in improving the education program. (8-16-13)T

i. Innovation - Principal seeks and implements innovative and effective solutions that comply with general and special education law. (8-16-13)T

ii. Instructional Vision - Principal insures that instruction is guided by a shared, research-based instructional vision that articulates what students do to effectively learn. (8-16-13)T

iii. High Expectations - Principal sets high expectation for all students academically, behaviorally, and in all aspects of student well-being. (8-16-13)T

iv. Continuous Improvement of Instruction - Principal has proof of proficiency in assessing teacher performance based upon the Charlotte Danielson Framework for Teaching Second Edition. Aligns resources, policies, and procedures toward continuous improvement of instructional practice guided by the instructional vision. (8-16-13)T

v. Evaluation - Principal uses teacher/principal evaluation and other formative feedback mechanisms to continuously improve teacher/principal effectiveness. (8-16-13)T

vi. Recruitment and Retention -Principal recruits and maintains a high quality staff. (8-16-13)T

02. Professional Practice. For evaluations conducted on or after July 1, 2014, all principals must receive an evaluation in which sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Domains and Components listed in Subsection 121.01.a. through 121.01.c. of this rule. As a measure to inform the Professional Practice portion of all principal evaluations, district evaluation models shall also include at least one (1) of the following: (8-16-13)T

a. Parent/guardian input; (8-16-13)T

b. Teacher input; (8-16-13)T

c. Student input; and/or (8-16-13)T

d. Portfolios. (8-16-13)T

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014,

growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (8-16-13)T

**04. Evaluation Policy - Content.** For evaluations conducted on or after July 1, 2014, local school district policies will include, at a minimum, the following information: (8-16-13)T

**a.** Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional leadership, personnel decisions. (8-16-13)T

**b.** Evaluation criteria -- statements of the general criteria upon which principals be evaluated. (8-16-13)T

**c.** Evaluator -- identification of the individuals responsible for appraising or evaluating principal performance. The individuals assigned this responsibility shall have received training in evaluation. (8-16-13)T

**d.** Sources of data -- description of the sources of data used in conducting principal evaluations. Proficiency in conducting observations and evaluating effective teacher performance shall be included as one (1) source of data. (8-16-13)T

**e.** Procedure -- description of the procedure used in the conduct of principal evaluations. (8-16-13)T

**f.** Communication of results -- the method by which principals are informed of the results of evaluation. (8-16-13)T

**g.** Personnel actions -- the action, available to the school district as a result of the evaluation, and the procedures for implementing these actions; e.g., job status change. (8-16-13)T

**h.** Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of an evaluations. (8-16-13)T

**i.** Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (8-16-13)T

**j.** Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's principal evaluation system. (8-16-13)T

**k.** Professional development and training -- a plan for ongoing training and professional learning based upon the district's evaluation standards and process. (8-16-13)T

**l.** Funding -- a plan for funding ongoing training and professional development for evaluators of principals. (8-16-13)T

**m.** Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development for principals. (8-16-13)T

**n.** Individualizing principal evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2014, districts shall have established an individualized principal evaluation rating system with a minimum of three rankings used to differentiate performance of principals including: (8-16-13)T

- i. Unsatisfactory being equal to “1”; (8-16-13)T
  - ii. Basic being equal to “2”; and (8-16-13)T
  - iii. Proficient being equal to “3”. (8-16-13)T
  - o. A plan for including stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their principal evaluation plan. (8-16-13)T
  - 05. Evaluation Policy - Frequency of Evaluation. The evaluation policy should include a provision for evaluating all principals on a fair and consistent basis. All principals shall be evaluated at least once annually no later than May 1 of each year. (8-16-13)T
  - 06. Evaluation Policy - Personnel Records. Permanent records of each principal evaluation will be maintained in the employee’s personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. (8-16-13)T
  - 07. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for principal performance evaluation in which criteria and procedures for the evaluation are research based and aligned with state standards. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (8-16-13)T
- 12~~1~~2. -- 129. (RESERVED)



# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1306**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

**Tuesday, October 8, 2013, at 3:00 p.m. (MDT)**

**Idaho State Department of Education  
650 West State Street, 2nd Floor  
Lewis and Clark Conference Room  
Boise, Idaho**

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

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

Proposed standards revisions to the Idaho Standards for Initial Certification of Professional School Personnel manual including the English Language Arts, Gifted and Talented, Library Media Specialist, Literacy, School Administrator foundation, Principal, School Superintendent, and Special Education Director standards.

Proposed standards revisions to the Idaho Standards for Operating procedures for Idaho Public Driver Education 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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature. All standards and endorsements were revised to better align with national standards. The Idaho Driver Education Program Standards were revised to better align with the national standards.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This information is voluminous in nature and is easily accessed by the link provided in rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder, State Department of Education at 208-332-6886 or [cplinder@sde.idaho.gov](mailto:cplinder@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 16th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1306  
(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on ~~August 16, 2012~~ August 15, 2013.** Copies of this document can be found on the Office of the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (~~4-4-13~~)( )

**02. Standards for Idaho School Buses and Operations as approved on June 23, 2011.** The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov/site/transportation/library.htm>. (3-29-12)

**03. Operating Procedures for Idaho Public Driver Education Programs as approved on ~~November 17, 2010~~ August 15, 2013.** The Operating Procedures for Idaho Public Driver Education Programs are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at [http://www.sde.idaho.gov/site/driver\\_edu/forms\\_curriculum.htm](http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm). (~~4-7-11~~)( )

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1307**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

**Tuesday, October 8, 2013, at 3:00 p.m. (MDT)**

**Idaho State Department of Education  
650 West State Street, 2nd Floor  
Lewis and Clark Conference Room  
Boise, Idaho**

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

**DESCRIPTIVE SUMMARY:** The following is 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 section is being clarified to more clearly articulate the intent of the law including for Out-of-State Applicants for the Idaho Comprehensive Literacy Course. In addition, the state is clarifying standards incorporated into the "Mathematical Thinking for Instruction," courses may be taught by all Idaho-approved preparation programs under a variety of course titles. Each must be approved, however, by the State Department of Education to ensure fidelity in curriculum.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) is appropriate for the following reasons:

The temporary adoption of this rule is appropriate so that schools can begin teaching "Mathematical Thinking for Instruction" Fall 2013.

**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: No Fiscal Impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary and simple in nature - clarification of 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 temporary and proposed rule, contact Christina Linder, State Department of Education at 208-332-6886 or [clinder@sde.idaho.gov](mailto:clinder@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 16th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0202-1307  
(Only those Sections being amended are shown.)**

**016. IDAHO EDUCATOR CREDENTIAL.**

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (Section 33-1201, Idaho Code) (3-16-04)

**01. Renewal Requirement - Mathematics In-Service Program.** In order to recertify, the state approved mathematics instruction course titled "Mathematical Thinking for Instruction", or another State Department of Education approved alternative course, shall be required. The "Mathematical Thinking for Instruction" course consists of three (3) credits (or forty-five (45) contact hours of in-service training). Teachers and administrators shall take one (1) of the three (3) courses developed that each teacher deems to be most closely aligned with their current assignment prior to September 1, 2014. Any teacher or administrator successfully completing said course shall be deemed to have met the requirement of Subsection 060.03.c. of this rule, regardless of whether such course is part of any official transcript. Successful completion of state approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals listed in Subsection 016.01.a. through 016.01.e. shall successfully complete the "Mathematical Thinking for Instruction" course in order to recertify: ~~(4-7-H)~~(8-26-13)T

- a.** Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (3-29-10)
  - b.** Each teacher holding a Standard Elementary Certificate (K-8); (3-29-10)
  - c.** Each teacher holding a Standard Secondary Certificate (6-12) teaching in a math content classroom (grade six (6) through grade twelve (12)) including Title I classrooms; (3-29-10)
  - d.** Each teacher holding a Standard Exceptional Child Certificate (K-12); and (3-29-10)
  - e.** Each school administrator holding an Administrator Certificate (Pre K-12), including all school district and charter administrators. (4-4-13)
- 02. Out-of-State Applicants - Mathematical Thinking for Instruction.** (4-4-13)

**a.** Out-of-state applicants shall take the state approved mathematics instruction course titled “Mathematical Thinking for Instruction” as a certification requirement. The “Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). (3-29-10)

**b.** Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable, interim certificate to allow time to meet the Idaho Mathematics In-service program requirement. (4-4-13)

**03. Waiver of Mathematics In-Service Program.** When applying for certificate renewal, an automatic waiver of the mathematics in-service program requirement shall be granted for any certificated individual who lives outside of the state of Idaho or who is not currently employed as an educator in the state of Idaho. This waiver applies only as long as the individual remains outside the state of Idaho or as long as the individual is not employed as an educator in the state of Idaho. Upon returning to Idaho or employment in an Idaho public school, the educator will need to complete this requirement prior to the next renewal period. (4-4-13)

**04. Renewal Requirement - Idaho Comprehensive Literacy Course.** In order to recertify, a state approved Idaho Comprehensive Literacy Course shall be required. Successful completion of a state approved Idaho Comprehensive Literacy course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals listed in Subsection 016.04.a. through 016.04.c. shall successfully complete an Idaho Comprehensive Literacy course in order to recertify: (4-4-13)

**a.** Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (4-4-13)

**b.** Each teacher holding a Standard Elementary Certificate (K-8); and (4-4-13)

**c.** Each teacher holding a Standard Exceptional Child Certificate (K-12). (4-4-13)

**05. Out-of-State Applicants - Idaho Comprehensive Literacy Course.** (8-26-13)T

**a.** Out-of-state applicants shall take a state approved Idaho Comprehensive Literacy Course as a certification requirement. (~~4-4-13~~)(8-26-13)T

**b.** Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable, interim certificate to allow time to meet the Idaho Comprehensive Literacy Course requirement. (8-26-13)T

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1308**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

**Tuesday, October 8, 2013, at 3:00 p.m. (MDT)**

**Idaho State Department of Education  
650 West State Street, 2nd Floor  
Lewis and Clark Conference Room  
Boise, Idaho**

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

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

After review by the Professional Standards Commission, several endorsements were updated to reflect best practices and qualifications for Idaho's educators. The Driver Education endorsement was struck from IDAPA since the endorsement is no longer offered by colleges and universities and a certificate is required instead. The proposed standards and evaluations have been aligned with the Idaho administrator evaluation standards and the most current School Leaders Licensure Consortium Standards. A clarification to rule is necessary because the accreditation of educator preparation programs has undergone a merger and changed names.

**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:

No Fiscal Impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature. All endorsements were revised to better align with national standards and to articulate the intent of the law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder, State Department of Education at 208-332-6886 or [cplinder@sde.idaho.gov](mailto:cplinder@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 16th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1308**  
**(Only those Sections being amended are shown.)**

**018. STANDARD ELEMENTARY CERTIFICATE.**

A Standard Elementary Certificate makes an individual eligible to teach grades Kindergarten (K) through eight (8), and may be issued to any person who has a bachelor's degree from an accredited college or university and who meets the following requirements: (3-16-04)

**01. General Education Requirements.** Completion of the general education requirements at an accredited college or university is required. (3-30-07)

**02. Professional Education Requirements.** (3-30-07)

**a.** A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, and methodological foundations and in the professional subject matter of elementary education, which shall include at least six (6) semester credit hours, or nine (9) quarter credit hours, in developmental reading and its application to the content area. (3-16-04)

**b.** At least six (6) semester credit hours, or nine (9) quarter credit hours, of elementary student teaching or two (2) years of satisfactory experience as a teacher in grades K-8. (3-16-04)

**03. Additional Requirements.** An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades Kindergarten (K) through eight (8). (3-16-04)

**04. Area of Endorsement.** All individuals, who begin an Idaho approved preparation program after July 1, 2013, seeking a Standard Elementary Certificate shall complete the requirements for a subject area endorsement as outlined under requirements for a Standard Secondary Certificate. An endorsement allowing teaching of that subject through grade nine (9) or a K-12 endorsement shall be added to the Standard Elementary Certificate. (4-7-11)( )

**05. Proficiency.** Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved elementary content area and pedagogy assessments. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. ENDORSEMENTS.**

Holders of a Secondary Certificate or a Standard Elementary Certificate, Exceptional Child Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements

in subject areas as provided herein. Idaho preparation programs shall prepare candidates for endorsements in accordance with the Idaho Standards for Initial Certification of Professional School Personnel. An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching major or minor if such statements originate in the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. To add an endorsement to an existing credential, an individual shall complete the credit hour requirements as provided herein and shall also meet or exceed the state qualifying score on appropriate, state approved content, pedagogy and performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours. (4-4-13)

**01. Clinical Experience Requirement. All endorsements require supervised teaching experience in the relevant content area, or a State Department of Education approved alternative clinical experience. ( )**

**022. ENDORSEMENTS A - D.**

**01. Agriculture Science and Technology (6-12). (3-16-04)**

**a.** Forty-five (45) semester credit hours including course work in each of the following areas: agriculture education; agriculture mechanics; agriculture business management; soil science; animal science; and plant science. (3-16-04)

**b.** Occupational teacher preparation coursework that relates to the appropriate area(s) as provided in Sections 034 through 038. (4-4-13)

**02. American Government /Political Science (6-12).** Twenty (20) semester credit hours to include: a minimum of six (6) semester credit hours in American Government, six (6) semester credit hours in U.S. History Survey, and a minimum of three (3) semester credit hours in Comparative Government. Remaining course work must be selected from Political Science. Course work may include three (3) semester credit hours in World History Survey. (4-11-06)

**03. Art (K-12 or 6-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Visual Arts Teachers in the area of Art to include a minimum of nine (9) semester credit hours in: Foundation Art and Design. Additional course work must include at least two (2) Studio Areas and Secondary Arts Methods. To obtain an Art (K-12) endorsement, applicants holding a Secondary Certificate must complete an elementary methods course. (4-7-11)

**04. Bilingual Education (K-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Bilingual Education Teachers to include all of the following: at least nine (9) upper division semester credit hours in one (1) Modern Language other than English, including writing and literature, and advanced proficiency according to the American Council on the Teaching of Foreign Languages (ACTFL) guidelines; cultural diversity; ENL/Bilingual Methods; second language acquisition theory and practice; Foundations of ENL/Bilingual Education, Federal and State Law, Testing/identification of Limited English Proficient Students; at least two (2) semester credit hours in Bilingual Practicum; and three (3) semester credit hours in a Bilingual Education related elective (ex: linguistics, critical pedagogy, parent involvement). (4-4-13)

**05. Biological Science (6-12).** Twenty (20) semester credit hours to include at least six (6) semester credit hours of course work in each of the following areas: Botany and Zoology. (3-16-04)

**06. Business Technology Education (6-12). (3-16-04)**

**a.** Twenty (20) semester credit hours to include course work in each of the following areas: accounting; computer and technical applications in business; economics; methods of teaching business education; Professional-Technical Student Organization (PTSO) leadership; business communication/writing; and office procedures. Additional competencies may be satisfied through the following: entrepreneurship; finance; marketing; business law; and/or career guidance. (4-4-13)

**b.** Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034



through 038. (4-4-13)

**07. Chemistry (6-12).** Twenty (20) semester credit hours in the area of Chemistry. (3-16-04)

**08. Communication (6-12).** Follow one (1) of the following options: (3-16-04)

**a.** Option I: Twenty (20) semester credit hours to include Methods of Teaching Speech/Communications plus course work in at least four (4) of the following areas: Interpersonal Communication/Human Relations; Argumentation/Personal Persuasion; Group Communications; Nonverbal Communication; Public Speaking; and Drama/Theater Arts. (3-16-04)

**b.** Option II: Possess an English endorsement plus at least twelve (12) semester credit hours distributed among the following: Interpersonal Communication/Human Relations, Public Speaking, and Methods of Teaching Speech/Communication. (3-16-04)

**10. Drama (6-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Drama Teachers, including a minimum of sixteen (16) semester credit hours in Drama or Theater Arts, including course work in each of the following: Acting, Directing, and Technical Stage Production, and four (4) semester credit hours in Communications. To obtain a Drama (6-12) endorsement, applicants must complete a comprehensive methods course including the pedagogy of acting, directing and technical theatre. (4-7-11)

~~**11. Driver Education (6-12).** Two (2) semester credit hours in Basic Driver Education for Teachers and two (2) semester credit hours in any of the following: Advanced Driver Education; Driver Simulation Education; Traffic Engineering; General Safety Education; or Highway Transportation. Additionally, an individual must have three (3) years of satisfactory driving experience immediately prior to endorsement as verified by the Motor Vehicle Division of the State Department of Transportation. (3-16-04)~~

**023. ENDORSEMENTS E - L.**

**01. Earth Science (6-12).** Twenty (20) semester credit hours including course work in each of the following: Earth Science, Astronomy, and Geology. (4-11-06)

**02. Economics (6-12).** Twenty (20) semester credit hours to include a minimum of three (3) semester credit hours of micro-economics, a minimum of three (3) semester credit hours of macro-economics, and a minimum of six (6) semester credit hours of Personal Finance/Consumer Economics/Economics Methods. Remaining course work may be selected from economics and finance course work in one (1) or more of the following areas: Agriculture Science and Technology, Business Education, Economics, Family and Consumer Science, or Marketing Education. (4-11-06)

**03. English (6-12).** ~~Twenty (20)~~ **Forty-five (45) upper division** semester credit hours **leading toward competency as defined by Idaho Standards for English Language Arts Teachers**, including ~~three (3) semester credit hours in Linguistics/Grammar, three (3) semester credit hours in American Literature, three (3) semester credit hours in English Literature, six (6) semester credit hours in British Literature, Adolescent Literature, Multicultural Literature, Content Literacy, methods courses in Reading/Literature, Writing, and Integrating English Language Arts,~~ **and** Advanced Composition, excluding the introductory sequence designed to meet general education requirements. ~~Remaining credits must be completed in the English Department, and must include some course work in Writing Methods for Teachers of Secondary Students. (3-16-04)( )~~

**04. English as a New Language (ENL) (K-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for ENL Teachers to include all of the following: at least four (4) semester credit hours in a modern language other than English; Cultural Diversity; ENL Methods; Linguistics; second language acquisition theory and practice; Foundations of ENL/Bilingual Education, Federal and State Law, Testing/Identification of Limited English Proficient Students; and at least one (1) semester credit in ENL Practicum or Field Experience. (4-4-13)

**05. Family and Consumer Sciences (6-12).** (4-4-13)

a. Thirty (30) semester credit hours to include coursework in each of the following areas: Child/Human Development; Human/Family Relations; Directed Laboratory Experience in Childcare; Apparel and Textiles, Cultural Dress, Fashion Merchandising, or Design; Nutrition; Food Preparation, Food Production, or Culinary Arts; Housing, Interior Design, Home Management, or Equipment; Consumer Economics or Family Resource Management; Introduction to Family Consumer Sciences; Professional-Technical Student Organization (PTSO) leadership; and Integration of Family Consumer Sciences or Family Consumer Science Methods. (4-4-13)

b. Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. (4-4-13)

06. **Geography (6-12).** Twenty (20) semester credit hours including course work in Cultural Geography and Physical Geography, and a maximum of six (6) semester credit hours in World History Survey. Remaining semester credit hours must be selected from Geography. (4-11-06)

07. **Geology (6-12).** Twenty (20) semester credit hours in the area of Geology. (3-16-04)

08. **Gifted and Talented (K-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Gifted and Talented Education Teachers, to include ~~a minimum of three (3)~~ semester credit hours in each of the following areas: Foundations of Gifted and Talented Education; Creative/Critical Thinking Skills for Gifted and Talented Students; Social and Emotional Needs of Gifted and Talented Students; Curriculum, ~~and~~ Instruction, and Assessment for Gifted and Talented Students; Differentiated Instruction and Programing for Gifted and Talented Students; and Practicum and Program Design for Gifted and Talented Education. Remaining course work must be in the area of gifted education. ~~(5-8-09)~~(    )

09. **Health (6-12 or K-12).** Twenty (20) semester credit hours to include course work in Organization/Administration/Planning of a School Health Program; Health and Wellness; Secondary Methods of Teaching Health; Mental/Emotional Health; Nutrition; Human Sexuality; Substance Use and Abuse. Remaining semester credits must be in health-related course work. To obtain a Health K-12 endorsement, applicants must complete an elementary Health methods course. (4-4-13)

10. **History (6-12).** Twenty (20) semester credit hours to include a minimum of six (6) semester credit hours of U.S. History Survey and a minimum of six (6) semester credit hours of World History Survey. Remaining course work must be in History. Course work may include three (3) semester credit hours in American Government. (4-11-06)

11. **Humanities (6-12).** An endorsement in English, History, Music, Visual Art, Drama, or Foreign Language and twenty (20) semester credit hours in one of the following areas or ten (10) semester credit hours in each of two (2) of the following areas: Literature, Music, Foreign Language, Humanities Survey, History, Visual Art, Philosophy, Drama, Comparative World Religion, Architecture, and Dance. (4-11-06)

12. **Journalism (6-12).** Follow one (1) of the following options: (3-16-04)

a. Option I: Twenty (20) semester credit hours to include a minimum of sixteen (16) semester credit hours in Journalism and four (4) semester credit hours in English. (3-16-04)

b. Option II: Possess an English endorsement with a minimum of six (6) semester credit hours in Journalism. (3-16-04)

~~13. **Library Media Specialist (K-12).** Twenty (20) semester credit hours in the field of Education Media or Library Science, including a minimum of:~~ ~~(5-8-09)~~

~~a. *Collection Development/Materials Selection;* (5-8-09)~~

~~b. *Literature for Youth or Children;* (5-8-09)~~

~~c. *Organization of Information (Cataloging and Classification);* (5-8-09)~~

- ~~d. School Library Administration/Management; and (5-8-09)~~
- ~~e. Library Information Technologies and Information Literacy. (5-8-09)~~

**143. Literacy (K-12).** Twenty one (201) semester credit hours ~~in the area of Literacy including a minimum of three (3) semester credit hours in each of~~ leading toward competency as defined by Idaho Standards for Literacy Teachers to include the following areas: Foundations of ~~Reading or Developmental Reading; Reading Literacy (including reading, writing, and New Literacies); Development and Diversity of Literacy Learners; Literacy~~ in the Content Area; Literature for Youth; ~~Psycholinguistics or~~ Language Development; Corrective/Diagnostic/Remedial Reading; and ~~Teaching~~ Writing Instruction. To obtain a Literacy endorsement, applicants must complete the Idaho Comprehensive Literacy Course or the Idaho Comprehensive Literacy Assessment. ~~Remaining credits must be taken in the area of teaching literacy. (5-8-09)( )~~

**024. ENDORSEMENTS M - Z.**

**01. Marketing Technology Education (6-12).** (3-16-04)

**a.** Twenty (20) semester credit hours to include course work in each of the following areas: Marketing; Management; Economics; Coordination of Cooperative Programs; Merchandising/Retailing; Methods of Teaching Marketing Education; and Professional-Technical Student Organization (PTSO) Leadership, with remaining credit hours in Entrepreneurship; Hospitality and Tourism; Finance; or Accounting. (4-4-13)

**b.** Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. (4-4-13)

**02. Mathematics - Basic (6-12).** Twenty (20) semester credit hours in Mathematics including course work in Algebra, Geometry, and Trigonometry. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics. (3-16-04)

**03. Mathematics (6-12).** Twenty (20) semester credit hours including course work in each of the following areas: Geometry, Linear Algebra, Discrete Mathematics, Probability and Statistics, and a minimum of three (3) semester credit hours of Calculus. Statistics course work may be taken from a department other than the mathematics department. (4-11-06)

**04. Music (6-12 or K-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Music Teachers to include course work in the following: Theory and Harmony; Aural Skills, Music History; Conducting; Applied Music; and Piano Proficiency (Class Piano or Applied Piano), and Secondary Music Methods/Materials. To obtain a Music K-12 endorsement, applicants must complete an elementary music methods course. (4-7-11)

**05. Natural Science (6-12).** Follow one (1) of the following options: (4-7-11)

**a.** Option I: Must hold an existing endorsement in one of the following areas: Biological Science, Chemistry, Earth Science, Geology, or Physics; and complete a total of twenty-four (24) semester credit hours as follows: (4-7-11)

**i.** Existing Biological Science Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Physics, Chemistry, and Earth Science or Geology. (4-7-11)

**ii.** Existing Physics Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Chemistry, and Earth Science or Geology. (4-7-11)

**iii.** Existing Chemistry Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Earth Science or Geology. (4-7-11)

**iv.** Existing Earth Science or Geology Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Chemistry. (4-7-11)

b. Option II: Must hold an existing endorsement in Agriculture Science and Technology; and complete twenty (20) semester credit hours with at least four (4) semester credit hours in each of the following areas: Biology, Chemistry, Earth Science or Geology, and Physics. (4-7-11)

**06. Physics (6-12).** Twenty (20) semester credit hours in the area of Physics. (3-16-04)

**07. Physical Education (PE) (6-12 or K-12).** Twenty (20) semester credit hours to include course work in each of the following areas: Sport, Movement, and Outdoor Skills; Secondary PE Methods; Student Evaluation in PE; Administration of a PE Program; Safety and Prevention of Injuries; Fitness and Wellness; PE for Special Populations; Exercise Physiology; Kinesiology/Biomechanics; Sports Psychology or Sociology; Motor Behavior; and Current CPR and First Aid Certification. To obtain a PE K-12 endorsement, applicants must complete an elementary PE methods course. (4-4-13)

**08. Physical Education/Health.** Must have an endorsement in both physical education and health. (3-30-07)

**09. Physical Science (6-12).** Twenty (20) semester credit hours in the area of physical science to include a minimum of eight (8) semester credit hours in each of the following: Chemistry and Physics. (3-16-04)

**10. Psychology.** Twenty (20) semester credit hours in the area of Psychology. (3-16-04)

**11. Social Studies (6-12).** Must have an endorsement in History, American Government/Political Science, Economics, or Geography plus a minimum of twelve (12) semester credit hours in each of the remaining core endorsements areas: History, Geography, Economics, and American Government/Political Science. (3-29-10)

**12. Sociology (6-12).** Twenty (20) semester credit hours in the area of Sociology. (3-16-04)

**13. Sociology/Anthropology (6-12).** Twenty (20) semester credit hours including a minimum of six (6) semester credit hours in each of the following: Anthropology and Sociology. (3-16-04)

**14. Teacher Librarian (K-12).** Twenty (20) semester credit hours of coursework leading toward competency as defined by Idaho Standards for Teacher Librarians to include the following: Collection Development/ Materials Selection, Literature for Children and/or Young Adults; Organization of Information (Cataloging and Classification); School Library Administration/Management; Library Information Technologies; Information Literacy; and Reference and Information Service. ( )

**145. Technology Education (6-12).** (3-16-04)

a. Twenty (20) semester credit hours to include course work in each of the following areas: Communication Technology; Computer Applications; Construction Technology; Electronics Technology; Manufacturing Technology; Power, Energy and Transportation and other relevant emerging technologies; and Principles of Engineering Design. (4-4-13)

b. Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. (4-4-13)

**156. World Language (6-12 or K-12).** Twenty (20) semester credit hours to include a minimum of twelve (12) upper division credits in a specific world language taken within the last ten (10) years leading to a proficiency level as defined by a state-approved exam (for example, a passing grade on the Praxis or an Advanced level as defined by the American Council on the Teaching of Foreign Languages (ACTFL)). Course work must include two (2) or more of the following areas: Grammar, Conversation, Composition, Culture, and Literature; and course work in Foreign Language Methods. To obtain an endorsement in a specific foreign language (K-12), applicants holding a Secondary Certificate must complete an elementary methods course. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. ADMINISTRATOR CERTIFICATE.**

Every person who serves as a superintendent, a secondary school principal, or principal of an elementary school with eight (8) or more teachers (including the principal), or is assigned administrative duties over and above those commonly assigned to teachers, is required to hold an Administrator Certificate. The certificate may be endorsed for service as a school principal, a superintendent, or a director of special education and related services. Assistant superintendents are required to hold the Superintendent endorsement. Assistant principals or vice-principals are required to hold the Principal endorsement. Applicants for the Director of Special Education and Related Services endorsement will hold that endorsement on an Administrator Certificate. Proof of proficiency in evaluating teacher performance shall be required of all Administrator Certificate holders. Proof of proficiency in evaluating performance shall be demonstrated by passing a proficiency assessment approved by the State Department of Education as an initial certification requirement. Possession of an Administrator Certificate does not entitle the holder to serve as a teacher at a grade level for which the educator is not qualified or certificated. All administrator certificates require candidates to meet the following competencies of the Idaho Foundation Standards for School Administrators: ~~Visionary and Strategic Planning, Instructional Leadership, Management and Organizational Leadership, Family and Community Partnerships, Professional and Ethical Leadership, and Governance and Legal Leadership~~ School Climate, Collaborative Leadership, and Instructional Leadership. (3-30-07)( )

**01. School Principal Endorsement (Pre-K-12).** To be eligible for an Administrator Certificate endorsed for School Principal Pre-K-12, a candidate must have satisfied the following requirements: (3-16-04)

- a. Hold a master's degree from an accredited college or university. (3-16-04)
- b. Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in an accredited school setting. (3-30-07)
- c. Have completed an administrative internship in a state-approved program, or have one (1) year of experience as an administrator in grades Pre-K-12. (3-30-07)
- d. Provide verification of completion of a state-approved program of at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, of graduate study in school administration for the preparation of school principals at an accredited college or university. This program shall include the competencies of the Idaho Foundation Standards for School Administrators: ~~Visionary and Strategic Planning, Instructional Leadership, Management and Organizational Leadership, Family and Community Partnerships, Professional and Ethical Leadership, and Governance and Legal Leadership~~ School Climate, Collaborative Leadership, and Instructional Leadership. (3-30-07)( )
- e. An institutional recommendation is required for a School Principal Pre-K-12 Endorsement. (3-16-04)

**02. Superintendent Endorsement.** To be eligible for an Administrator Certificate with a Superintendent endorsement, a candidate must have satisfied the following requirements: (3-16-04)

- a. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. (3-16-04)
- b. Have four (4) years of full-time certificated/licensed experience working with Pre-K-12 students while under contract in an accredited school setting. (3-30-07)
- c. Have completed an administrative internship in a state-approved program for the superintendent endorsement or have one (1) year of out-of-state experience as an assistant superintendent or superintendent in grades Pre-K-12. (3-30-07)
- d. Provide verification of completion of an approved program of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, of post-master's degree graduate study for the preparation of school superintendents at an accredited college or university. This program in school administration and interdisciplinary supporting areas shall include the competencies in Superintendent Leadership, in addition to the competencies in

the Idaho Foundation Standards for School Administrators: ~~Visionary and Strategic Planning, Instructional Leadership, Management and Organizational Leadership, Family and Community Partnerships, Professional and Ethical Leadership, and Governance and Legal Leadership~~ School Climate, Collaborative Leadership, and Instructional Leadership. (3-30-07)( )

- e. An institutional recommendation is required for a School Superintendent Endorsement. (3-16-04)

**03. Director of Special Education and Related Services Endorsement (Pre-K-12).** To be eligible for an Administrator Certificate endorsed for Director of Special Education and Related Services Pre-K-12, a candidate must have satisfied all of the following requirements: (3-16-04)

- a. Hold a master's degree from an accredited college or university. (3-16-04)

b. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting. (3-16-04)

c. Obtain college or university verification of demonstrated the competencies of the Idaho Foundation Standards for School Administrators: ~~Visionary and Strategic Planning, Instructional Leadership, Management and Organizational Leadership, Family and Community Partnerships, Professional and Ethical Leadership, and Governance and Legal Leadership~~ School Climate, Collaborative Leadership, and Instructional Leadership. (3-30-07)( )

d. Obtain college or university verification of demonstrated competencies in the following areas, in addition to the competencies in the Idaho Foundation Standards for School Administrators: Concepts of Least Restrictive Environment; Post-School Outcomes and Services for Students with Disabilities Ages Three (3) to Twenty-one (21); Collaboration Skills for General Education Intervention; Instructional and Behavioral Strategies; Individual Education Programs (IEPs); Assistive and Adaptive Technology; Community-Based Instruction and Experiences; Data Analysis for Instructional Needs and Professional Training; Strategies to Increase Program Accessibility; Federal and State Laws and Regulations and School District Policies; Resource Advocacy; and Technology Skills for Referral Processes, and Record Keeping. (3-30-07)

e. Have completed an administrative internship/practicum in the area of administration of special education and related services. (3-16-04)

f. An institutional recommendation is required for Director of Special Education and Related Services Pre-K-12 Endorsement. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. OFFICIAL VEHICLE FOR APPROVING TEACHER EDUCATION PROGRAMS.** (4-1-97)  
(Section 33-114, Idaho Code)

**01. The Official Vehicle for the Approval of Teacher Education Programs.** The official vehicle for the approval of teacher education programs will be the ~~National Council for Accreditation of Teacher Education (NCATE)~~ Council for the Accreditation of Educator Preparation (CAEP) approved Idaho Standards for the Initial Certification of Professional School Personnel. The Idaho Standards are based upon the accepted national standards for educator preparation and include state-specific, core teaching requirements. The State Department of Education will transmit to the head of each Idaho college or department of education a copy of all revisions to the Idaho Standards for the Initial Certification of Professional School Personnel. Such revisions will take effect and must be implemented within a period not to exceed two (2) years after notification of such revision. (3-29-12)( )

**02. Reference Availability.** The Idaho Standards for the Initial Certification of Professional School Personnel, incorporated by reference in Subsection 004.01, are available for inspection on the Office of the State Board of Education's website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-12)

**03. Continuing Approval.** (3-29-12)

**a.** The state of Idaho will follow the National Council for Accreditation of Teacher Education (NCATE) model by which institutions shall pursue continuing approval through a full program review every seven (7) years. The full program review shall be based upon the Idaho Standards for Initial Certification of Professional School Personnel. (3-29-12)

**b.** The state of Idaho will additionally conduct focused reviews of state-specific, core teaching requirements in the interim, not to exceed every third year following the full program review. (3-29-12)

**04. Payment Responsibilities for Teacher Preparation Program Reviews.** The Professional Standards Commission is responsible for Idaho teacher preparation program reviews, including assigning responsibility for paying for program reviews. To implement the reviews, it is necessary that: (4-6-05)

**a.** The Professional Standards Commission pay for all in-state expenses for on-site teacher preparation reviews from its budget. (4-6-05)

**b.** Requesting institutions pay for all out-of-state expenses related to on-site teacher preparation program reviews. (4-6-05)

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1301**

### **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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-116, and 33-1612, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

IDAPA 08.02.03, Section 113 sets out the requirements for the State Board of Education to recognize Distinguished Schools as well as grant Additional Yearly Growth Awards. Both awards are dependent on determination of Adequate Yearly Progress as it is defined in the states Accountability Workbook. With the granting of Idaho's ESEA waiver there have been modification to the Accountability Workbook and how AYP is determined, these changes necessitate changes to this rule to bring it into alignment with Idaho's current five (5) star accountability system.

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

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

**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 33](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 28, 2013.

DATED the 30th day of August, 2013.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
(208)332-1582, fax: (208)334-2632



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1301  
(Only those Sections being amended are shown.)

113. REWARDS.

**01. Distinguished Schools.** A school ~~may~~ **shall** be recognized as a “Distinguished School” ~~if it is in the top five percent (5%) of schools exceeding the Idaho Adequate Yearly Progress (AYP) intermediate targets listed in Subsection 112.03, of this rule, and if it has significantly reduced the gaps between subgroups listed in Subsection 112.04.d. of this rule.~~ based on the following criteria: (3-30-07)(    )

- a.** School must have received a five (5) star rating. (    )
- b.** Be within the top five percent (5%) of schools based on proficiency. (    )
- c.** Be within the top ten percent (10%) of schools based on the gap between highest and lowest achievement subgroup as outlined in Subsection 112.04.d. (    )
- d.** Be within the top ten percent (10%) of schools based on the gap between at-risk and not at-risk students. (    )
- e.** Be within the top ten percent (10%) of schools based on proficiency of at-risk students. (    )
- f.** Be within the top ten percent (10%) of schools based on lowest achieving subgroup as outlined in Subsection 112.04.d. (    )

~~**02. Additional Yearly Growth (AYG) Award.** A school demonstrating improved proficiency levels of subpopulations or in the aggregate by greater than ten percent (10%) shall be considered to have achieved AYG. Such school must have achieved Adequate Yearly Progress (AYP) to be eligible for this award.~~ (3-30-07)

~~**03.2. Determination by State Department of Education.** The State Board of Education will determine the schools eligible for the Distinguished School ~~and AYG awards~~ each year based upon the criteria outlined in Subsections 113.01 ~~and 113.02.~~ The State Department of Education will provide the list of schools meeting the specified criteria to the State Board of Education no later than August 30th of each year. The State Board of Education will recognize the schools no later than the annual October Board Meeting. (4-2-08)(    )~~

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1302**

### **NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has vacated the proposed rulemaking previously initiated and is rescinding the temporary rule previously adopted under docket number 08-0203-1302. The action is authorized pursuant to Sections 33-105, 33-107, and 33-612, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for vacating the proposed rulemaking and for rescinding the temporary rule:

In order to implement changes that would allow students to take advantage of the programs outlined in Senate Bill 1091 and Senate Bill 1028 (2013), a temporary rule was adopted to make them available as intended by the Idaho Legislature. These changes were also promulgated concurrently as proposed rules and were published under docket number 08-0203-1302. Additional changes needed in the same affected section of the rule and the need for additional temporary rules affecting other sections of this rule have made it less confusing to rescind and vacate this current rulemaking, adopt new temporary rules and promulgate new proposed rules. To avoid unnecessary complications, the changes previously adopted as temporary rules under docket 08-0203-1302 have been included into docket 08-0203-1305 (temporary only). The changes promulgated as proposed rules under docket 08-0203-1302 are included in docket 08-0203-1306 (proposed only). Because of this, it is necessary to rescind the temporary rule previously adopted under docket number 08-0203-1302 making it null, void and of no force and effect and to vacate the proposed rulemaking promulgated under this same docket number.

Dockets 08-0203-1305 and 08-0203-1306 are published in this Bulletin following this notice. The notice and text of the temporary and proposed rulemaking being rescinded and vacated are published in the August 7, 2013 Idaho Administrative Bulletin, [Vol. 13-8, pages 77 through 83](#).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rescission of temporary rule and vacation of proposed rulemaking contact Luci Willits, State Department of Education at 208-332-6814 or [lwillits@sde.idaho.gov](mailto:lwillits@sde.idaho.gov).

DATED this 26th Day of September, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2<sup>nd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812  
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# IDAPA 08 - STATE BOARD AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1305

### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 2013.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 67-1628, 67-5291, and 33-512C, Idaho Code.

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

During the 2013 Legislative Session, the Idaho Legislature passed Senate Bill 1091 and Senate Bill 1028, which were both based on providing students with opportunities to advance through their coursework at a more rapid rate by taking online overload courses paid for by the State of Idaho. This would then allow eligible students to either graduate early or take dual credit courses at the expense of the State of Idaho. With the state offering all students in grades 3-11 to take the field test for Idaho Core, the Class of 2016 will be in transition and must have an alternate route in lieu of passing the ISAT at 10th graders.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1), 67-1628, 67-5291, and 33-512C, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule is being brought forth as temporary to allow students to begin taking advantage of the programs outlined in Senate Bills 1091 and 1028.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Luci Willits, State Department of Education, 208-332-6814, [lwillits@sde.idaho.gov](mailto:lwillits@sde.idaho.gov).

DATED this 26th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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#### THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-1305 (Only those Sections being amended are shown.)

**104. OTHER REQUIRED INSTRUCTION.**

Other required instruction for all students and other required offerings of the school are: (4-1-97)

**01. Elementary Schools.** (4-11-06)

a. The following section outlines other information required for all elementary students, as well as other required offerings of the school:

Fine Arts (art and music)  
Health (wellness)  
Physical Education (fitness) (4-11-06)

b. Additional instructional options as determined by the local school district. For example:  
Languages other than English  
Career Awareness (4-1-97)

**02. Middle Schools/Junior High Schools.** (4-11-06)

a. No later than the end of Grade eight (8) each students shall develop parent-approved student learning plans for their high school and post-high school options. The learning plan shall be developed by students with the assistance of parents or guardians, and with advice and recommendation from school personnel. It shall be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the school district's or LEA's graduation standards. The school district or LEA will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-11-06)

b. (Effective for all students that enter the sixth grade in the fall of 2006 or later.) A student must have taken pre-algebra before the student will be permitted to enter grade nine (9). (4-11-06)

c. Other required instruction for all middle school students:  
Health (wellness)  
Physical Education (fitness) (4-11-06)

d. Other required offerings of the school:  
Family and Consumer Science  
Fine & Performing Arts  
Professional Technical Education  
Advisory Period (middle school only, encouraged in junior high school) (4-11-06)

~~**03. High Schools (Grades 9-12) (Effective for all students that graduate prior to January 1, 2012).**  
Students will maintain a parent-approved student learning plan for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. The learning plan outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional technical education (PTE), or humanities aligned with the student's post graduation goals. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-11-06)~~

~~a. Other required instructional offerings of the high school. Each student must complete credit and achievement standards in at least two (2) of the following areas of instructional offerings:  
Physical Education (fitness)  
Humanities  
Professional Technical Education (including work-based learning)  
Family and Consumer Science  
Fine and Performing Arts  
Languages other than English (may include indigenous languages or sign language) (4-11-06)~~

**105. HIGH SCHOOL GRADUATION REQUIREMENTS.**

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

**01. Credit Requirements.** The State minimum graduation requirement for all Idaho public high schools is forty-two (42) credits. The forty-two (42) credits must include twenty-five (25) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, the minimum graduation requirement will be forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-29-12)

**a. Credits.** (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

**b. Mastery.** A student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

**c. Secondary Language Arts and Communication.** Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

**d. Mathematics.** Four (4) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) semester credits are required. For such students, secondary mathematics includes instruction in the following areas: (3-29-10)

**i.** Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

**ii.** Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

**iii.** Two (2) credits of mathematics of the student's choice. (3-29-10)

**iv.** Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than math are not required to retake a math course as long as they have earned six (6) credits of high school level mathematics. (3-29-10)(8-26-13)T

**v.** Students who have completed six (6) credits of math prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking math during their last year of high school. (4-4-13)

**e. Science.** Four (4) credits are required, two (2) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences.

(3-29-10)

i. Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) credits will be required. (3-29-10)

ii. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. (3-29-10)

**02. Content Standards.** Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

**03. College Entrance Examination.** *(Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.)* ~~(3-29-12)~~(8-26-13)T

a. A student must take one (1) of the following college entrance or placement examinations before the end of the student's eleventh grade year: ~~COMPASS, ACCUPLACER, ACT or SAT, ACT, or Compass. Scores must be included in the Learning Plan.~~ A student who missed the statewide administration of the college exam during the student's eleventh grade year may take the examination during the student's twelfth grade year to meet this requirement, if the student: ~~(3-29-12)~~(8-26-13)T

i. Transferred to an Idaho school district during the eleventh grade year; (8-26-13)T

ii. Was homeschooled during the eleventh grade year; or (8-26-13)T

iii. Missed the fall statewide administration of the college entrance exam dates for documented medical reasons. (8-26-13)T

b. A student may elect an exemption ~~in their 11th grade year~~ from the college entrance exam requirement, if the student is: ~~(3-29-12)~~(8-26-13)T

i. Enrolled in a special education program and has an Individual Education Plan (IEP) that specifies accommodations not allowed for a reportable score on the approved tests; ~~or~~ ~~(3-29-12)~~(8-26-13)T

ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; ~~or~~ ~~(3-29-12)~~(8-26-13)T

iii. Enrolled for the first time in 12th grade at an Idaho high school after the fall statewide administration of the college entrance exam. (8-26-13)T

**04. Senior Project.** *(Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.)* A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. ~~(3-29-10)~~(8-26-13)T

**05. Middle School.** A student will have met the high school content and credit area requirement for any required high school course if: (8-26-13)T

**a.** ~~If a~~ The student completes ~~any required high school~~ such course with a grade of C or higher before entering grade nine (9), ~~and if that;~~ (8-26-13)T

**b.** The course meets the same standards that are required in high school; (8-26-13)T

**c.** The course is taught by a properly certified teacher who meets the federal definition of being highly qualified for the course being taught; and (8-26-13)T

**d.** The school providing the course is accredited as recognized by the state board. (8-26-13)T

**e.** ~~then the student has met the high school content area requirement for such course.~~ The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. in addition to the courses completed in middle school. ~~(3-29-12)~~(8-26-13)T

**06. Proficiency.** Each student must achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. Students who receive a proficient or advanced score on the Grade 10 ISAT while in Grade 9 may bank the score for purposes of meeting their graduation requirement. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not achieved a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test by the fall semester of the student's junior year. All locally established alternate plans used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. ~~(4-7-11)~~(8-26-13)T

**a.** Before entering an alternate measure, the student must be: (4-2-08)

i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

**b.** The alternate plan must: (4-7-11)

i. Contain multiple measures of student achievement; (4-7-11)

ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)

iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)

iv. Be valid and reliable; and (4-7-11)

v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)

**c.** A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)

i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must approved by the State Board of Education and

must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)

ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)

iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)

iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)

**d.** For the Class of 2016, students who have not received a proficient or advanced score on the ISAT in Grade 9 will be required to complete an alternative plan for graduation, as designed by the district, including the elements prescribed in Subsection 105.06.b. of this rule. (8-26-13)T

**07. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

**08. Foreign Exchange Students.** A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)



# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1306

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

**Tuesday, October 8, 2013, at 3:00 p.m. (MDT)**

**Idaho State Department of Education  
650 West State Street, 2nd Floor  
Lewis and Clark Conference Room  
Boise, Idaho**

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

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

**Physical Education:** Currently, there are no required minimums for elementary, middle school/junior high, or high school. This change seeks to set out minimum requirements for physical education at all levels. In addition, the change requires cardiopulmonary resuscitation to be taught in health as a graduation requirement.

**Engineering, Computer Science as Math and Science credits:** Students will be allowed to take dual credit engineering or dual credit computer science or AP computer science as a math or science credit versus being counted as electives. Students need greater exposure to the applicability of math and science and by allowing this flexibility in graduation requirements; students could gain valuable exposure to high demand areas.

**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:

No Fiscal Impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because a committee of interested stakeholders is bringing the proposals forward and it will be available for public comment on our website and at the above referenced Public Hearing.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luci Willits, State Department of Education at 208-332-6814 or [lbwillits@sde.idaho.gov](mailto:lbwillits@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 16th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1306  
(Only those Sections being amended are shown.)**

**104. OTHER REQUIRED INSTRUCTION.**

Other required instruction for all students and other required offerings of the school are: (4-1-97)

**01. Elementary Schools.** (4-11-06)

**a.** The following section outlines other information required for all elementary students, as well as other required offerings of the school:

Fine Arts (art and music)

Health (wellness)

Physical Education (fitness, a minimum of sixty (60) minutes of physical education on a weekly basis) ~~(4-11-06)~~ ( )

**b.** Additional instructional options as determined by the local school district. For example:  
Languages other than English  
Career Awareness (4-1-97)

**02. Middle Schools/Junior High Schools.** (4-11-06)

**a.** No later than the end of Grade eight (8) each students shall develop parent-approved student learning plans for their high school and post-high school options. The learning plan shall be developed by students with the assistance of parents or guardians, and with advice and recommendation from school personnel. It shall be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the school district's or LEA's graduation standards. The school district or LEA will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-11-06)

**b.** (Effective for all students that enter the sixth grade in the fall of 2006 or later.) A student must have taken pre-algebra before the student will be permitted to enter grade nine (9). (4-11-06)

**c.** Other required instruction for all middle school students:

Health (wellness)

Physical Education (fitness, an average of two hundred twenty (220) minutes of physical education on a weekly basis, beginning Fall of 2015; to be increased to two hundred twenty-five (225) minutes on a weekly)

basis beginning Fall 2018)

(4-11-06)( )

- d. Other required offerings of the school:  
Family and Consumer Science  
Fine & Performing Arts  
Professional Technical Education  
Advisory Period (middle school only, encouraged in junior high school) (4-11-06)

~~03. High Schools (Grades 9-12) (Effective for all students that graduate prior to January 1, 2012). Students will maintain a parent-approved student learning plan for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. The learning plan outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional technical education (PTE), or humanities aligned with the student's post-graduation goals. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-11-06)~~

~~a. Other required instructional offerings of the high school. Each student must complete credit and achievement standards in at least two (2) of the following areas of instructional offerings:  
Physical Education (fitness)  
Humanities  
Professional Technical Education (including work-based learning)  
Family and Consumer Science  
Fine and Performing Arts  
Languages other than English (may include indigenous languages or sign language) (4-11-06)~~

#### 105. HIGH SCHOOL GRADUATION REQUIREMENTS.

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

01. **Credit Requirements.** The State minimum graduation requirement for all Idaho public high schools is ~~forty-two (42) credits. The forty-two (42) credits must include twenty-five (25) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, the minimum graduation requirement will be~~ forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-29-12)( )

a. Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

b. Mastery. A student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

c. Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements.

(3-29-10)

d. Mathematics. ~~Four~~ **Six (46)** credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. ~~For all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) semester credits are required. AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering courses may also be counted as a mathematics credit if the student has completed Algebra II standards. For such students, must complete~~ secondary mathematics ~~includes instruction~~ in the following areas: (3-29-10)(    )

i. Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

ii. Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

iii. Two (2) credits of mathematics of the student's choice. (3-29-10)

iv. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than math are not required to retake a math course as long as they have earned six (6) credits of high school level mathematics. (3-29-10)(    )

v. Students who have completed six (6) credits of math prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking math during their last year of high school. (4-4-13)

e. Science. ~~Four~~ **Six (46)** credits are required, ~~two~~ **four (24)** of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. Up to two (2) credits in AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may be used as science credits. (3-29-10)(    )

~~i. Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) credits will be required.~~ (3-29-10)

ii. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter high school at the 9th grade level in Fall 2015 or later, each student shall receive a minimum of one (1) class period on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in AHA Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-29-10)(    )

i. Physical Education. Effective for all public school students who enter high school at the 9th grade

level in Fall 2015 or later, two (2) credits are required for graduation. ( )

i. One (1) credit may be substituted with participation for one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district. ( )

**02. Content Standards.** Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

**03. College Entrance Examination.** (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) (3-29-12)

**a.** A student must take one (1) of the following college entrance or placement examinations before the end of the student's eleventh grade year prior to graduation: ~~COMPASS, ACCUPLACER, ACT or~~ SAT, ACT, or Compass. Scores must be included in the Learning Plan. (3-29-12)( )

**b.** A student may elect an exemption in their 11th grade year from the college entrance exam requirement if the student is: (3-29-12)( )

**i.** Enrolled in a special education program and has an Individual Education Plan (IEP) that specifies accommodations not allowed for a reportable score on the approved tests; ~~or~~ (3-29-12)( )

**ii.** Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-29-12)( )

**iii.** Enrolled in grade 12 at an Idaho high school after the fall statewide administration of the college entrance exam. ( )

**04. Senior Project.** ~~(Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.)~~ A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-29-10)( )

**05. Middle School.** If a student completes any required high school course with a grade of C or higher before entering grade nine (9), ~~and~~ if that course meets the same standards that are required in high school, if the course is taught by a properly certified teacher who meets the federal definition of being highly qualified for the course being taught and if the school providing the course is accredited as recognized by the state board, then the student ~~has~~ will have met the high school content and credit area requirement for such course. The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. in addition to the courses completed in middle school. (3-29-12)( )

**06. Proficiency.** Each student must achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. Students who receive a proficient or advanced score on the Grade 10 ISAT while in Grade 9 may bank the score for purposes of meeting their graduation requirement. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not achieved a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test by the fall semester of the student's junior year. All locally established alternate plans used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. (4-7-11)( )

**a.** Before entering an alternate measure, the student must be: (4-2-08)

- i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)
- ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)
- iii. Enrolled in the fall semester of the senior year. (3-20-04)
- b.** The alternate plan must: (4-7-11)
  - i. Contain multiple measures of student achievement; (4-7-11)
  - ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)
  - iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)
  - iv. Be valid and reliable; and (4-7-11)
  - v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)
- c.** A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)
  - i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)
  - ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)
  - iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)
  - iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)
- d.** For the Class of 2016, students who have not received a proficient or advanced score on the ISAT in Grade 9 will be required to complete an alternative plan for graduation, as designed by the district, including the elements prescribed in Subsection 105.06.b. of this rule. ( )

**07. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

**08. Foreign Exchange Students.** A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1307**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

**Tuesday, October 8, 2013, at 3:00 p.m. (MDT)**

**Idaho State Department of Education  
650 West State Street, 2nd Floor  
Lewis and Clark Conference Room  
Boise, Idaho**

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

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

This proposed rule change would ensure there is no lapse in the mandate to teach cursive writing across the state as the Idaho Core Standards are implemented statewide in the 2013-14 school year.

**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:

No Fiscal Impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because during the 2013 legislative session Concurrent Resolution - HCR003 passed. This resolution requires that all Idaho Public Elementary Schools provide instruction in cursive handwriting. The changes to IDAPA 08.02.03.103 are being proposed consistent with this requirement.

**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 Scott Cook, State Department of Education at 208-332-6927 or [scook@sde.idaho.gov](mailto:scook@sde.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 16th day of August, 2013.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; fax (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1307**  
**(Only those Sections being amended are shown.)**

**103. INSTRUCTION GRADES 1-12.**

**01. Instruction.** Instruction is inclusive of subject matter, content and course offerings. Patterns of instructional organization are a local school district option. Schools will assure students meet locally developed standards with the state standards as a minimum.\* (\*This includes special instruction that allows limited English proficient students to participate successfully in all aspects of the school's curriculum and keep up with other students in the regular education program. It also includes special learning opportunities for accelerated, learning disabled students and students with other disabilities.) (4-5-00)

**02. Instructional Courses.** At appropriate grade levels, instruction will include but not be limited to the following: (4-11-06)

**a.** Language Arts and Communication will include instruction in reading, writing, English, literature, technological applications, spelling, speech and listening, and, in elementary schools, cursive writing. (4-1-97)(    )

**b.** Mathematics will include instruction in addition, subtraction, multiplication, division, percentages, mathematical reasoning and probability. (4-1-97)

**c.** Science will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (4-1-97)

**d.** Social Studies will include instruction in history, government, geography, economics, current world affairs, citizenship, and sociology. (4-1-97)



## IDAPA 11 - IDAHO STATE POLICE

### 11.10.01 - RULES GOVERNING IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

#### DOCKET NO. 11-1001-1301 (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 Sections 67-3001, 67-3003, 67-3004, 67-3007 and 67-3010, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule amends the fees charged to users of the Idaho Public Safety and Security Information system, commonly known as the ILETS System. This fee increase was approved by the ILETS Board, a six-member multi-jurisdictional board that establishes policies relating to the management and operations of the ILETS System, as outlined in this section of Administrative Rule.

The increase in the fee structure is necessary for the continuation of the ILETS System's operation and for the implementation of a disaster recovery system.

**FEE SUMMARY:** The amendment to the current fee structure is included in this section of Administrative Rule.

**FISCAL IMPACT:** The following is a specific 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 rule does not create an impact on the general fund. However, additional funding of the ILETS System is being sought to augment financial need for operation of the System.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiation of the rule is not feasible due to the lack of identifiable representatives of affected interests to participate in negotiated rulemaking. However, the ILETS Board, that represent the affected users of the ILETS System, unanimously voted to approve the fee increase.

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

There are no materials to be incorporated by reference to this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Manager, Bureau of Criminal Identification, 208-884-7130.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Lt. Col. Kedrick Wills, Deputy Director  
 Idaho State Police  
 700 S. Stratford Dr.  
 Meridian, Idaho 83642  
 Phone: 208-884-7000  
 Fax: 208-884-7090

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 11-1001-1301**  
**(Only those Sections being amended are shown.)**

**018. USER ACCESS FEES.**

**01. Payment of Fees Required.** Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-13-02)

**02. ILETS Network User Access Fees.** The access fees approved by the Board and to be collected quarterly in advance by the department are as follows: (3-13-02)

**a.** An agency at the county or municipal level pays an annual access fee of ~~four thousand dollars (\$4,000) for each telecommunication line drop to the agency. Effective October 1, 2007, the fee shall be~~ five thousand dollars (\$5,000). (3-19-07)(    )

**b.** An agency at the state, federal, or tribal level pays an annual access fee of ~~seven thousand dollars (\$7,000) for each telecommunication line drop to the agency. Effective October 1, 2007 the fee shall be~~ eight thousand, seven hundred fifty dollars (\$8,750). (3-19-07)(    )

**03. Usage Fee.** Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network pays quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-20-04)

**a.** The usage fee is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee Prior to October 1, 2007	Annual Usage Fee Effective October 1, 2007	Annual Usage Fee Effective October 1, 2014
0 - .25 %	<del>\$500</del>	\$625	<del>\$1,875</del>
.26 - .50 %	<del>\$1,000</del>	\$1,250	<del>\$3,750</del>
.51 - .75 %	<del>\$2,000</del>	\$2,500	<del>\$7,500</del>
.76 - 1.0 %	<del>\$4,000</del>	\$5,000	<del>\$15,000</del>
1.01 - 1.50 %	<del>\$6,000</del>	\$7,500	<del>\$22,500</del>
1.51 - 2.0 %	<del>\$9,000</del>	\$11,250	<del>\$33,750</del>
2.01 - 5.0 %	<del>\$13,500</del>	\$16,875	<del>\$50,625</del>
> 5.01 %	<del>\$20,250</del>	\$25,313	<del>\$75,939</del>

(3-19-07)(    )

**b.** The department will conduct audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee. This fee is effective for two (2) years and begins with the quarterly statement beginning October 1 of odd-numbered years. (3-20-04)

**c.** If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access will be adjusted to reflect the combined historical usage. (3-20-04)

**d.** A new agency approved for direct ILETS access that does not have historical usage will be assessed an interim usage fee by the department pending the next audit of ILETS message traffic. The department sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal the interim usage fee set by the department to the ILETS Board. (3-20-04)

**e.** As operator of ILETS, the department, in lieu of payment of fees, provides direct and in-kind support of network operations. The Board reviews biennially the proportion of that support to the overall operating cost of the system. (3-20-04)

**04. Billing and Payment.** The department mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day. (3-20-04)

**05. Sanctions for Delinquency.** Any user agency that becomes delinquent in payment of assessed fees is subject to sanctions under Section 028. (3-20-04)

## IDAPA 11 - IDAHO STATE POLICE

### 11.10.02 - RULES ESTABLISHING FEES FOR SERVICES - IDAHO CRIMINAL JUSTICE INFORMATION SYSTEM

DOCKET NO. 11-1002-1301

#### 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 67-3001, 67-3003, 67-3004, 67-3007 and 67-3010, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule will include terms defined in Section 67-3001, Idaho Code. This rule will also provide a procedure for the expungement of a person's criminal history record, for the transmittal of criminal history arrest fingerprints, and for a person to contest to the accuracy and completeness of a criminal history record in the database of the Bureau of Criminal Identification, as allowed pursuant to Section 67-3001, Idaho Code.

**FEE SUMMARY:** No fees are imposed by this rule.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiation of the rule is not feasible due to the lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials to be incorporated by reference to this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Manager, Bureau of Criminal Identification, 208-884-7130.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 26th day of August, 2013.

Lt. Col. Kedrick Wills, Deputy Director  
Idaho State Police  
700 S. Stratford Dr.  
Meridian, Idaho 83642  
Phone: 208-884-7000  
Fax: 208-884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1002-1301  
(Only those Sections being amended are shown.)

11.10.02 - RULES ~~ESTABLISHING FEES FOR SERVICES - IDAHO~~ GOVERNING STATE  
CRIMINAL ~~JUSTICE~~ HISTORY RECORDS AND CRIME INFORMATION ~~SYSTEM~~

**000. LEGAL AUTHORITY.**

These rules are authorized by Sections ~~67-3001, 67-3003, 67-3004, 67-3007, and~~ 67-3010, Idaho Code.

~~(3-30-01)~~( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 11.10.02, "Rules ~~Establishing Fees for Services - Idaho~~  
~~Governing State~~ Criminal ~~Justice~~ ~~History Records and Crime~~ Information ~~System~~."  
~~(3-30-01)~~( )

**02. Scope.** The rules relate to the governance and operation of criminal history records and crime  
information. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

Except as otherwise specifically provided, the terms defined in Section 67-3001, Idaho Code, shall have the same  
meaning in these rules. ~~Any other terms defined in Section 67-3001 shall be given their ordinary and commonly~~  
~~understood meaning.~~  
~~(3-30-01)~~( )

**01. Acquittal.** ~~The legal certification by a jury or judge that a person is not guilty of the crime charged.~~  
( )

**02. Criminal Summons.** ~~Shall include any summons, information or indictment issued in a criminal~~  
~~proceeding or action.~~ ( )

**03. Dismissal.** ~~Termination of a criminal action without further hearing, especially before the trial of~~  
~~the issues involved.~~ ( )

**04. Expunge.** ~~To erase or destroy, to declare null and void outside the record, so that it is noted in the~~  
~~original record as expunged, and redacted from all future copies.~~ ( )

**05. Serious Misdemeanor.** ~~A crime, that if convicted, could be punishable by imprisonment in a~~  
~~county jail.~~ ( )

**011. ABBREVIATIONS.**

Except as otherwise specifically provided, ~~the terms defined in Section 67-3001, any terms abbreviated in Chapter 30,~~  
~~Title 67,~~ Idaho Code, shall have the same ~~identification and~~ meaning in these rules. ~~(3-21-12)~~( )

*[Codified Sections 012 and 013 are being moved and renumbered respectively to  
Sections 031 and 032]*

~~012. -- 020. (RESERVED)~~

**021. EXPUNGEMENT PROCEDURE.**

The procedure for any criminal history record expungement shall be as follows: ( )

**01. Application.** A person seeking to expunge their criminal history record must submit the proper application to the Bureau of Criminal Identification as provided by the Bureau. ( )

**02. Required Information Included.** The applicant must also include a copy of one of the following to the Bureau of Criminal Identification: ( )

**a. Criminal citation; or** ( )

**b. Criminal Summons, Complaint, and Affidavit of Service by the county sheriff's office; or** ( )

**c. Indictment; or** ( )

**d. Information.** ( )

**03. Certified Copy of Acquittal.** The applicant must also include a certified copy of the court's order of acquittal finding the applicant was not guilty of the crime charged. ( )

**04. Return of Incomplete Application.** The Bureau of Criminal Identification shall return an application to the applicant, if the application is incomplete or if the required documents are not provided. ( )

**022. TRANSMITTAL OF CRIMINAL HISTORY RECORDS.**

The transmittal of criminal history arrest fingerprint(s) may be via electronic submission from a live-scan or card scanner over a secured and approved network or by hard copy through regular mail. ( )

**023. PROCEDURE FOR CONTESTING THE ACCURACY AND COMPLETENESS OF A CRIMINAL HISTORY RECORD CONTAINED IN AGENCY FILE.**

**01. Challenge Accuracy of Records.** A person may challenge the accuracy and correctness of their criminal history records contained in the Bureau's database. ( )

**a.** The applicant must submit to fingerprinting through either the Bureau of Criminal Identification or other law enforcement agency. A fingerprinting fee may apply. ( )

**02. Notification of Fingerprints Not Matched.** If the applicant's fingerprints do not match those contained in the Bureau's database, the applicant will be notified by certified mail. ( )

**03. Documentation of Erroneous Information.** If the applicant's fingerprints match, but the applicant has documentation showing the information is in error, the applicant may submit such information to the Bureau of Criminal Identification. ( )

**04. Correction of Records.** The Bureau of Criminal Identification will correct its records per the direction of the law enforcement agency where the initial criminal action arose or appropriate court order. ( )

**024. -- 030. (RESERVED)**

**031. FEES FOR SERVICES.**

**01. Fingerprint Check.** The Bureau shall charge a fee of not more than twenty-five dollars (\$25) for each fingerprint check requested for other than law enforcement purposes. (3-21-12)

**02. Name Check.** The Bureau shall charge a fee of not more than twenty dollars (\$20) for each name check requested for other than law enforcement purposes. (3-21-12)

**03. Rolling Fingerprint.** The Bureau shall charge a fee of not more than ten dollars (\$10) for rolling a set of fingerprints and no more than five dollars (\$5) for each additional copy of such rolled fingerprints. (3-21-12)

**~~0432.~~ NON-EXPANSION OF SERVICES.**

Nothing within these rules shall be construed to alter or expand the services which will be provided to those requesting fingerprint checks and name checks. (7-1-96)

**~~0433.~~ -- 999. (RESERVED)**

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-1302

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 Sections 36-104(b) and 36-1101(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 revises the Nonresident Junior Mentored Tag to delete the requirement that the accompanying adult have a tag valid in the same area.

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

The temporary rule confers a benefit to certain hunters and sportsmen.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Not Applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this minor change is simple in nature, and there were few responses to a Notice of Intent to Promulgate Rules.

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

Not Applicable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.



W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1302  
(Only those Sections being amended are shown.)**

**250. TAGS AND PERMITS.**

No person shall hunt big game animals without having in possession the appropriate hunting license, tags and permits. (4-7-11)

**01. Use of Tags.** (7-1-93)

**a.** Controlled hunt tags issued for moose, bighorn sheep, mountain goat and pronghorn may be used only in the controlled hunt for which the hunter was drawn. (4-7-11)

**b.** Extra tags issued for deer, elk or pronghorn may be used only in the hunt area for which the tags are issued. (4-7-11)

**c.** Any person who purchases a tag to hunt black bear, or who is unsuccessful in killing an animal, and who is subsequently drawn for a black bear controlled hunt tag, may choose to purchase a controlled hunt bear tag or exchange the general season bear tag for the controlled hunt bear tag, the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

**d.** General season tags issued for black bear and mountain lion may be used statewide. Extra tags issued for black bear and mountain lion may be used only in the hunt area for which the tags are issued. (4-7-11)

**e.** Regular tags issued for deer and elk may be used ONLY as follows: (7-1-93)

**i.** Regular Deer:

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident	Any archery, muzzleloader or general deer season.
Resident/Senior/Disabled American Veteran (DAV)	Any archery, muzzleloader or general deer season.
Nonresident	Any archery, muzzleloader or general deer season or may be used to tag a black bear or mountain lion or gray wolf during the Regular deer season when the black bear or mountain lion, or gray wolf season is open.
Controlled Hunt Tag	Only the designated controlled hunt for which the hunter was drawn.
Controlled Depredation Hunt Tag	Only the designated controlled depredation hunt for which the hunter was drawn.
Controlled Hunt Extra Tag	Only the designated controlled extra tag hunt for which the hunter was drawn.

(4-7-11)

ii. White-tailed deer.

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident White-tailed	To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.
Resident Junior/Senior/Disabled American Veteran (DAV) White-tailed	To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.
Nonresident White-tailed	To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season or may be used to tag a black bear, mountain lion or gray wolf during the white-tailed deer season when the black bear, mountain lion or gray wolf season is open.
Nonresident White-tailed Junior Mentored	Any archery, muzzleloader or general white-tailed deer season.

(4-7-11)

iii. Elk A Tag: Valid only for A Tag elk seasons in specific elk zones.

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident	Any archery, muzzleloader, or general season in A Tag elk seasons in specific zones.
Resident Junior/Senior/Disabled American Veteran (DAV)	Any archery, muzzleloader, or general season in A Tag elk seasons in specific zones.
Nonresident	Any elk archery, muzzleloader, or general season in A tag elk seasons in specific zones. May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.
Nonresident Junior Mentored	Any archery, muzzleloader, or general season in A Tag elk season in specific zones.
Controlled Hunt Tag	Only the designated controlled hunt for which the hunter was drawn.
Controlled Depredation Hunt Tag	Only the designated controlled depredation hunt for which the hunter was drawn.
Controlled Extra Tag	Only the designated controlled and extra tag hunt for which the hunter was drawn.

(4-7-11)

iv. Elk B Tag: Valid only for B Tag elk seasons in specified zones.

<b>TYPE OF TAG</b>	<b>SEASONS</b>
Resident	Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.
Junior/Senior/Disabled American Veteran (DAV)	Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.

TYPE OF TAG	SEASONS
Nonresident	Any elk archery, muzzleloader, or general season in B tag elk seasons in specific zones. May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.
Nonresident Junior Mentored	Any archery, muzzleloader, or general season in B Tag elk season in specific zones.
Controlled Hunt Tag	Only the designated controlled hunt for which the hunter was drawn.
Controlled Depredation Hunt Tag	Only the designated controlled depredation hunt for which the hunter was drawn.
Controlled Hunt Extra Tag	Only the designated controlled and extra tag hunt for which the hunter was drawn.

(4-7-11)

v. Super Tag.

TYPE OF TAG	SEASONS
Controlled Hunt "Super" Tag	Valid for either pronghorn, deer, moose, or elk and allows the hunter to hunt in any open and/or controlled hunt for the selected species.

(4-7-11)

f. Nonresident Junior Mentored Deer or Elk tags are not valid for bear, mountain lion, or gray wolf. (4-7-11)

g. Any person hunting with a Nonresident Junior Mentored License or tag must be accompanied in the field by an adult license holder close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (4-6-05)

h. Any adult accompanying the holder of a Nonresident Junior Mentored Tag must have a tag for the same species, ~~valid in the same area.~~ (4-6-05)(8-26-13)T

i. Regular tags issued for gray wolf may be used ONLY as allowed by the gray wolf seasons and quotas set by Commission proclamation under Section 36-105(3), Idaho Code. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-10)

**02. Return of Tags by Unsuccessful Hunters.** Hunters who are not successful in killing a bighorn sheep, mountain goat or moose shall present or mail their unused tags to a Department office within ten (10) days after the close of the season for which the tag was valid. Canceled tags will be returned to the hunter upon request. (4-7-11)

**03. Archery and Muzzleloader Permits.** Any person hunting in an archery only or muzzleloader only season must have the appropriate permit (archery or muzzleloader) for the relevant season validated on their license. (3-20-97)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1303

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 Sections 36-104(b) and 36-405(c)(2)(B), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

2012 House Bill 457 allowed rules for controlled hunt tag designation to a minor child or grandchild. This rule makes a minor wording change to more closely align statute and rule language for designating a controlled hunt tag from a parent or grandparent to his or her minor child or grandchild.

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

The temporary rule confers a benefit to certain hunters and sportsmen.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Not Applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this minor wording change is simple in nature, and is in response to a Legislative request.

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

Not Applicable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1303  
(Only those Sections being amended are shown.)**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

e. Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to ~~his or her~~ resident minor child or grandchild who is qualified to participate in the hunt. ~~(4-4-13)~~(8-26-13)T

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to ~~his or her~~ resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ~~(4-4-13)~~(8-26-13)T

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to ~~his or her~~ nonresident minor child or grandchild who is qualified to participate in the hunt. ~~(4-4-13)~~(8-26-13)T

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates ~~a~~ his or her control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ~~(4-4-13)~~(8-26-13)T

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

d. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-4-13)

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**m.** The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All



applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear - Application period - January 15 - February 15. (4-6-05)
  - b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
  - c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)
  - d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
  - e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)
- 05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)
- a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
  - b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
  - c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
  - d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)
  - e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)
    - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
    - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
    - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
  - f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4)

hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**e.** Application fees are nonrefundable. (4-7-11)

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0109-1301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 Sections 36-104(b) and 36-405(c)(2)(B), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

2012 House Bill 457 allowed rules for controlled hunt tag designation to a minor child or grandchild. This rule makes a minor wording change to more closely align statute and rule language for designating a controlled hunt tag from a parent or grandparent to his or her minor child or grandchild.

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

The temporary rule confers a benefit to certain hunters and sportsmen.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Not Applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this minor wording change is simple in nature, and is in response to a Legislative request.

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

Not Applicable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0109-1301  
(Only those Sections being amended are shown.)**

**100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.**

**01. Sage Grouse or Sharp-Tailed Grouse.** No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

**02. Migratory Game Birds.** No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

**a.** Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. (4-4-13)

**b.** To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (4-4-13)

**c.** The tag must remain attached so long as the sandhill crane is in transit or storage. (4-4-13)

**03. Wild Turkey.** No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

**a.** There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**c.** Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

**d.** Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

- i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)
- ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)
- e.** Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)
- i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)
- ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)
- iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)
- iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
- v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f.** Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g.** Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h.** To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)
- i.** The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)
- j.** The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)
- k.** Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to ~~at~~ his or her resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. ~~(4-4-13)~~(8-26-13)T
- i. Designation of the controlled hunt permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License

Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

I. Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to ~~his or her~~ nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. ~~(4-4-13)~~(8-26-13)T

i. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

### DOCKET NO. 13-0111-1301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 Sections 36-104(b) and 36-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 defines the terms “single-point hook” and “watercraft” which have been used for many years in fish season proclamations.

The term “single-point hook” is used to limit fishing tackle to prevent snagging. In certain situations where fish are large, visible, and congregated, hooks with more than one point create a higher probability that anglers could intentionally or unintentionally snag a fish. This can lead to illegal harvest or unintended mortality. This is of particular concern in fisheries for salmon and steelhead in tributary river systems.

The term “watercraft” is used to limit angler conflict and address safety concerns. In some reservoirs and large river fisheries with concentrated angler use, there can be conflicts and/or unsafe conditions for bank/wading anglers created by wake from watercraft. Watercraft anchored in desired fishing areas can also monopolize preferred fishing locations to the point that bank/wading anglers have no opportunity to fish. These events are rare but can occur in waters with high-use salmon and steelhead fisheries.

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

The temporary rule confers a benefit to certain anglers and sportsmen.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Not Applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this minor change is simple in nature, and these terms have been used for many years in fish season proclamations.

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

Not Applicable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0111-1301  
(Only those Sections being amended are shown.)**

**004. DEFINITIONS.**

For the purposes of this chapter, the following terms will be defined as follows: (3-20-97)

**01. Artificial Fly.** Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-20-97)

**02. Artificial Lure.** Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. (3-29-12)

**03. Bag Limit.** The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. The bag and possession limits are equal except for salmon and steelhead. (3-20-97)

**04. Bait.** Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) (3-29-12)

**05. Barbless Hook.** A fish hook without barbs or on which barbs have been bent completely closed. (3-20-97)

**06. Catch-and-Release.** Effort, by permitted methods, to catch or attempt to catch a fish or species of fish is lawful, with the restriction that any fish so caught must be released immediately, unharmed, back to the water. NOTE: Species of fish not specifically listed as catch-and-release may be harvested under their appropriate limits. (3-30-07)

**07. Confluence of a Stream or River.** The point where two (2) rivers or streams come together. (3-20-97)



- 08. Diversion.** A man-made structure designed to change the direction of flowing water in a stream. (3-29-12)
- 09. Diversion Pond.** A man-made pond holding water taken from a stream or reservoir. The diversion pond may be connected to the stream or reservoir by an open ditch or pipe. (3-29-12)
- 10. Drainage.** All water flowing into a common river or stream system, either above or below ground, due to area geography. (3-29-12)
- 11. Electric Motors Only.** When fishing waters listed “electric motors only,” gas (internal combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (3-20-97)
- 12. Fishing.** Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (3-20-97)
- 13. Fish Trap.** Any man-made structure designed to capture fish. (3-29-12)
- 14. Fish Weir.** Any man-made structure placed in a water body to delay or divert migrating fish. (3-29-12)
- 15. Flat Water.** Water where there is no observable direction of flow. (3-29-12)
- 16. Float Tube.** A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (4-6-05)
- 17. Fly Fishing.** Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-20-97)
- 18. Game Fish.** Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; Chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (4-6-05)
- 19. General Rules.** The seasons, gear, and bag limits adopted for the Department Region where you are fishing. (3-29-12)
- 20. Harvest.** Reduce a fish to possession. (3-20-97)
- 21. Hook.** A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (3-20-97)
- 22. Hybrid Fish.** The offspring of two (2) different species or subspecies of fish. (3-29-12)
- 23. Ice Fishing.** Fishing through an opening broken or cut through the ice. (3-20-97)
- 24. Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (3-20-97)
- 25. Limit is 0 (Zero).** Fishing is allowed but the species listed in the rule or proclamation must be released after landing and may not be reduced to possession. (3-29-12)
- 26. Motor.** Includes electric and internal combustion motors. (See Subsection 004.09 - Electric Motors Only.) (3-20-97)
- 27. Mouth of River or Stream.** The place where a river or stream enters a larger body of water. (3-20-97)

- 28. No Motors.** Fishing from a boat with a motor attached is prohibited. (3-20-97)
- 29. Possession Limit.** Maximum number of fish that may be lawfully in possession of any person. "Possession limit" shall apply to fish while in the field or being transported to the final place of consumption or storage. (3-20-97)
- 30. Reservoir.** The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-20-97)
- 31. Season Limit.** The maximum number of fish that may be lawfully taken in any declared season. (3-20-97)
- 32. Section.** An area of a river, stream, or reservoir between specific boundary locations. (3-29-12)
- 33. Single-Point Hook.** A bent wire device, for catching fish, with one (1) shank and one (1) point. (8-26-13)T
- 334. Sliding Sinker.** A method of attaching a sinker to a device that slides freely on the main line. The line used to attach the sinker to the sliding device must be of lower breaking strength than the main line. (3-2-10)
- 345. Snagging.** Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. Game fish which are hooked other than in the jaw or mouth must be released immediately. (4-6-05)
- 356. Special Rule Waters.** Any water with a gear, season, or bag limit rule that is different from the regional general rules. (3-29-12)
- 367. Steelhead.** Steelhead are defined as any rainbow trout longer than twenty (20) inches in rivers and streams in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage (excluding that portion above Dworshak Dam). Rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam. (3-29-12)
- 378. Tributary.** A stream flowing into a larger stream or lake. (3-20-97)
- 389. Trout.** Includes the following trout family fishes: brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow, splake, Sunapee; trout hybrids; and the landlocked forms of Chinook, coho, Atlantic and kokanee (blueback) salmon. (3-30-07)
- 3940. Unattended Line.** A line not under the immediate surveillance by the angler. (3-20-97)
- 401. Unprotected Nongame Fish.** All fish species other than game fish and protected nongame fish. (3-30-07)
- 412. Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. (3-29-12)
- 43. Watercraft.** Those devices designed as a means of transportation on water. (8-26-13)T

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1302

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 26, 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 Sections 36-104(b) and 36-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is intended to minimize the risk of injury to sturgeon when landed by anglers. Only 'catch-and-release' angling is allowed in Idaho for sturgeon. Keeping the sturgeon in the water allows the natural buoyancy of the water to support internal organs of larger fish. Sturgeon have a cartilaginous skeleton which is not as supportive as a bony skeleton found in most fish species. The rule was in IDAPA through 2008 and was inadvertently removed during a chapter restructure, but the rule was not rescinded by the Commission.

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

The temporary rule confers a benefit to certain anglers, outfitters and sportsmen.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Not Applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this minor change is simple in nature, and the rule was inadvertently removed during a chapter restructure.

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

Not Applicable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0111-1302  
(Only those Sections being amended are shown.)**

**101. RELEASE OF FISH.**

No person shall release or allow the release of any species of live fish, or eggs thereof, in the state of Idaho without the permission of the director of the Idaho Department of Fish and Game, EXCEPT where no permission is required:  
(3-20-97)

**01. Same Location -- Fish.** When fish are being freed from a hook and released at the same time and place where caught. No released fish can be marked by any means, including with a tag, by removing fins or injuring with intent to leave a scar, without first obtaining a Scientific Collecting Permit. All sturgeon must be released at the same time and place where landed. Any sturgeon caught may not be removed from the water. ~~(3-29-12)~~(8-26-13)T

**02. Same Location -- Crayfish.** When crayfish are being released from a trap and released at the same time and place where caught.  
(3-20-97)

# **IDAPA 14 - BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

## **14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

**DOCKET NO. 14-0101-1301**

### **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 54-2808, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is amending its rules to define 'responsible charge' and to clarify when a geologist may seal work prepared by someone else. This change will ensure the safety and welfare of the public.

**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 rule change 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 October 23, 2013.

DATED this 21st day of August, 2013.

Tana Cory  
Bureau Chief  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
Ph: 208-334-3233  
Fax: 208-334-3945

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 14-0101-1301  
(Only those Sections being amended are shown.)**

**010. DEFINITIONS.**

For the purposes of these rules, the following definitions apply: (3-26-08)

**01. Act.** The legislation enacted by the First Regular Session of the Forty-first Legislature (Chapter 137, 1971 Session Laws), and compiled at Sections 54-2801, et seq., Idaho Code, providing for registration of professional geologists. (3-26-08)

**02. Applicant.** Any person who has made application for registration under the Act and who has neither been granted registration nor had the Application denied by the Board. (3-26-08)

**03. Application.** An Application consists of completed form or forms prescribed by the Board and all official transcripts, reference statements, and a signed code of ethics. (3-26-08)

**04. Board.** The Idaho Board of Registration for Professional Geologists as provided for in the Act. (7-1-93)

**05. Geologist-in-Training.** The interim designation given to any person who has met the academic requirements and successfully passed the fundamental and academic geological portion of the professional examination but has not yet completed the requisite years of experience and passed the practices of geology examination as provided in the Act. The Geologist-in-Training designation is applicable for a period of ten (10) years from notification of the successful completion of the fundamentals of geology examination. If after ten (10) years the Geologist-in-Training has not met all requirements for registration as a professional geologist, the Geologist-in-Training certification is withdrawn and the Applicant must re-apply for registration. The possession of a Geologist-in-Training certificate by an Applicant does not entitle the Applicant to practice professional geology without supervision as provided in the Act. (3-26-08)

**06. Registrant.** Any person currently registered as a professional geologist under provisions of the Act. (7-1-93)

**07. Responsible Position.** A position wherein a person, having independent control, direction, or supervision of a geological project, investigates and interprets geologic features. (7-1-93)

**08. Responsible Charge.** Responsible charge means the control and direction of geology work, requiring initiative, professional skill, independent judgment, and professional knowledge of the content of relevant documents during their preparation. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**100. GENERAL PROVISIONS.**

**01. Filing of Documents.** All correspondence, including remittances and renewal fees, shall be directed to the office of the Board. (3-26-08)

**02. Meetings.** The Board shall meet at least once each year at the call of the chairman; the Board shall elect a chairman and vice-chairman at such annual meeting. In addition to this annual meeting, the chairman may call special meetings from time to time when, in his opinion, it is deemed necessary, or upon the written request of any three (3) members of the Board. (4-9-09)

**03. Officers.** Officers elected from the Board shall be chairman and vice-chairman. (4-9-09)

**a.** The chairman shall be the executive head of the Board; shall, when present, preside at meetings;

shall appoint committees; and shall perform all the duties pertaining to the office of chairman. (3-26-08)

**b.** The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and possess all the powers of the chairman. (7-1-93)

**04. Committees.** Regular or special committees may be appointed by the chairman, as necessary, to perform special duties and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. (7-1-93)

**05. Quorum.** As provided in the Act, a quorum shall be at least three (3) members of the Board legally holding office at the time of meeting. Official business of the Board shall be conducted only at Board meetings with a quorum present. (7-1-93)

**06. Certificates.** Certificates of registration shall be issued to each Registrant, as prescribed by the Act, on forms adopted by the Board. Certificates shall be displayed by Registrants in their place of business. A new certificate may be issued by the Board, to replace one lost, destroyed or mutilated. Each certificate shall bear an individual number, as assigned to that particular Registrant by the Board, which number shall be included in the annual roster of Registrants prepared by the secretary. (7-1-93)

**07. Seals.** (7-1-93)

**a.** The official seal of the Board shall consist of a seal of the state of Idaho surrounded with the words "Board of Registration for Professional Geologists." (7-1-93)

**b.** The Board has adopted a similar seal for use by each registrant. The seal may be a rubber stamp, crimp, or electronically generated image. Whenever the seal is applied, the Registrant's signature and date shall also be included. If the signature is handwritten, it shall be adjacent to or across the seal. No further words or wording are required. A facsimile signature generated by any method will not be acceptable unless accompanied by a digital signature. SEE "APPENDIX A" AT END OF THIS CHAPTER. (3-26-08)

**c.** The seal, signature, and date shall be placed on all final specifications, reports, information, and calculations, whenever presented to a client or any public or governmental agency. Any such document presented to a client or public or governmental agency that is not final and does not contain a seal, signature, and date shall be clearly marked as "Preliminary," "Draft," "Not for Construction," or with similar words to distinguish the document from a final document. (3-26-08)

**d.** The seal, signature, and date shall be placed on all original documents. The application of the Registrant's seal, signature, and date shall constitute certification that the work thereon was done by him or under his supervision. Each plan or drawing sheet shall be sealed and signed by the Registrant or Registrants responsible for each sheet. In the case of a business entity, each plan or drawing sheet shall be sealed and signed by the Registrant or Registrants involved. The supervising professional geologist shall sign and seal the title or first sheet. Copies of electronically produced documents, listed in Paragraph 100.08.b. of these rules, distributed for informational uses such as for bidding purposes or working copies, may be issued with the Registrant's seal and a notice that the original document is on file with the Registrant's signature and date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the original document shall also be provided. Only the title page of reports, specifications, and like documents need bear the seal, signature, and date of the Registrant. (3-26-08)

**e.** The seal and signature shall be used by Registrant only when the work being stamped was under the Registrant's supervision responsible charge. Upon sealing, Registrant takes full professional responsibility for that work. After-the-fact ratification by the sealing of documents relating to work that was not performed by the Registrant but by an unregistered subordinate or other unregistered individual and without thorough technical review throughout the project by the sealing Registrant is prohibited. (3-26-08)( )

**f.** In the event a Registrant in responsible charge of a project leaves employment, is transferred, is promoted, becomes incapacitated, dies, or is otherwise not available to seal, sign, and date final documents, the duty of responsible charge for the project shall be accomplished by successor Registrant by becoming familiar with and

reviewing, in detail, and retaining the project documents to date. Subsequent work on the project must clearly and accurately reflect the successor Registrant's responsible charge. The successor Registrant shall seal, sign, and date all work product in conformance with Section 54-2815, Idaho Code. ( )

**08. Address Change.** Each Applicant and Registrant shall notify the Board within sixty (60) days of any and all changes of address, giving both old and new address. (7-1-93)

**09. Board Report.** The Board shall publish on its website, among other things: (4-9-09)

**a.** Copy of the Act; (7-1-93)

**b.** Rules of the Board; (4-9-09)

**c.** Minutes of the meetings; (4-9-09)

**d.** Financial report; (4-9-09)

**e.** Roster of Registrants; and (4-9-09)

**f.** Code of ethics. (4-9-09)



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

**15.06.03 - PUBLIC SAFETY COMMUNICATIONS RULES**

**DOCKET NO. 15-0603-1301**

**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 46-804, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rules are being revised to address several inconsistencies and formatting problems. There is no change to the fees being charged. The rulemaking corrects citations, provides internal consistency in terminology, and eliminates redundant and unnecessary language.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes to this chapter of rules are housekeeping 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 Col. Brad Richy, Director, Bureau of Homeland Security, at (208) 422-3001, e-mail [brichy@bhs.idaho.gov](mailto:brichy@bhs.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

Col. Brad Richy  
Director, Bureau of Homeland Security  
Military Division  
700 S. Stratford Dr., Bldg. 600  
Meridian, ID 83642  
Phone: (208) 422-3001  
Fax: (208) 288-2605

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0603-1301  
(Only those Sections being amended are shown.)

15.06.03 - PUBLIC SAFETY COMMUNICATIONS SYSTEMS INSTALLATION  
AND MAINTENANCE FEE RULES

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the authority of Section ~~39-7101~~ 46-804, Idaho Code. ~~(3-27-13)~~( )

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is the IDAPA 15. ~~1306.013~~, "Public Safety Communications Systems Installation and Maintenance Fee Rules." ~~(3-27-13)~~( )

02. Scope. ~~The scope of this chapter is creation of Public Safety Communications authorities and~~ These rules ~~pertaining to establish fees for the installation and maintenance of public safety communications services, fee structure for services, providing wireless interoperable communications, technical assistance and standards, microwave systems and high speed wireless bandwidth for state agencies' use in interoperable and public safety communications amongst~~ systems for local, state, federal, and tribal ~~entities~~ agencies, emergency, and first responders. ~~(3-27-13)~~( )

002. WRITTEN INTERPRETATIONS (RULE 2).

~~In accordance with Section 67-5747(a)(i)(ii)(iii)(iv), Idaho Code, the agency Public Safety Communications has been transferred from the Department of Administration to the Idaho Military Division; which now pertain~~ does not rely on any interpretative statements with regard to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. Included in these written statements is the charge of providing communications services to all state agencies except the executive office, state courts, and higher education. Pursuant to Section 67-5747(a)(i)(iii)(iv), Idaho Code. ~~(3-27-13)~~( )

003. ~~ADOPTION OF ATTORNEY GENERAL'S IDAHO RULES OF PROCEDURE~~ ADMINISTRATIVE APPEAL (RULE 3).

~~IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," are adopted for all contested cases before the Military Division and all rulemaking by the Military Division. This chapter does not provide for administrative appeals.~~ ~~(3-27-13)~~( )

004. ~~(RESERVED)~~ INCORPORATION BY REFERENCE (RULE 4).

~~No documents have been incorporated by reference into this chapter.~~ ( )

005. OFFICE, OFFICE HOURS, MAILING ADDRESS, TELEPHONE AND FACSIMILE NUMBERS, AND WEBSITE ADDRESS (RULE 5).

01. Address. The main office of the Idaho ~~Public Safety Communications~~ Military Division, Bureau of Homeland Security, is located at 700 South Stratford Drive, Building 600, Meridian, Idaho 83642. ~~(3-27-13)~~( )

02. Office Hours. Office hours are weekdays, 8:00 a.m. to 4:30 p.m., excluding holidays. (3-27-13)

03. Telephone. The telephone number is (208) 288-4000. The twenty four (24) hour emergency notification number is (800) 632-8000 or (208) 846-7610. ~~The facsimile number is (208) 288-2605.~~ ~~(3-27-13)~~( )

04. Website. The website address is <http://www.bhs.idaho.gov/>. ( )

006. ~~(RESERVED)~~ PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

~~All records relative to this chapter are public records except to the extent such records are by law exempt from~~

disclosure. ( )

**007. COMMUNICATION WITH MILITARY DIVISION, BUREAU OF HOMELAND SECURITY (RULE 7).**

**01. Records Custodian.** The Director of the Military Division, Bureau of Homeland Security, is the custodian of all records and files maintained in ~~all formal proceedings under these rules and is responsible for service of all orders and notices~~ connection with this chapter. ~~Unless otherwise directed by order, the Director, Bureau of Homeland Security issues all official notices.~~ (3-27-13)( )

**02. Filing.** All written communications and documents that are intended to be part of an official ~~Military Division~~ record ~~for a decision in a contested case or a rulemaking~~ pertaining to this chapter must be filed with the ~~Director~~ records custodian. ~~Unless otherwise provided by statute, these rules, order or notice, documents are considered filed when received by the Director, not when mailed.~~ (3-27-13)( )

~~**03. Information.** Information concerning proceedings before the Military Division, or the status of any matter of public record is available from the Director, Bureau of Homeland Security.~~ (3-27-13)

**008. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Public Safety Communications.** ~~The Agency. Public Safety Communications (PSC) is a unit within Idaho Military transferred from the Department of Administration to the Idaho Military Division under House Bill 305. PSC is charged with "the acquisition and installation of all State public safety radio and microwave systems in support of state emergency communications and will be under the control of the Military Division". This transfer was accomplished to enhance services and coordination for emergency operations and logistics through federal channels already in place within the Idaho Military Division.~~ (3-27-13)

~~**02. Public Safety Communications.** The ability to transmit voice, video and data sent electronically be by means of radio, wireless, data, fiber, leased lines circuits, and digital transmission for emergency and first responders.~~ ( )

**02. Public sSafety eCommunications sSystems.** ~~is eEquipment or systems~~ used in providing interoperable means of communications amongst between local, state, federal, and tribal agencies. These systems ~~and equipment~~ are designed to give emergency and first responders the ability to respond to normal and emergency situations ~~in carrying out each respective agencies duties and responsibilities. These public safety communications systems are used to~~ carry out ~~the~~ normal ~~operations~~ and emergency operations in the protection of life, property and civil authority. (3-27-13)( )

**03. Interoperable Communications.** The ~~condition achieved among communications electronics systems or items of communications electronic equipment when information or services can be exchanged directly and satisfactorily between them and/or their users. Interoperability specifically refers to the~~ ability of emergency response officials to share information via voice and data signals on demand, in real time, when needed, and as authorized, and may include one (1) or more forms of wireless communications and microwave systems. (3-27-13)( )

**04. Wireless Communications.** Is the ability to transfer information over ~~distant~~ distance utilizing electromagnetic waves through space as the medium to send voice, video, data, and information. Wireless communications for interoperability specifically refers to the ability of emergency response officials to share information via voice and data signals on demand, in real time, when needed, and as authorized. (3-27-13)( )

**a. Radio Systems.** These wireless systems are typically known as Land Mobile Radio ~~or LMR.~~ Land Mobile Radio Systems are the main wireless communications systems deployed by public safety communications for emergency and first responders. (3-27-13)( )

**b. Data Systems.** These wireless systems are used to transmit data at rates typically from 1.2 kilobit up

to approximately 1 megabit. These systems are used to send data and text messaging utilized by emergency and first responders. (3-27-13)

**c.** Video Systems. These wireless systems are used to transmit video and closed circuit television (cctv) for use by emergency and first responders. These systems also carry full motion video for broadcast use such as Idaho Public Television. (3-27-13)

**d.** Broadband Systems. These wireless systems are used to transmit voice, video, and data information in multiple applications. These systems can either be point-to-point links or point to multi-point systems deployed today by emergency and first responders. (3-27-13)

**05. Microwave Systems.** Equipment or apparatus that utilize electromagnetic wavelengths between 1 meter down to 1 millimeter with the equivalent operating frequency between 0.3 GHz and 300 GHz to transmit and receive information. These transmissions are sent on micro-wave links which is a communications system operating between 0.3 GHz – 300 GHz that use electromagnetic waves to send voice, video and data information over distances ranging from a few feet to several hundred miles. (3-27-13)

~~011. ABBREVIATIONS (RULE 11).~~

- ~~01. PSC. Public Safety Communications. (3-27-13)~~
- ~~02. BHS. Idaho Bureau of Homeland Security. (3-27-13)~~
- ~~03. LMR. Land Mobile Radio. (3-27-13)~~
- ~~04. I.P. Internet Protocol (Ethernet based systems). (3-27-13)~~
- ~~05. GHz. Gigahertz (measured in cycles per second). (3-27-13)~~

~~012~~**1. -- 099. (RESERVED)**

**100. FEES (RULE 100).**

**01. Fee Schedule for Services.** ~~Public Safety Communications is a dedicated funded agency. It receives no direct funding from the state's general fund. The agency must therefore charge for the services that it provides to local, state, federal and tribal agencies, emergency and first responders. Public Safety Communication~~ The fees listed are minimum rates and can be adjusted annually, based on the Consumer Price Index, and or as contracts are negotiated or renewed, without further rulemaking. ~~These fees are used to maintain and operate the various communications systems that Public Safety Communications (the agency) is charged to maintain and provide.~~ (3-27-13)(    )

**02. Fleet Communication Services.** (3-27-13)

**a.** Fleet Vehicle Equipment Installation:

FLEET VEHICLE EQUIPMENT INSTALLATION		Minimum Charges
1.	Standard Enforcement Package	\$1,500
2.	Special, Unmarked, or Disguise Package	\$1,300
3.	Standard Vehicles – High Tier Radio	\$ 500
4.	Standard Vehicles – Low / Mid Tier Radio	\$ 325
5.	Standard Vehicles- Multi-Band	\$ 750

FLEET VEHICLE EQUIPMENT INSTALLATION		Minimum Charges
6.	Non-Standard Fleet Packages	Will bid on individual fleets as needs arise

(3-27-13)

b. Time and Materials Rate:

TIME AND MATERIALS RATE (Minimum 2-hour charge for any labor or travel costs)		\$45.00 / Hr
1.	Travel Time & Mileage	Per Board of Examiners
2.	Parts	Cost + Shipping + Processing

(3-27-13)

03. Emergency Communication Services.

(3-27-13)

a. Microwave Communication Services:

MICROWAVE COMMUNICATION SERVICES Leased Lines & Analog Circuit Rates		Month
1.	Radio Control Circuit	\$200
2.	DS1 Circuit (T-1)	\$300
3.	Ethernet Access Fee (Per Meg)	\$200

(3-27-13)

b. Building Space Rental - (Equipment operating from mountaintop communications site):

BUILDING SPACE RENTAL <del>Equipment Operating From Mountaintop Communications Site</del>		
1.	<del>One customer provided</del> Equipment rack, occupying <del>no more than</del> <b>not to exceed</b> 6 cubic feet of space	\$125/month

(3-27-13)( )

d.c. Radio Communication Equipment Space Rental - (Equipment operating from mountain-top communications site):

RADIO COMMUNICATION EQUIPMENT SPACE RENTAL <del>Equipment Operating From Mountain-Top Communications Site</del>		
1.	<del>One customer provided</del> <b>Radio equipment rack space,</b> <del>not to exceed</del> 72 x 19 inches <del>equipment rack,</del> <del>(typically one radio transmitter per rack)</del>	\$125/month <b>per transmitter</b>

(3-27-13)( )

e.d. Radio Communication Services:

<b>RADIO COMMUNICATION SERVICES</b>		<b>Monthly Rate / Unit</b>
<b>Maintenance Fees for Agency-Owned Equipment</b>		
1.	Portables – Tier I (16 channel or less)	\$ 17.50
2.	Portables – Tier II (greater than 16 channels or groups)	\$ 36.50
3.	Mobile – Tier I (16 channel-non split mount)	\$ 25.50
4.	Mobile – Tier II (greater than 16 channel and/or remote mount)	\$ 37.50
5.	Mobile – Trunking (trunking radio with multiple groups / zones)	\$ 45.00
6.	Base Control – Local	\$ 60.00
7.	Base Control – Mountain Top (per transmitter)	\$ 95.00
8.	Repeater – Mountain Top (per transmitter)	\$ 95.00
9.	Console Desktop – Local	\$ 60.00
10	Console – Multi-Channel – Small System – Single Position	\$165.00
11.	Console – Multi-Channel – Large System – Per operator position (The multi-channel large system console is computed by multiplying the number of operator positions by the monthly rate/unit.)	\$250.00
12	Miscellaneous Equipment Maintenance	(Negotiated as determined)
13	User Site Management Fees	(Based on site fees, license, and administrative costs)
14	Other related systems or items	(Will be quoted as needed)

(3-27-13)

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

**15.06.04 - RULES GOVERNING IDAHO YOUTH CHALLENGE PROGRAM**

**DOCKET NO. 15-0604-1301 (NEW CHAPTER)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 46-804 and 46-805, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is a new title and chapter of rules that aid in the establishment and facilitation of the Idaho Youth Challenge Program. These rules define the student acceptance criteria for the Idaho Youth Challenge Program. They establish: a process for administering the criteria fairly to all potential students wishing to enroll; the Idaho Youth Challenge Board of Admissions, outline the duties therein, and list out those persons selected to serve on that Board; the Idaho Youth Challenge funding and accounting processes; the Idaho Youth Challenge Governing Board; and the Idaho Youth Challenge Board of Trustees.

**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 Idaho Youth Challenge Program provides a benefit to students who may be eligible for enrollment into the program. Furthermore, these rules are specifically authorized by Section 46-805, Idaho Code.

**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 Brig. Gen. Richard G. Turner, Director of Joint Staff, at (208) 422-5471.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

Brig. Gen. Richard G. Turner  
Director of Joint Staff, Military Division  
700 S. Stratford Dr., Bldg. 600  
Meridian, ID 83642  
Phone: (208) 422-5471  
Fax: (208) 422-6179

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0604-1301**

**IDAPA 15**  
**TITLE 06**  
**CHAPTER 04**

**MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**15.06.04 - RULES GOVERNING THE IDAHO YOUTH CHALLENGE PROGRAM**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the authority of Sections 46-804 and 46-805, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is the IDAPA 15.06.04, "Rules Governing the Idaho Youth Challenge Program." ( )

**02. Scope.** These rules establish the criteria for student enrollment in the Idaho Youth Challenge Program. ( )

**002. WRITTEN INTERPRETATIONS.**

The Idaho Military Division does not rely on any interpretative statements with regard to this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

This chapter does not provide for administrative appeals. ( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into this chapter. ( )

**005. OFFICE ADDRESS, OFFICE HOURS, TELEPHONE AND FACSIMILE NUMBERS, AND WEBSITE ADDRESS.**

**01. Address.** The main office of the Idaho Military Division is located at 4040 West Guard Street, Gowen Field, Building 600, Boise, Idaho 83705. ( )

**02. Office Hours.** Office hours are weekdays, 8:00 a.m. to 4:30 p.m., excluding holidays. ( )

**03. Telephone.** The telephone number is (208) 422-3000. The facsimile number is (208) 422-3040. ( )

**04. Website.** The website address is <http://www.idaho.ang.af.mil>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records relative to this chapter are public records except to the extent such records are by law exempt from disclosure. ( )

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

**010. DEFINITIONS.**

**01. Participant.** A participant is a person who meets all of the participant selection criteria for the Youth Challenge Program and is selected to participate in the Program from among the eligible applicants. ( )



**02. Program.** The National Guard Youth Challenge Program is a community-based program that leads, trains and mentors at-risk youth so that they may become productive citizens in America's future. ( )

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

**100. PARTICIPANT SELECTION CRITERIA.**

**01. Age.** A Participant must be between the ages of sixteen (16) to eighteen (18) years of age at the time of entry into the Program. ( )

**02. Residency.** A Participant must be a citizen or legal resident of the United States and resident of the state of Idaho. ( )

**03. Physical and Mental Requirements.** ( )

**a.** A Participant must be physically and mentally capable to participate in the Program in which enrolled with reasonable accommodation for physical and other disabilities. ( )

**b.** Selected Participants shall receive a physical examination in conjunction with their entry into the Program. Such examination shall be sufficiently complete so that a conclusion may be reached as to the Participant's ability to complete the program with reasonable accommodation for physical and other disabilities. The examination may also include testing for drug or substance abuse and pregnancy insofar as directed by Department of Defense instructions and insofar as such testing does not conflict with state law. ( )

**04. Additional Requirements.** In addition to the above requirements, a Participant must meet the following criteria to be eligible for the Program. ( )

**a.** A Participant must be a high school dropout. A high school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or certificate from a program of equivalency for such diploma. ( )

**b.** A Participant must be unemployed or underemployed at the time an application is submitted. ( )

**c.** A Participant must not currently be on parole or probation for anything other than juvenile status offenses. ( )

**d.** A Participant must not be serving time or awaiting sentencing. ( )

**e.** A Participant must not be under indictment, charged with or convicted of a crime that is considered a felony when charged as an adult. ( )

**f.** A Participant must be free from use of illegal drugs or substances and free from the illegal use of drugs or substances. ( )

**101. GOVERNING BOARD.**

The Governing Board shall consist of the Adjutant General, the Director of the Youth Challenge Program, and three (3) at large members appointed by the Adjutant General. Each member of the Governing Board shall serve at the pleasure of the Adjutant General. ( )

**102. BOARD OF ADMISSIONS.**

The Board of Admissions shall consist of the Director of the Youth Challenge Program, the Deputy Director of the Youth Challenge Program, the Youth Challenge Academy Principle, the Youth Challenge Academy Commandant, the Youth Challenge Medical Liaison, the Youth Challenge Program Coordinator, and one (1) at large member appointed by the Adjutant General. Each member of the Governing Board shall serve at the pleasure of the Adjutant General. ( )

**103. -- 999. (RESERVED)**

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR**

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

**15.06.05 - HAZARDOUS SUBSTANCE RESPONSE RULES**

**DOCKET NO. 15-0605-1300L**

**NOTICE OF LEGISLATIVE ACTION AFFECTING THE MILITARY DIVISION  
AND THE BUREAU OF HOMELAND SECURITY  
HOUSE BILL 267, AS AMENDED, SESSION LAW 281 (2009)**

**EFFECTIVE DATE:** The effective date of this legislative action is July 1, 2009.

**AUTHORITY:** In compliance with and as authorized by Sections 39-7104, 67-5202(2), 67-5202(3), 67-5203, 67-5224, Idaho Code, and pursuant to House Bill 267aaS (Session Law 281, 2009), notice is hereby given that the Office of the Administrative Rules Coordinator, in conjunction with the Military Division, has redesignated the Title and Chapter numbers of the rule previously under the jurisdiction of the Idaho Emergency Response Commission.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the legislative action affecting these rules:

House Bill 267, as amended in the Senate, (Session Law 281, 2009) amended parts of Idaho Code Title 39, Chapter 71, the Hazardous Substance Emergency Response Act. The amendments to the Act made the Military Division, through the Bureau of Homeland Security, responsible for implementing the provisions of the Act. These responsibilities include the authority to promulgate rules. The Act was previously implemented and administered by the Idaho Emergency Response Commission which no longer exists. It is therefore necessary to redesignate this rule chapter to the Military Division and the Bureau of Homeland Security.

The rule was previously codified as IDAPA 15.13.02 and it has been redesignated as IDAPA 15.06.05, "Hazardous Substance Response Rules," and remains as currently codified without any additional substantive changes. Because the Military Division is a division of the Governor's Office, the IDAPA number is not changing.

Pursuant to Section 67-5202(2), Idaho Code, and further complying with the legislative intent of House Bill 267aaS, all non-substantive changes that do not affect the sense, meaning, or intent of the rules will be made to correct references and citations to the title and chapter numbers within the rules formerly promulgated under the authority of the Idaho Emergency Response Commission.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this notice, contact Dennis Stevenson, Administrative Rules Coordinator, 208-332-1820, or Col. Brad Richey, Director, Bureau of Homeland Security, at (208) 422-3001.

DATED this 10th day of September, 2013.

Dennis Stevenson  
Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
Department of Administration  
PO Box 83720  
Boise, ID 83720-0306

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

**15.13.01 - RULES OF THE IDAHO EMERGENCY RESPONSE COMMISSION**

**DOCKET NO. 15-1301-1301 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-7104 and 46-804, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 Military Division, through the Bureau of Homeland Security, is now responsible for implementing the provisions of the Hazardous Substances Emergency Response Act after the Idaho Emergency Response Commission was abolished. The Military Division is now repealing the rule previously codified under IDAPA 15.13.01, "Rules of the Idaho Emergency Response Commission."

**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 Military Division wishes to repeal the rules presently found in IDAPA 15.13.01, "Rules of the Idaho Emergency Response Commission," because there is no longer an Emergency Response Commission.

**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 Col. Brad Richy, Director, Bureau of Homeland Security, at (208) 422-3001, e-mail [brichy@bhs.idaho.gov](mailto:brichy@bhs.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

Col. Brad Richy, Director  
Bureau of Homeland Security  
Military Division  
700 S. Stratford Dr., Bldg. 600  
Meridian, ID 83642  
Phone: (208) 422-3001  
Fax: (208) 288-2605

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**IDAPA 15.13.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

#### DOCKET NO. 16-0301-1301 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code; and 42 CFR, 45 CFR, and 26 USC Part 36B.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is being done because changes in federal laws that must be implemented by January 1, 2014, will render this chapter of rules outdated and out of compliance with federal law. To avoid confusion and remain in compliance with the new federal requirements, this chapter is being repealed in its entirety and rewritten under companion Docket No. 16-0301-1302 that is being published in this same Bulletin.

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

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

The fiscal impact for this rulemaking is anticipated to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because federal laws require the Department to make changes to these rules and have them in place by January 1, 2014, in order to be in compliance with that law. The changes required by federal law makes these rules non-negotiable.

**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 Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock, DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

phone: (208) 334-5500  
fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**IDAPA 16.03.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

#### DOCKET NO. 16-0301-1302 (CHAPTER REWRITE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code; and 42 CFR, 45 CFR, and 26 USC Part 36B.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is being initiated because of changes in federal law that must be implemented by January 1, 2014. To avoid confusion and remain in compliance with the new federal requirements, the current chapter is being repealed under companion Docket No. 16-0301-1301 and published in this same Bulletin. This chapter of rules is being rewritten to be in compliance with federal law. The rules are being published as proposed in this Bulletin, but will go into effect on January 1, 2014. The new chapter includes:

1. Eligibility criteria;
2. Definitions;
3. Application requirements;
4. Non-financial requirements, including residency and U.S. citizenship, identity, and verification requirements;
5. Financial requirements including determination of income for eligibility;
6. Health coverage for children, adults, and access to coverage under other health plans;
7. Renewal of eligibility including reporting requirements;
8. References to other chapters of rules as necessary; and
9. Sections needed to meet requirements of the rules of the Office of the Administrative Rules Coordinator.

**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:

The fiscal impact for this rulemaking is anticipated to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because federal laws require the Department to make changes to these rules and have them in place by January 1, 2014, in order to be in compliance with that law. The changes required by federal law makes these rules non-negotiable.

**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 Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0301-1302**

**IDAPA 16**  
**TITLE 03**  
**CHAPTER 01**

**16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN**

**000. LEGAL AUTHORITY.**

In accordance with Sections 56-202, 56-203, 56-209, 56-239, 56-250, 56-253, 56-255, 56-256 and 56-257, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to adopt and enforce rules for the administration of Title XIX of the Social Security Act (Medicaid), Title XXI of the Social Security Act. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules will be cited as IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ( )

**02. Scope.** These rules provide standards for issuing coverage for Title XIX and Title XXI of the Social Security Act. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036 or at any of the Department's Regional Offices. ( )

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals are governed by provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.**

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

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

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

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

**05. Internet Website.** The Department's internet website is <http://www.healthandwelfare.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS.**

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

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

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

**010. DEFINITIONS (A THROUGH L).**

For the purposes of this chapter, the following terms apply. ( )

**01. Advanced Payment of Premium Tax Credit.** Payment of federal tax credits specified in 26 U.S.C. Part 36B (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a Qualified Health Plan (QHP) through an exchange in accordance with sections 1402 and 1412 of the Affordable Care Act. ( )

**02. Adult.** Any individual who has passed the month of his nineteenth birthday. ( )

**03. Affordable Care Act.** The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152). ( )

**04. Applicant.** A person applying for public assistance from the Department, including individuals referred to the Department from a Health Insurance Exchange or Marketplace. ( )

**05. Application.** An application for benefits including an Application for Assistance (AFA) or other application recognized by the Department, including referrals from a Health Insurance Exchange or Marketplace. ( )

**06. Application Date.** The date the Application for Assistance (AFA) is received by the Department or by the Health Insurance Exchange or Marketplace electronically, telephonically, in person, or the date the application is postmarked, if mailed. ( )

**07. Caretaker Relative.** A caretaker relative is a relative of a dependent child by full - or half-blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care. A caretaker relative is one of the following: ( )

**a.** A child's natural, adoptive, or step-parents; ( )

- b.** A child's natural, adoptive, or step-grandparents; ( )
- c.** The child's natural, adoptive, half- or step-siblings; ( )
- d.** The child's natural, adoptive, half or step-uncle, aunt, first cousin, nephew, niece; first cousin once removed; or ( )
- e.** The current or former spouse of a qualified relative listed above. ( )
- 08. Child.** Any individual from birth through the end of the month of his nineteenth birthday. ( )
- 09. Citizen.** A person having status as a “national of the United States” defined in 8 U.S.C. 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States. ( )
- 10. Cost-Sharing.** A participant payment for a portion of Medicaid service costs such as deductibles, coinsurance or co-payment amounts. ( )
- 11. Creditable Health Insurance.** Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. ( )
- 12. Department.** The Idaho Department of Health and Welfare. ( )
- 13. Disenrollment.** The end of an individual's participation in a Health Care Assistance program. ( )
- 14. Electronic Account.** An electronic file that includes all information collected and generated by the state regarding each individual's Health Care Assistance eligibility and enrollment, including all documentation required and information collected as part of an eligibility review, or during the course of an appeal. ( )
- 15. Eligibility.** The determination of whether or not an individual is eligible for participation in a Health Care Assistance program. ( )
- 16. Enrollment.** The process of adding eligible individuals to a Health Care Assistance program. ( )
- 17. Extended Medicaid.** Extended Medicaid is four (4) additional months of medical assistance for a parent or relative caretaker who becomes ineligible for Title XIX Medicaid due to an increase in spousal support payments. ( )
- 18. Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the Department of Health and Human Services (HHS).The Federal Poverty Guidelines (FPG) are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. ( )
- 19. Health Assessment.** Health Assessment is an examination performed by a primary care provider in order to determine the appropriate health plan for a Medicaid-eligible individual. ( )
- 20. Health Care Assistance (HCA).** Health coverage, including Title XIX or Title XXI benefits granted by the Department for persons or families under the authority of Title 56, Chapter 2, Idaho Code, as well as private health insurance plans purchased with a Premium Tax Credit described in Subsection 010.01 of this rule. ( )
- 21. Health Insurance Exchange or Marketplace.** A resource where individuals, families, and small businesses can:

  - a.** Learn about their health coverage options; ( )



- b. Compare health insurance plans based on costs, benefits, and other important features: ( )
  - c. Choose a health coverage plan; and ( )
  - d. Enroll in health coverage. ( )
- 22. Health Insurance Premium Program (HIPP).** The Premium Assistance program in which Title XIX and Title XXI participants may participate. ( )
- 23. Health Plan.** A set of health services paid for by Idaho Medicaid, or health insurance coverage obtained through the Health Insurance Exchange or Marketplace. ( )
- 24. Health Questionnaire.** A tool used to assist Health and Welfare staff in determining the correct Health Plan for the Medicaid applicant. ( )
- 25. Internal Revenue Code.** The federal tax law used to determine eligibility under Title 26 U.S.C. for individual income and self-employment income. ( )
- 26. Internal Revenue Service (IRS).** The U.S. government agency in charge of tax laws. These laws are used to determine income eligibility. The IRS website is at <http://www.irs.gov>. ( )
- 27. Insurance Affordability Programs.** Insurance affordability programs include Title XIX title XXI and all insurance programs available in the Health Insurance Marketplace. ( )
- 28. Lawfully Present.** An individual who is a non-citizen and who is a qualified non-citizen as described in Section 221 of these rules. ( )
- 29. Lawfully Residing.** An individual who is lawfully present in the United States and is a resident of the state in which they are applying for health care coverage. ( )
- 011. DEFINITIONS (M THROUGH Z).**  
For the purposes of this chapter, the following terms apply. ( )
- 01. MAGI-Based Income.** Income calculated using the same financial methodologies used by the IRS to determine modified adjusted gross income for federal tax filers, with the exception that: ( )
    - a. Educational income is excluded in Section 382 of these rules; ( )
    - b. Indian monies excluded by federal law are not included in MAGI-based income; ( )
    - c. Lump sum income is counted only in the month received in Section 384 of these rules; and ( )
    - d. For Medicaid applicants, MAGI-based income is calculated based on income received in the month of application. ( )
  - 02. Medicaid.** Idaho’s Medical Assistance Program administered by the Department and funded with federal and state funds according to Title XIX of the Social Security Act that provides medical care for eligible individuals. ( )
  - 03. Modified Adjusted Gross Income (MAGI).** Modified Adjusted Gross Income (MAGI), is Adjusted Gross Income as defined by the IRS, plus certain tax-exempt income. ( )
  - 04. Newborn Deemed Eligible.** A child born to a woman who is eligible for and receiving medical assistance on the date of the child’s birth, including during a month of retroactive eligibility for the mother. A child so born is eligible for Medicaid for the first year of his life. ( )
  - 05. Non-Citizen.** Same as “alien” defined in Section 101(a)(3) of the Immigration and Nationality Act

(INA) (8 U.S.C. 1101 (a)(3)), and includes any individual who is not a citizen or national of the United States. ( )

- 06. Parent.** For a household with a MAGI-based eligibility determination a parent can be: ( )
  - a.** Natural; ( )
  - b.** Biological; ( )
  - c.** Adoptive; or ( )
  - d.** Step-parent. ( )
- 07. Participant.** An individual who is eligible for, and enrolled in, a Health Care Assistance program. ( )
- 08. Pregnant Woman Coverage.** Medical assistance for a pregnant woman that is limited to pregnancy-related services for the period of the pregnancy and sixty (60) days after the pregnancy ends. ( )
- 09. Premium.** A regular, periodic charge or payment for health coverage. ( )
- 10. Qualified Hospital.** Participates as a provider under the Medicaid state plan, may assist individuals in completing and submitting applications for Health coverage, and has not been disqualified from doing presumptive eligibility determinations. ( )
- 11. Qualified Non-Citizen.** Is the same definition as a “qualified alien” defined at 8 U.S. C.164(b) and (c). ( )
- 12. Reasonable Opportunity Period.** A period of time allowed for an individual to provide requested proof of citizenship or identity. A reasonable opportunity period extends for ninety (90) days beginning on the 5th day after the notice requesting the proof has been mailed to the applicant. This period may be extended if the Department determines that the individual is making a “good faith” effort to obtain necessary documentation. ( )
- 13. Sibling.** For household with MAGI-based eligibility determination: Is a natural or biological, adopted, half or step sibling. ( )
- 14. SSI.** Supplemental Security Income. ( )
- 15. SSN.** Social Security Number. ( )
- 16. State.** The state of Idaho. ( )
- 17. TAFI.** Temporary Assistance for Families in Idaho. ( )
- 18. TANF.** Temporary Assistance to Needy Families. ( )
- 19. Tax Dependent.** A person, who is a related child, or other qualifying relative or person, according to federal IRS standards for whom another individual can claim a deduction for a personal exemption when filing a federal income tax for a taxable year. ( )
- 20. Third Party.** Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a medical assistance participant. ( )
- 21. Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the States. This program pays for medical assistance for certain individuals and families with low income, and for some program types, limited resources. ( )

**22. Title XXI.** Title XXI of the Social Security Act, known as the Children's Health Insurance Program (CHIP), is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low-income children. ( )

**23. Working Day.** A calendar day when regular office hours are observed by the state of Idaho. Weekends and state holidays are not considered working days. ( )

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

**APPLICATION REQUIREMENTS**  
**(Sections 100 Through 199)**

**100. PARTICIPANT RIGHTS.**

The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of the following rights during the application process and eligibility reviews. ( )

**01. Right to Apply.** Any person has the right to apply for any Health Care Assistance program. Applications may be submitted by paper, electronically, by fax or telephonically. Application information must be in a form or format provided by the Department. ( )

**02. Right to Hearing.** Any participant can request a hearing to contest a Department or Health Insurance Exchange or Marketplace decision under the provisions in IDAPA 16.05.03. "Contested Case Proceedings and Declaratory Ruling." ( )

**03. Right to Request Reinstatement of Benefits.** Any participant has the right to request reinstatement of benefits until a hearing decision is made if the request for the reinstatement is made before the effective date of the action taken on the notice of decision. Reinstatement pending a hearing decision is not provided in the case of an application denied because an individual did not provide citizenship or identity documentation during a reasonable opportunity period allowed by the Department. ( )

**04. Civil Rights.** Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 contained in Title 29 of the U.S. Code, and all other relevant parts of federal and state laws. ( )

**101. -- 109. (RESERVED)**

**110. APPLICATION FOR HEALTH CARE ASSISTANCE.**

The application must be complete and signed by the participant or authorized representative. By signing the application, the participant or authorized representative agrees, under penalty of perjury, that statements made on the application are truthful. ( )

**111. SIGNATURES.**

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record. ( )

**112. -- 119. (RESERVED)**

**120. COLLATERAL SOURCES.**

A participant's signature on the application is his consent for the Department to contact collateral sources for verification of eligibility requirements. Collateral sources include available electronic data sources to verify eligibility requirements which may include: Homeland Security, IRS, Social Security, State and Federal wage verification systems, child support services, or other electronic sources available to the Department. ( )

**121. -- 129. (RESERVED)**

**130. APPLICATION TIME LIMITS.**

Each application must be processed as close to real time as practicable, but not longer than forty-five (45) days, from the date of application, unless prevented by events beyond the Department's control. ( )

**131. -- 139. (RESERVED)**

**140. ELIGIBILITY EFFECTIVE DATES.**

Title XIX and Title XXI coverage begins the first day of the application month. Coverage for a newborn is effective the date of birth if the mother was covered by Medicaid for the child's birth. ( )

**141. -- 149. (RESERVED)**

**150. RETROACTIVE MEDICAL ASSISTANCE ELIGIBILITY.**

Title XIX and Title XXI can begin up to three (3) calendar months before the application month if the participant is eligible during the prior period. Coverage is provided if services that can be paid by Medicaid were received in the prior period. ( )

**151. -- 199. (RESERVED)**

**NON-FINANCIAL REQUIREMENTS**  
**(Sections 200 Through 299)**

**200. NON-FINANCIAL CRITERIA FOR DETERMINING ELIGIBILITY.**

Non-financial criteria are conditions of eligibility, other than income, that must be met before Health Care Assistance can be authorized. ( )

**201. -- 209. (RESERVED)**

**210. RESIDENCY.**

The participant must live in Idaho and have no immediate intention of leaving, including an individual who has entered the state to look for work, or who has no permanent fixed address. ( )

**211. -- 219. (RESERVED)**

**220. U.S. CITIZENSHIP VERIFICATION.**

**01. Citizenship Verified.** Citizenship must be verified through electronic means when available. If an electronic verification is not immediately obtainable, the Department may request documentation from the applicant. The Department will not deny the application for Health Coverage until the applicant has had a reasonable opportunity period to obtain and provide the necessary proof of U. S. citizenship. ( )

**02. Benefits During Reasonable Opportunity Period.** Benefits are provided during the reasonable opportunity period that is provided to allow the applicant time to obtain and provide documentation to verify U.S. citizenship. No overpayment exists for the reasonable opportunity period if the applicant does not provide necessary documentation during the reasonable opportunity period so that the application results in denial. ( )

**221. U.S. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible, an individual must be a lawfully present member of one (1) of the following groups: ( )

**01. U.S. Citizen.** A U.S. Citizen or a "national of the United States." ( )

**02. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: ( )

**a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This

includes an adoptive parent; ( )

**b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; ( )

**c.** The child is under eighteen (18) years of age; ( )

**d.** The child is a lawful permanent resident; and ( )

**e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. ( )

**03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. ( )

**04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard for a reason other than their citizenship status, or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. ( )

**05. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen. ( )

**06. Non-Citizen Entering On or After August 22, 1996.** A non-citizen who entered the U.S. on or after August 22, 1996, and who is: ( )

**a.** A refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from the date of entry; ( )

**b.** An asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date asylee status is assigned; ( )

**c.** An individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date deportation or removal was withheld; ( )

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

**e.** A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from the date of entry. ( )

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

**08. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359. ( )

**09. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). ( )

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

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

**a.** Is under the age of eighteen (18) years; or ( )

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

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

**ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. ( )

**12. Afghan Special Immigrant.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007. ( )

**13. Iraqi Special Immigrant.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. ( )

**14. Employment Authorized Alien.** An alien granted an employment authorization document (EAD), as defined in 8 CFR Part 274a.12(c). ( )

**15. Individuals not Meeting the Citizenship or Qualified Non-Citizen Requirements.** An individual who does not meet the citizenship or qualified non-citizen requirements in Subsections 221.01 through 221.14 of this rule, may be eligible for emergency medical services if he meets all other conditions of eligibility. ( )

**222. U.S. CITIZENSHIP AND IDENTITY VERIFICATION REQUIREMENTS.**

Any individual who participates in a Title XIX Medicaid or Title XXI CHIP funded program must provide proof of U.S. citizenship and identity unless he has otherwise met the requirements under Section 226 of these rules. ( )

**01. Electronic Verification.** Electronic interfaces initiated by the Department with agencies that maintain citizenship and identity information are the primary sources of verification of U.S. Citizenship and Identity. ( )

**02. Documents.** When verification is not available through an electronic interface, the individual must provide the Department with the most reliable document that is available. Documents can be: ( )

**a.** Originals; ( )

**b.** Photocopies; ( )

**c.** Facsimiles; ( )

**d.** Scanned; or ( )

**e.** Other type of copy of a document. ( )

**03. Accepted Documentation.** Other forms of documentation are accepted to the same extent as an original document, unless information on the submitted document is: ( )

**a.** Inconsistent with other information available to the Department; or ( )

**b.** The Department has good cause to question the validity of the document or the information on it. ( )

- 04. Submission of Documents.** The Department accepts documents that are submitted: ( )
- a. In person; ( )
  - b. By mail or parcel service; ( )
  - c. Through an electronic submission; or ( )
  - d. Through a guardian or authorized representative. ( )

**223. DOCUMENTATION OF U.S. CITIZENSHIP.**

**01. Documents Accepted as Stand-Alone Proof of U.S. Citizenship and Identity.** The following documents are accepted as proof of both U.S. citizenship and identity: ( )

- a. A U.S. passport or a U.S. passport card, without regard to expiration date as long as the passport or passport card was issued without limitation; ( )
- b. A Certificate of Naturalization; ( )
- c. A Certificate of U.S. Citizenship. ( )
- d. Documented evidence, issued by a federally-recognized Indian tribe, including tribes with an international border that identifies: ( )
  - i. The federally recognized Indian Tribe issuing the document; ( )
  - ii. The individual by name; ( )
  - iii. Confirms the individual's membership; and ( )
  - iv. Enrollment or affiliation with the Tribe. ( )
- f. Verification of U.S. citizenship by a federal agency or another state on or after July 1, 2006, no further documentation of U.S. citizenship or identity is required. ( )

**02. Documents Accepted as Evidence of U.S. Citizenship.** The following documents are accepted as proof of U.S. citizenship if documented proof in Subsection 223.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 223.03 or Section 224 of these rules to establish both citizenship and identity. ( )

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: ( )
  - i. United States' fifty (50) states; ( )
  - ii. District of Columbia; ( )
  - iii. Puerto Rico, on or after January 13, 1941; ( )
  - iv. Guam; ( )
  - v. U.S. Virgin Islands, on or after January 17, 1917; ( )
  - vi. America Samoa; ( )
  - vii. Swain's Island; ( )

- viii. Northern Mariana Islands, after November 4, 1986; or ( )
  - ix. A cross match with a state's vital statistics agency that documents birth records. ( )
  - b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; ( )
  - c. A report of birth abroad of a U.S. Citizen, Form FS 240; ( )
  - d. A U.S. Citizen I.D. card, DHS Form I-197; ( )
  - e. A Northern Mariana Identification Card; ( )
  - f. A final adoption decree showing the child's name and U.S. place of birth, or if the adoption is not final, a statement from the state-approved adoption agency that shows the child's name and U.S. place of Birth; ( )
  - g. Evidence of U.S. Civil Service employment before June 1, 1976; ( )
  - h. An official U.S. Military record showing a U.S. place of birth; ( )
  - i. Certification of birth abroad, Form FS-545; ( )
  - j. Verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; ( )
  - k. Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000; ( )
  - l. Medical records from a hospital, clinic, or doctor, admission papers from nursing facility, skilled care facility or other institution that indicates a U.S. place of birth: ( )
  - m. Life, health, or other insurance record that indicates a U.S. place of birth. ( )
  - n. Officially recorded religious record that indicates a U.S. place of birth; ( )
  - o. School records, including pre-school, Head Start, and daycare that shows the child's name and indicates a U.S. place of birth; ( )
  - p. Federal or state census record that shows U.S. Citizenship or indicates a U.S. place of birth; or ( )
  - q. When an applicant has none of the documents listed in Subsections 223.02.a. through q. of this rule, an affidavit signed by another individual under the penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, and indicates the date and U.S. place of birth, may be submitted. The affidavit does not need to be notarized. ( )
- 03. Documents Accepted for Evidence of Identity.** The following documents are accepted as proof of identity provided the document has a photograph or other identifying information that includes name, age, sex, race, height, weight, eye color, or address. ( )
- a. A driver's license issued by a state or territory. A driver's license issued by a Canadian government authority is not a valid indicator of identity in the U.S. and cannot be used as evidence of identity. ( )
  - b. An identity card issued by federal, state, or local government; ( )



- c. School identification card; ( )
- d. U.S. Military card or draft record; ( )
- e. Military dependent's identification card; ( )
- f. U. S. Coast Guard Merchant Mariner card; or ( )
- g. A finding of identity from a federal or state governmental agency, when the agency has verified and certified the identity of the individual, including public assistance, law enforcement, internal revenue or tax bureau, or corrections agency; ( )
- h. A finding of identity from another state benefits agency or program provided that it obtained verification of identity as a criterion of participation; ( )
- i. Two (2) documents containing consistent information that corroborates the applicant's identity including: employer identification cards, high school or high school equivalency diplomas, college diplomas, marriage certificates, divorce decrees, property deeds or titles; ( )
- j. Identity affidavits are acceptable evidence of identity for individuals living in a residential care facility. ( )
- k. When an applicant has none of the specified findings or documents listed in Subsections 223.03.a. through j. of this rule, the applicant may submit an affidavit signed by another individual under the penalty of perjury who can reasonably attest to the applicant's identity. The affidavit must contain the applicant's name, and identifying information to establish identity. The affidavit does not need to be notarized. ( )

**224. IDENTITY RULES FOR CHILDREN.**

The following additional sources of documentation of identity for children under nineteen (19) years of age may be used: ( )

- 01. **School Records.** School records may be used to establish identity, including nursery or day care records. ( )
- 02. **Medical Records.** Clinic, hospital or doctor records may be used to establish identity. ( )

**225. ELIGIBILITY FOR APPLICANTS WHO DO NOT PROVIDE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION.**

01. **U.S. Citizenship and Identity not Verified.** When the Department is unable to obtain verification of U.S. citizenship and identity through electronic means, or the applicant is unable to provide documentation at the time of application, the applicant will have a reasonable opportunity period of ninety (90) days to provide proof of U.S. citizenship and identity. ( )

02. **Notice Mailed.** The reasonable opportunity period of ninety (90) days to provide needed documentation for proof of U.S. citizenship and identity begins five (5) days after the date the notice requesting the proof of documentation is mailed. ( )

03. **Medicaid Benefits.** If the applicant meets all other eligibility requirements, Medicaid benefits will be approved pending verification of U.S. citizenship and identity. Medicaid benefits will be denied if the applicant refuses to obtain documentation. ( )

**226. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.**

The individuals listed in Subsections 226.01 through 226.06 of this rule are considered to have met the U.S. citizenship and identity requirements and are not required to provide further documentation. ( )

- 01. Supplemental Security Income (SSI) Recipients.** ( )
- 02. Social Security Disability Income (SSDI) Recipients.** ( )
- 03. Individuals Entitled or Enrolled in Medicare by SSA.** Individuals determined by the SSA to be entitled or enrolled in any part of Medicare. ( )
- 04. Adoptive or Foster Care Children Receiving Assistance.** Adoptive or foster care children receiving under Title IV-B or Title IV-E of the Social Security Act. ( )
- 05. Individuals Deemed Eligible for Medicaid.** A waived newborn under Section 530 of these rules. ( )
- 06. Individuals Whose Records Match Records of the SSA.** Confirmed records of SSA that match and include: ( )
  - a.** Name; ( )
  - b.** Social Security Number; and ( )
  - c.** Declaration of U.S. Citizenship. ( )

**227. ASSISTANCE IN OBTAINING DOCUMENTATION.**  
The Department will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of U.S. citizenship. ( )

**228. VERIFICATION OF CITIZENSHIP AND IDENTITY ONE TIME.**  
Once an individual's U.S. citizenship and identity have been verified, whether through an electronic data match or by provided documentation, changes in eligibility will not require an individual to provide the verification again. If later verification, documentation, or information provides the Department with good cause to question the validity of the individual's U.S. citizenship or identity, the individual may be requested to provide further verification. ( )

**229. -- 239. (RESERVED)**

**240. INDIVIDUALS WHO DO NOT MEET THE CITIZENSHIP OR QUALIFIED NON-CITIZEN REQUIREMENTS.**

**01. Non-Citizen.** An individual who does not meet the citizen or qualified non-citizen requirements may be eligible for emergency medical services if he meets all other conditions of eligibility for a Title XIX or Title XXI program. ( )

**02. Limited Eligibility.** Eligibility for emergency medical assistance under the Title XIX or Title XXI programs is limited to the dates of the emergency condition ( )

**241. -- 249. (RESERVED)**

**250. EMERGENCY MEDICAL CONDITION.**  
An individual who meets eligibility criteria for a category of assistance but does not meet U.S. citizenship requirements or eligible non-citizen requirements may receive medical assistance under a Title XIX or Title XXI coverage group as follows: ( )

**01. Emergency Medical Conditions.** An individual not meeting the U.S. citizenship requirement may receive medical services necessary to treat an emergency medical condition, including labor and delivery. Emergency medical conditions have acute symptoms of severity, including severe pain. ( )

**02. Determination of Emergency Medical Conditions.** The Department determines if a condition meets criteria of an emergency medical condition. ( )

**03. Limitation on Medical Assistance.** Medical assistance is limited to the period of time established for the emergency medical condition. ( )

**04. Documentation Waived.** For undocumented individuals with emergency medical conditions, the Social Security Number (SSN) requirement is waived because an SSN cannot be issued. Individuals must be otherwise eligible for Title XIX or XXI. ( )

**251. SPONSOR DEEMING.** Income of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. ( )

**252. SPONSOR RESPONSIBILITY.** Section 213 of the Immigration and Naturalization Act requires that a sponsor signing Form I-864, Affidavit of Support, reimburse the Department for Health Care Assistance benefits paid for a sponsored, qualified non-citizen. ( )

**253. -- 269. (RESERVED)**

**270. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.**

**01. SSN Required.** An applicant must provide his social security number (SSN), or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. ( )

**a.** The SSN must be verified by the Social Security Administration (SSA) electronically. When an SSN is unverified, the applicant is not eligible for Health Care Assistance. ( )

**b.** The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement. ( )

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

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

**a.** Is a member of a recognized religious sect or division of the sect; and ( )

**b.** Adheres to the tenets or teachings of the sect, or division of the sect, and for that reason is conscientiously opposed to applying for or using a national identification number. ( )

**04. SSN Requirement Waived.** An applicant may have the SSN requirement waived when he is: ( )

**a.** Only eligible for emergency medical services as described in Section 250 of these rules; or ( )

**b.** A newborn deemed eligible child as described in Section 530 of these rules. ( )

**271. -- 279. (RESERVED)**

**280. GROUP HEALTH PLAN ENROLLMENT.** Title XIX and Title XXI participants must apply for and enroll in a cost-effective group health plan if one is available. A cost-effective health plan is one which has premiums and co-payments at a lower cost than Medicaid would pay for full medical services. Medicaid will pay premiums and other co-payments for plans the Department finds cost-

effective. ( )

**281. -- 289. (RESERVED)**

**290. ASSIGNMENT OF RIGHTS TO MEDICAL SUPPORT AND THIRD PARTY LIABILITY.**

By operation of Sections 56-203B and 56-209b(3), Idaho Code, medical support rights are assigned to the Department by signature on the application for assistance. The participant must cooperate to secure medical support from any liable third party. The cooperation requirement may be waived if the participant has good cause for not cooperating. ( )

**291. MEDICAL SUPPORT COOPERATION.**

A Medicaid participant responsible for assigning their rights to medical support must cooperate to identify and locate the noncustodial parent, establish paternity, and establish, modify and enforce a medical support order. ( )

**01. Cooperation Defined.** Cooperation includes providing all information to identify and locate the non-custodial parent and identifying other liable third party payers. The participant must provide the first and last name of the non-custodial parent. The participant must also provide at least two (2) of the following pieces of information about the non-custodial parent: ( )

- a. Birth date; ( )
- b. Social Security Number; ( )
- c. Current address; ( )
- d. Current phone number; ( )
- e. Current employer. ( )
- f. Make, model, and license number of any motor vehicle owned by the non-custodial parent; or ( )
- g. Names, phone numbers and addresses of the parents of the non-custodial parent. ( )

**02. Good Cause Defined.** The participant may claim good cause for failure to cooperate in securing medical support for a minor child. Good cause is limited to the following reasons: ( )

- a. There is proof the child was conceived as a result of incest or rape; ( )
- b. There is proof the child's non-custodial parent may inflict physical or emotional harm to the participant, the child, the custodial parent or the caretaker relative; ( )
- c. A credible explanation is provided showing the participant cannot provide the minimum information regarding the non-custodial parent; or ( )
- d. A participant who has good cause for not cooperating as described in Subsection 291.03.b of this rule. ( )

**03. Conditions for Non-Denial of Medicaid.** Medicaid cannot be denied for individuals who meet one (1) of the following conditions: ( )

- a. A child or unmarried minor child who cannot legally assign his rights to medical support; or ( )
- b. A pregnant woman whose income is at or below the federal poverty guideline, and who does not cooperate in establishing paternity and obtaining medical support from, or derived from, the father of the unborn child. ( )

**292. COOPERATION WITH HEALTHY CONNECTIONS PROGRAM.**

Applicants must cooperate with Healthy Connections in establishing a primary care provider unless exempt under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." If a primary care provider is not chosen by the applicant, Healthy Connections will choose the primary care provider for the participant. ( )

**293. COST-SHARING REQUIREMENT.**

Participants are required to pay a cost-sharing premium based on the level of the family's income described in IDAPA 16.03.18, "Medicaid Cost-Sharing." ( )

**294. -- 295. (RESERVED)**

**296. COOPERATION WITH THE QUALITY CONTROL PROCESS.**

When the Department or federal government selects a case for review in the quality control process, the participant must cooperate in the review of the case. ( )

**297. -- 299. (RESERVED)**

**FINANCIAL REQUIREMENTS**  
**(Sections 300 Through 314)**

**300. HOUSEHOLD COMPOSITION AND FINANCIAL RESPONSIBILITY.**

Household composition and financial responsibility are divided into two categories: tax-filing and non-tax filing households. ( )

**01. Household Composition.** The household composition includes: Spouses, parents including stepparents, and all children including stepchildren and step siblings under age nineteen (19) who are living together, as members of the same household. ( )

**02. Financial Responsibility.** ( )

**a.** A tax-filing household is one whose individuals file taxes for themselves and their tax dependents. ( )

**b.** A non-tax filing household is one whose individuals neither file a tax return nor are claimed as a tax dependent on someone else's tax return, also referred to as "non-filers." ( )

**301. TAX FILING HOUSEHOLD.**

**01. Taxpayers.** For an individual filing a federal tax return for the taxable year in which an initial determination or redetermination of eligibility is made, and who is not claimed as a tax dependent by another taxpayer, the tax filing household consists of the taxpayer and the taxpayer's tax dependents. ( )

**02. Individuals Claimed as a Tax-Dependent.** For an individual who is claimed as a tax dependent by another taxpayer, the tax filing household is the household of the taxpayer claiming such individual as a tax dependent, with the exception that tax dependents meeting any of the following criteria will be treated as non-filers described in Section 302 of these rules: ( )

**a.** Individuals claimed as a tax dependent by an individual other than a spouse or custodial parent; ( )

**b.** Individuals under age nineteen (19) living with both parents, if the parents are not married, or married filing separately; and ( )

**c.** Individuals under age nineteen (19) claimed as a tax dependent by a parent residing outside of the applicant household. ( )

**03. Married Couples.** Married couples living together, each spouse is included in the household whether a joint federal tax return is filed, whether one (1) spouse is claimed as a tax dependent by the other spouse, or whether each filed separately. ( )

**302. NON-TAX FILING HOUSEHOLD.**

**01. Individuals Not Filing a Tax Return and Not Claimed as a Tax Dependent.** An individual who does not file a federal tax return and is not claimed as a tax dependent by another taxpayer, or meets one (1) of the exceptions in Subsections 301.02.a through 301.02.c, the household is a non-filing household that consists of the individual and if living with the another individual who is: ( )

- a.** The individual's spouse; ( )
- b.** The individual's natural, adopted, and stepchildren under age nineteen (19); or ( )
- c.** The individuals under age nineteen (19), the individual's natural, adopted, and step parents and natural, adoptive and step siblings under age nineteen (19). ( )

**02. Married Couples.** Married couples living together will be included in the household of the other spouse. ( )

**303. FINANCIAL ELIGIBILITY.**

To be eligible for a Health Care Assistance program, a participant must meet the income limits. Income limits are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. ( )

**304. -- 344. (RESERVED)**

**INCOME**  
**(Sections 345 Through 394)**

**345. HOUSEHOLD INCOME.**

The sum of calculated Modified Adjusted Gross Income (MAGI-based income) of every individual whose income must be included in the household budget minus a standard disregard in the amount of five percent (5%) of Federal Poverty Guidelines (FPG) by family size, if the disregard is used to establish eligibility. ( )

**346. DETERMINING INCOME ELIGIBILITY.**

**01. Financial Eligibility of Applicants.** Financial eligibility for Medicaid applicants must be based on calculated monthly household income and household size. Eligibility for Health Care Assistance is determined by comparing the individual's calculated income against the income limit. ( )

**02. Financial Eligibility of Participants.** To project annual household income of participants at the time of a change or at redetermination of continuing eligibility, include: ( )

- a.** Reasonably predictable future income; ( )
- b.** Account for a predicted decrease or increase in future income, or both, as may be established by: ( )
  - i.** A signed contract for employment; ( )
  - ii.** A clear history of fluctuating income; or ( )
  - iii.** Other clear indicators of future changes in income. ( )
- c.** Future projected increase or decrease in income must be verified in the same manner as other

income, including by self-attestation if reasonably compatible with electronic data obtained by the Department. Eligibility for Health Care assistance is determined by comparing the calculated income against the income limit. ( )

**347. EARNED INCOME.**

**01. Earned Income.** Earned income is derived from labor or active participation in a business. Earned income includes taxable wages, tips, salary, commissions, bonuses, self-employment and any other type of income defined as earnings by the Internal Revenue Service (IRS). Earned income is counted as income when it is received, or would have been received except for the decision of the participant to postpone receipt. Earnings over a period of time and paid at one (1) time, such as the sale of farm crops, livestock, or poultry are annualized and IRS allowable self-employment expenses deducted. ( )

**02. Determination of Income.** The Department determines income eligibility based on income in the month of application. ( )

**348. DEPENDENT CHILD'S EARNED INCOME.**

A dependent child's earned income is excluded, unless the child is required to file a tax return based on his own income. ( )

**349. INCOME PAID UNDER CONTRACT.**

The earned income of an employee paid on a contractual basis is prorated over the period of the contract by using the method described in Section 347 of these rules. ( )

**350. IN-KIND INCOME.**

An individual who receives a service, benefit, or durable goods instead of wages is earning in-kind income. In-kind income is excluded. ( )

**351. SELF-EMPLOYMENT EARNED INCOME.**

Income from self-employment is treated as earned income. Calculated self-employment income is the taxable self-employment income after gross receipts and the IRS allowable costs of producing the self-employment income, when the self-employment is expected to continue as provided in Title 26, U.S.C. ( )

**01. Allowable Costs of Producing the Self-Employment Income.** For a non-farming enterprise, the allowable costs of producing the self-employment income are limited to those costs allowed by the IRS for federal tax purpose found on the IRS website at <http://www.irs.gov>, ( )

**02. Allowable Costs of Producing Farming Self-Employment Income.** Allowable costs of producing farming self-employment income are limited to those costs allowed by the IRS for federal tax purposes found on the IRS website at <http://www.irs.gov>. ( )

**352. -- 369. (RESERVED)**

**370. UNEARNED INCOME.**

Unearned income is any income the individual receives that is not gained through employment. Unearned income includes payments from pensions, non-business rental of real property, retirement, survivors, disability insurance (RSDI), unemployment compensation, worker's compensation, spousal support payments, and capital investment returns, such as dividends and interest. ( )

**371. SUPPORT INCOME.**

Support income is any payment made from a former spouse to the individual. ( )

**01. Child Support Payment.** A received child support payment is excluded income. ( )

**02. Spousal Support Payment.** A received spousal support payment is unearned income to the individual who receives it. ( )

**372. -- 373. (RESERVED)**

**374. INTEREST AND DIVIDEND INCOME.**

Taxable interest or dividends are unearned income. ( )

**01. Interest Income.** Interest posted to any financial institution account on a monthly, quarterly, or any other regular basis is unearned income in the month received. Interest is counted in the month received or in the total income considered for the tax year. ( )

**02. Dividend Income.** Dividends are unearned income in the month received. ( )

**03. Tax-Exempt Interest.** Tax-exempt interest is not counted as income. ( )

**375. RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) INCOME OR RAILROAD RETIREMENT BOARD BENEFITS.**

The amount of the entitlement to retirement, survivors, and disability insurance (RSDI) or railroad retirement board benefits is counted as unearned income, unless an overpayment is being withheld. If an overpayment is being withheld, the net amount is unearned income. ( )

**376. -- 377. (RESERVED)**

**378. DISABILITY INSURANCE PAYMENTS.**

Taxable disability payments, paid to an individual through an insurance company, are unearned income in the month received. ( )

**379. INCOME FROM ROOMER OR BOARDER.**

Taxable income from a commercial boarding house is earned income. Income from other room and board situations is unearned income. ( )

**380. RETIREMENT ACCOUNTS, PENSIONS, AND ANNUITY DISTRIBUTIONS.**

Distributions received from an individual retirement account that is reported as income on the most recent year's tax return is included in gross income for the year when determining calculated income for Medicaid. Interest from a retirement account that is withdrawn in one (1) lump sum is unearned income in the month received. ( )

**381. INCOME FROM SALE OF REAL PROPERTY.**

Monthly payments, minus prorated taxes and insurance costs, received by a participant for the sale of real property are unearned income. ( )

**382. EDUCATIONAL INCOME.**

Any student financial assistance provided under Title IV of the Higher Education Act, the Bureau of Indian Affairs education program, Veteran's Administration educational benefits, grants, loans, scholarships, or work study is excluded. ( )

**383. (RESERVED)**

**384. LUMP SUM INCOME.**

A non-recurring lump sum payment is income in the month the lump sum is received. Lump sum income is a retroactive monthly benefit or a windfall payment. The lump sum may be earned or unearned income that is paid in a single sum. Lump sum income includes retirement, survivors, and disability insurance (RSDI), Veteran's Administration (VA), worker compensation awards, severance pay, disability insurance, and lottery winnings. ( )

**01. Lump Sum Received in Initial Month of Eligibility.** Lump sum income received in the application month is counted as income for that month. ( )

**02. Lump Sum Received in Any Other Month of Eligibility.** If a lump sum income is anticipated, the lump sum is counted as income in the month the income is expected. ( )



**03. Prior-Year Tax Refund.** Any portion of a prior-year tax refund, which is considered as income on the most recent year's tax return, is included in the gross calculated income for the year when determining calculated annual income for Medicaid. ( )

**385. INCOME EXCLUDED BY FEDERAL LAW.**  
Income excluded by federal law is not counted in determining income available to the participant. ( )

**386. -- 387. (RESERVED)**

**388. DEPENDENT CHILD'S UNEARNED INCOME.**  
A child's unearned income is countable towards his household's eligibility, only when the child must file a tax return based on his own income. ( )

**389. -- 394. (RESERVED)**

**DISREGARDS**  
**(Section 395 Through 399)**

**395. INCOME DISREGARDS.**  
A standard disregard in the amount of five percent (5%) of Federal Poverty Guidelines (FPG) by family size is applied to the calculated income of an individual in those situations where the application of the disregard is necessary in order for the individual or household to be eligible for the highest income limit Health Care coverage for which they may be eligible. ( )

**396. -- 399. (RESERVED)**

**HEALTH COVERAGE FOR ADULTS**  
**(Sections 400 Through 499)**

**400. PARENTS AND CARETAKER RELATIVES INCLUDED IN HOUSEHOLD BUDGET UNIT.**  
A household budget unit is a parent, parents, caretaker relatives, or pregnant woman who is responsible for a dependent child, including an unborn child, and who live in the same home with a dependent child. The parent's or caretaker relative's needs, and income, are counted as a unit for adult eligibility. Eligibility is based on the number of household budget unit members. ( )

**01. Member of More Than One Budget Unit.** No person may receive benefits in more than one (1) budget unit during the same month. ( )

**02. More Than One Medicaid Budget Unit in Home.** If there is more than one (1) Medicaid budget unit in a home, each budget unit is considered a separate unit. ( )

**03. Budget Units Not Separate.** Budget units cannot be separate if any member is a required member of both units. The budget units must be combined and treated as one (1) unit. ( )

**401. FINANCIALLY ELIGIBLE CHILD.**

**01. Household Income.** The household's calculated income does not exceed the threshold established and available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. ( )

**02. SSI Income.** The child receives SSI income. ( )

**402. PERSONS EXEMPT FROM MAGI-BASED ELIGIBILITY DETERMINATION.**

**01. SSI Recipient.** Persons who receive SSI benefits. ( )

- 02. AABD State Supplemented Recipient.** Persons who receive AABD cash benefits. ( )
- 03. Ineligible Non-Citizen.** Persons who are ineligible non-citizens. ( )
- 04. Title IV-E Foster Child.** A child who receives foster care payments from the Department. ( )
- 05. Adoption Assistance.** A child who receives adoption assistance payments from any federal, state, or local agency providing adoption assistance payments. ( )
- 06. AABD.** An individual who receives Medicaid based on disability, blindness, age (65 or older), or the need for long term care service. ( )

**403. -- 409. (RESERVED)**

**410. DETERMINING MEDICAID ELIGIBILITY.**

Calculated income for each individual is compared to the income payment standard. When income exceeds the standards, the individual is ineligible. Income standards are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. ( )

**411. INCOME LIMITS FOR PARENTS AND CARETAKER RELATIVES.**

The income limits are based on the number of household budget unit members. Parents and caretaker relatives, whose MAGI-based income does not exceed the guidelines listed in the table below for their household size, meet the income limit for parent and caretaker relative Medicaid.

TABLE 411 INCOME LIMITS	
Number of Household Members	Income Limit
1	\$233
2	\$289
3	\$365
4	\$439
5	\$515
6	\$590
7	\$666
8	\$741
9	\$816
10	\$982
Over 10 Persons	Add \$75 Each

( )

**412. -- 419. (RESERVED)**

**420. EXTENDED MEDICAID FOR SPOUSAL SUPPORT INCREASE.**

Participants are eligible for four (4) calendar months of Extended Medicaid if an increase in the participant's spousal support causes them to exceed the income limit for their household budget unit size. The participant must have received Medicaid in Idaho in at least three (3) of the six (6) months before the month the participant became income ineligible. ( )

**421. -- 499. (RESERVED)**

**PREGNANCY-RELATED HEALTH COVERAGE**  
**(Sections 500 Through 519)**

**500. PREGNANT WOMAN COVERAGE.**

A pregnant woman of any age is eligible for the Pregnant Woman coverage if she meets all of the non-financial and financial criteria of the coverage group. Health care assistance for Pregnant Woman coverage is limited to pregnancy-related and postpartum services. The Pregnant Woman medical assistance coverage extends through the sixty (60) day postpartum period if she applied for medical assistance while pregnant and was receiving medical assistance when the child was born. An individual who applies for Pregnant Woman medical assistance after the child is born is not eligible for the sixty-day (60) postpartum period. ( )

**01. Income Limit.** The individual's calculated income must not exceed one hundred thirty-three percent (133%) of the Federal Poverty Guidelines (FPG) for her family size in the application month. ( )

**02. Household Size.** Household members include the pregnant woman and the unborn child or children if expecting more than one child. Household members also include the spouse, minor tax dependent children, and minor step-children, if living with the pregnant woman. Other related children may be included if they live with the pregnant woman and are tax dependents of her household. Household members are counted regardless of Medicaid ineligibility or disqualification. Household members who receive SSI or AABD cash supplement payments are not included. ( )

**03. Income Disregards.** A standard disregard in the amount of five percent (5%) of Federal Poverty Guidelines (FPG) for family size is applied to the MAGI income of the pregnant woman if the disregard is necessary to establish income eligibility. ( )

**04. Continuing Eligibility.** The pregnant woman remains eligible during the pregnancy regardless of changes in income. The woman must report the end of pregnancy to the Department within ten (10) days. ( )

**501. PREGNANT WOMAN INELIGIBLE BECAUSE OF EXCESS INCOME.**

A pregnant woman who receives health care assistance and becomes ineligible because of an increase in income will continue to receive coverage through the end of the month in which the sixtieth day falls after the end of the pregnancy. ( )

**502. PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN.**

Presumptively eligible (PE) pregnant woman coverage is designed to provide some prenatal care during the time between the pregnancy diagnosis and the eligibility determination. ( )

**01. Pregnancy Diagnosis and Eligibility Determination.** A pregnant woman can get limited ambulatory prenatal care as a presumptively eligible (PE) pregnant woman through the end of the month after the month the provider completes the PE determination. ( )

**02. Qualified Provider Completes Eligibility Determination.** A qualified PE provider accepts written requests for these services and completes the eligibility determination. ( )

**03. Formal Application.** The qualified PE provider must inform the participant how to complete the formal application process. ( )

**04. Notification of Eligibility Determination Results.** Qualified PE providers are required to send the result of the PE decision and the completed application for the Pregnant Woman coverage to the Department within two (2) working days of the PE determination. ( )

**05. Presumptive Eligibility Decisions.** Notice and hearing rights of the Title XIX Medicaid program do not apply to the PE decisions. An individual is eligible for only one (1) period of PE coverage during each pregnancy. ( )

503. -- 519. (RESERVED)

**HEALTH COVERAGE FOR CHILDREN**  
**(Sections 520 Through 529)**

**520. FINANCIAL ELIGIBILITY.**

Children are eligible for Health Care Assistance when the household's total MAGI-Based income minus a standard disregard in the amount of five percent (5%) of Federal Poverty Guidelines (FPG) by family size is less than or equal to the applicable income limit for the age of the child. ( )

**01. Title XIX Income Limit.** For children age zero (0) to six (6), Title XIX income limit is one hundred forty-one percent (141%) of the FPG for the household size. For children age six (6) through age eighteen (18) the income limit is one hundred thirty three percent (133%) of the FPG for the household size. ( )

**02. Title XXI Income Limit.** For children age zero to six (0-6), Title XXI income limit is between one hundred forty-one percent (141%) and one hundred eighty-five percent (185%) of the FPG for the household size. For children ages six (6) through eighteen (18) the income limit is between one hundred thirty-three percent (133%) and one hundred eighty five percent (185%) of the FPG for the household size. ( )

**03. Disregard Applied.** A standard disregard in the amount of five percent (5%) of Federal Poverty Guidelines (FPG) by family size is applied to the calculated income used to establish the child's eligibility when applying the disregard is necessary for the child to be financially eligible. ( )

**521. HOUSEHOLD SIZE AND FINANCIAL RESPONSIBILITY.**

Household size and financial responsibility for health coverage for children is determined using the methodology described in Section 300 of these rules. ( )

522. (RESERVED)

**523. ACCESS TO OR COVERAGE UNDER OTHER HEALTH PLANS.**

A child is ineligible for coverage under the CHIP plan if they have access to or are enrolled in other health coverage plans as described below: ( )

**01. Covered by Creditable Health Insurance.** The child is covered by creditable health insurance at the time of application. ( )

**02. Eligible for Title XIX.** The child is eligible under Idaho's Title XIX State Plan. ( )

**03. Idaho State Employee Benefit Plan.** The child is eligible to receive health insurance benefits under Idaho's State employee benefit plan. ( )

**524. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.**

Children under age nineteen (19), who are found eligible for health coverage in an initial determination or at renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. ( )

**01. Reasons Continuous Eligibility Ends.** Continuous eligibility for children stops for one (1) of the following reasons: ( )

**a.** The child is no longer an Idaho resident; ( )

**b.** The child dies; ( )

**c.** The participant requests closure; or ( )

d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. ( )

**02. Children Not Eligible for Continuous Eligibility.** Children are not eligible for continuous eligibility for one (1) of the following reasons: ( )

a. A child is approved for emergency medical services; or ( )

b. A child is approved for pregnancy-related services. ( )

**525. FORMER FOSTER CHILD.**

An individual who is between the age of eighteen (18) and twenty-six (26), who was in foster care in Idaho and became ineligible for Medicaid as a foster child due to age, may receive Medicaid coverage until his twenty-sixth birthday. There are no financial eligibility criteria. The only non-financial criteria are the receipt of foster care services and age. ( )

**526. -- 529. (RESERVED)**

**SPECIAL CIRCUMSTANCES FOR CHILDREN**  
**(Sections 530 Through 549)**

**530. NEWBORN CHILD DEEMED ELIGIBLE FOR MEDICAID.**

A child is deemed eligible for Medicaid for his first year of life when the following exists. ( )

**01. Mother Filing an Application.** The child is born to a mother who files an application for medical assistance. ( )

**02. Mother Is Eligible for Medicaid.** The mother is eligible for Medicaid in the newborn's birth month, including a month of retroactive coverage. This includes a mother who qualifies for coverage only for the delivery because of her alien status. ( )

**531. MINOR PARENT LIVING WITH PARENTS.**

A minor parent is a child under the age of eighteen (18) who is pregnant or has a child. Minor parents who live with their parents may be eligible for Health Care Assistance for themselves and their children. The minor parent's eligibility is determined according to the Section 300 of these rules related to tax filing households. ( )

**532. RESIDENT OF AN ELIGIBLE INSTITUTION.**

A resident of an eligible institution must meet all nonfinancial and financial criteria of Title XIX or Title XXI. Eligible institutions are medical institutions, intermediate care facilities, child care institutions for foster care, or publicly-operated community residences serving no more than sixteen (16) residents. ( )

**533. CHILDREN WITH SPECIAL CIRCUMSTANCES AND MEDICAID.**

Children who receive foster care or are in adoptive placements are eligible for Medicaid. The children must meet nonfinancial criteria and must meet the financial requirements described for the children's coverage group. ( )

**534. ADOLESCENT RESIDENT OF IDAHO STATE HOSPITAL SOUTH.**

A child, residing in Idaho State Hospital South, may be eligible for Health Care Assistance if the child is: ( )

**01. Age.** The child must be under the age twenty-one (21). ( )

**02. Calculated Income.** The child's calculated income is: ( )

a. Two hundred thirty-three dollars (\$233) or less; and ( )

b. If necessary, a standard disregard of five percent (5%) of Federal Poverty Guidelines (FPG) by family size is applied to the child's calculated income in order for the child to be eligible for coverage. ( )

**535. TITLE IV-E FOSTER CARE CHILD.**

A child may be eligible for Health Care Assistance as a Title IV-E foster care child if the following conditions are met. ( )

**01. Court Order or Voluntary Placement.** The child must have been living in a parent's or relative's home during the month a court order removes the child or during the month a parent or relative voluntarily signs a written agreement with the Department for foster care. ( )

**02. Custody and Placement.** The child's placement and care are the Department's responsibility and the child is living in a licensed foster home, licensed institution, licensed group home, detention center, or in a relative's home approved for the child by the Department. ( )

**03. IV-E Foster Care and SSI Eligibility.** When a child is eligible for both IV-E-Foster Care and SSI, the caretaker relative or social worker must choose the Medicaid coverage group for the child. ( )

**536. TITLE XIX FOSTER CHILD.**

A child living in a foster home, children's agency, or children's institution who does not meet the conditions of Title IV-E Foster Care may be Medicaid eligible if the following conditions are met: ( )

**01. Age.** The foster child is under age twenty-one (21). ( )

**02. Department Responsibility.** The Department assumes full or partial financial responsibility for the child. ( )

**03. Calculated Income.** The child's calculated income is: ( )

**a.** Two hundred thirty-three dollars (\$233) or less; and ( )

**b.** If necessary, a standard disregard of five percent (5%) of Federal Poverty Guidelines (FPG) by family size is applied to the child's calculated income in order for the child to be eligible for coverage. ( )

**537. STATE SUBSIDIZED ADOPTION ASSISTANCE CHILD.**

A child in a state subsidized adoptive placement may be Medicaid eligible when the following conditions are met. ( )

**01. Age.** The child is under age twenty-one (21). ( )

**02. Adoption Assistance.** An adoption assistance agreement, other than under Title IV-E between the state and the adoptive parents, is in effect. ( )

**03. Special Needs.** The child has special needs for medical or rehabilitative care that prevent adoptive placement without Medicaid. ( )

**04. Medicaid.** The child received Medicaid in Idaho prior to the adoption agreement. ( )

**538. CHILD IN FEDERALLY-SUBSIDIZED ADOPTION ASSISTANCE.**

A child in a federally-subsidized adoptive placement under Title IV-E foster care is eligible for Medicaid. No additional conditions must be met. ( )

**539. THE ADOPTIONS AND SAFE FAMILIES ACT.**

The Adoptions and Safe Families Act of 1997 provides health insurance coverage for any child with special needs when they meet the following conditions. ( )

**01. Adoption Assistance Agreement.** The child has an adoption assistance agreement. ( )

**02. Special Needs.** The state has determined that due to the child's special needs for medical, mental health, or rehabilitative care, the child cannot be placed with adoptive parents without medical assistance. ( )

540. -- 549. (RESERVED)

**MEDICAID DIRECT COVERAGE PLANS**  
**(Sections 550 Through 559)**

**550. MEDICAID DIRECT COVERAGE GROUPS.**

Based on the assessment of the participant's health care needs they are enrolled in one (1) of the following plans: ( )

**01. Medicaid Basic Plan.** The Medicaid Basic Plan is similar to private health insurance plans. The services in this plan are described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ( )

**02. Medicaid Enhanced Plan.** The Medicaid Enhanced Plan includes all of the benefits found in the Basic Plan, plus additional benefits to cover needs of people with disabilities or special health needs. The services in this plan are described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ( )

**03. Medicare/Medicaid Coordinated Plan Benefits.** The Medicare/Medicaid Coordinated Plan includes the Medicaid benefit plan option that coordinates and integrates health plan benefits for individuals who are eligible for and enrolled in both Medicare and Medicaid. ( )

**551. HEALTH ASSESSMENT.**

A health assessment is required when a participant moves to the enhanced plan. Children who are receiving services from the Department, in foster care, receiving SSI, infant toddler program and children receiving developmentally delayed services, are eligible for the enhanced plan without the need for the health assessment. ( )

552. -- 599. (RESERVED)

**CASE MAINTENANCE REQUIREMENTS**  
**(Sections 600 Through 701)**

**600. ANNUAL ELIGIBILITY RENEWAL.**

Participants must have an annual eligibility review of all eligibility factors. Exceptions to the annual eligibility renewal are listed in Section 601 of these rules. ( )

**01. Continuing Eligibility.** Continuing eligibility is determined using available electronic verification sources without participant contact, unless: ( )

**a.** Information is not available; ( )

**b.** Information sources are provide conflicting information; or ( )

**c.** Information is inconsistent with information provided by the participant. ( )

**02. Inconsistency Impacts Eligibility.** When inconsistency exists from electronic verification sources that impact participant eligibility, information must be verified by the participant. The Department provides the participant a document that displays household information currently being used to establish eligibility and asks the participant to verify correctness, and if not correct to provide updated information. ( )

**601. EXCEPTIONS TO ANNUAL RENEWAL.**

A participant who receives Title XIX or Title XXI through time-limited coverage does not require an annual renewal when the following exists. ( )

**01. Extended Medicaid.** A participant who receives extended Medicaid is eligible as provided in Section 420 of these rules. ( )

**02. Pregnant Woman.** A participant who receives Medicaid as a Low Income Pregnant Woman is eligible as provided in Section 500 of these rules. ( )

**03. Newborn Child of Medicaid-Eligible Mother.** A participant receiving Medicaid as the newborn child of a Medicaid-eligible mother is eligible as provided in Section 530 of these rules. ( )

**602. -- 609. (RESERVED)**

**610. REPORTING REQUIREMENTS.**

Changes in family circumstances must be reported to the Department by the tenth of the month following the month in which the change occurred. Report of changes may be made verbally, in writing, through personal contact, telephone, fax, electronic mail, or mail. ( )

**611. TYPES OF CHANGES THAT MUST BE REPORTED.**

Changes in circumstances the participant must report are the following: ( )

**01. Name or Address.** A name change for any participant must be reported. A change of address or location must be reported. ( )

**02. Household Composition.** Changes in family composition must be reported if a parent or relative caretaker receives Medicaid. ( )

**03. Marital Status.** Marriages or divorces of any family member must be reported if a parent or relative caretaker receives Medicaid. ( )

**04. New Social Security Number.** A Social Security Number (SSN) that is newly assigned to a Medicaid Health Care Assistance program participant must be reported. ( )

**05. Health Insurance Coverage.** Enrollment or disenrollment of a participant in a health insurance plan must be reported. ( )

**06. End of Pregnancy.** Pregnant participants must report when pregnancy ends. ( )

**07. Earned Income.** Changes in the amount or source of earned income must be reported if a parent or relative caretaker receives Title XIX benefits. ( )

**08. Unearned Income.** Changes in the amount or source of unearned income must be reported if a parent or relative caretaker receives Title XIX benefits. ( )

**09. Support Income.** Changes in the amount of spousal support received by an adult household member. ( )

**10. Disability.** A family member who becomes disabled or is no longer disabled must be reported if a parent or relative caretaker receives Title XIX benefits. ( )

**612. -- 619. (RESERVED)**

**620. NOTICE OF CHANGES IN ELIGIBILITY.**

The Department will notify the participant of changes in his Health Care Assistance. The notice must give the effective date, the reason for the action, the rule that supports the action, and appeal rights. ( )

**621. NOTICE OF CHANGE OF PLAN.**

The Department is allowed to switch a participant from the Medicaid Basic Plan to the Medicaid Enhanced plan within the same month. Advance notice must be given to the participant when there is a decrease in their benefits and he will be switched from the enhanced plan to the basic plan. ( )



**622. ADVANCE NOTICE RESPONSIBILITY.**

The Department must notify the participant at least ten (10) calendar days before the effective date of when a reported change results in Health Care Assistance closure. The effective date must allow for a five (5) day mailing period for any notice. ( )

**623. ADVANCE NOTICE NOT REQUIRED.**

Advance notice is not required when a condition listed in Subsections 623.01 through 623.08 of this rule exists. The participant must be notified no later than the date of the action. ( )

**01. Death of Participant.** The Department has proof of the participant's death. ( )

**02. Participant Request.** The participant requests closure in writing. ( )

**03. Participant in Institution.** The participant is admitted or committed to an institution. Further payments to the participant do not qualify for federal financial participation under the state plan. ( )

**04. Nursing Care.** The participant is placed in a nursing facility or Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID). ( )

**05. Participant Address Unknown.** The participant's whereabouts are unknown. ( )

**06. Medical Assistance in Another State.** A participant is approved for medical assistance in another state. ( )

**07. Eligible One Month.** The participant is eligible for aid only during the calendar month of his application for aid. ( )

**08. Retroactive Medicaid.** The participant's Title XIX or Title XXI eligibility is for a prior period. ( )

**624. -- 699. (RESERVED)**

**700. OVERPAYMENTS.**

Health Care Assistance overpayments occur when a participant receives benefits during a month they were not eligible. ( )

**701. RECOVERY OF OVERPAYMENTS.**

All Health Care Assistance overpayments are subject to recovery. Overpayments are recovered by direct payment from the participant. ( )

**01. Notice of Overpayment.** The participant must be informed of the Health Care Assistance overpayment and appeal rights. ( )

**02. Notice of Recovery.** The participant must be informed when his Health Care Assistance overpayment is fully recovered. ( )

**702. -- 999. (RESERVED)**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1301**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 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 56-203, Idaho Code; also 7 CFR, Part 273.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 proposed changes will:

1. Revise rules to exempt federal income tax refunds from resource limits for up to twelve (12) months from the time of receipt as a liquid resource.
2. Allow a standard medical expense deduction for qualifying individuals who can show they have greater than \$35 in allowable medical expenses. This change will streamline the application and recertification process for individuals, especially for vulnerable populations. The change also will result in fewer calculation errors when determining food stamp benefits.
3. Revise rules to conform to federal regulations for changes on which the Department must act. This rule change will allow the Department flexibility to select options allowed under federal regulation when calculating expense changes used for food stamp benefits.

**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 necessary in order to comply with deadlines in amendments to 7 CFR, Part 273. Also, these rule changes confer a benefit by simplifying eligibility requirements for participants.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no anticipated fiscal impact to the state general fund or any other funds related to this rulemaking.

**NOTE:** The USDA Food and Nutrition Services require that the Department demonstrate cost neutrality prior to implementing the change regarding the medical expense deduction.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that this rulemaking is temporary and is being done to bring this chapter into compliance with federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kristin Matthews at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
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P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0304-1301  
(Only those Sections being amended are shown.)**

**221. DETERMINATION OF HOUSEHOLD COMPOSITION.**

Household composition must be determined at application, a ~~six-month~~ or twelve-month contact, recertification, and when acting on a reported change in household members ~~would result in an increase in the food stamp benefits.~~  
~~(3-29-12)~~(11-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**382. RESOURCES EXCLUDED BY FEDERAL LAW.**

Resources listed in Section 382 are excluded by Federal law: (3-15-02)

- 01. P.L. 91-646.** Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)
- 02. P.L. 92-203.** The Alaska Native Claims Settlement Act. (6-1-94)
- 03. P.L. 93-134 as Amended by P.L. 103-66.** Effective January 1, 1994, interest of individual Indians in trust or restricted lands. (6-1-94)
- 04. P.L. 93-288 as Amended by P.L. 100-707.** Payments from Disaster Relief and Emergency Assistance. (6-1-94)
- 05. P.L. 93-531.** Relocation assistance to Navajo and Hopi tribal members. (6-1-94)
- 06. P.L. 94-114.** The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)
- 07. P.L. 94-189.** The Sac and Fox Indian Claims Agreement. (6-1-94)
- 08. P.L. 94-540.** Funds to the Grand River Band of Ottawa Indians. (6-1-94)

09. **P.L. 95-433.** The Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)
10. **P.L. 96-420.** The Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)
11. **P.L. 97-403.** Payments to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)
12. **P.L. 97-408.** Payments to the Blackfeet, Gros Ventre and Asiniboine Tribes, Montana and the Papago Tribe, Arizona. (6-1-94)
13. **P.L. 98-64 and P.L. 97-365.** Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)
14. **P.L. 98-123.** Funds awarded to members of the Red Lake Band of Chippewa Indians. (6-1-94)
15. **P.L. 98-500.** Funds provided to heirs of deceased Indians under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of two thousand dollars (\$2,000). (6-1-94)
16. **P.L. 99-264.** Payments to the White Earth Band of Chippewa Indian Tribe, Michigan. (6-1-94)
17. **P.L. 99-346.** Payments to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
18. **P.L. 99-498 and P.L. 102-523 Student Loans.** Financial assistance funded in whole or in part under Title IV of the Higher Education Act. (6-1-94)
19. **P.L. 101-41.** Payments to the Puyallup Tribe of Indians, Washington. (6-1-94)
20. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the Independent Seminole Indians of Florida. (6-1-94)
21. **P.L. 101-426.** Payments from the Radiation Exposure Compensation Act. (6-1-94)
22. **P.L. 102-237.** Resources of any mixed household member who gets TAFI or SSI. (7-1-98)
23. **P.L. 103-286.** Effective 8-1-94, payments made to victims of Nazi persecution. (1-1-95)
24. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
25. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
26. **Civil Liberties Act of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
27. **SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
28. **BIA Education Grant.** Bureau of Indian Affairs (BIA) Higher Education Grant Program. (6-1-94)
29. **WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
30. **WIA.** Payments from the Workforce Investment Act (WIA). (3-15-02)

**31. Energy Assistance.** Payments from Federal, state, or local energy assistance, including insulation and weatherization payments. (6-1-94)

**32. HUD Payments.** HUD retroactive subsidy payments for tax and utilities are excluded the month received and the next month. (6-1-94)

**33. Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Effective January 1, 1989. (6-1-94)

**34. Federal EITC.** Federal Earned Income Tax Credit (EITC) is excluded ~~for the month of receipt and the following month. Federal EITC is excluded~~ for twelve (12) months from receipt ~~if the household member receives EITC while participating in the Food Stamp program. The exclusion continues only while the household participates in the Food Stamp program without a break, for up to twelve (12) months.~~ The month of receipt is the first month of the exclusion. ~~(1-1-95)~~(11-1-13)T

**35. Crime Act of 1984 as Amended by P.L. 103-322.** Payments from a crime victim compensation program. (7-1-99)

**36. Federal Tax Refunds.** Federal income tax refunds are excluded as a resource for a period of twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (11-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. INITIAL CHANGES IN FOOD STAMP CASE.**

Act on changes in household circumstances found during the application or the initial interview. (6-1-94)

**01. Anticipated Changes.** A household can be eligible in the application month, but not eligible the month after the application month because of expected changes in circumstances. The household may not be eligible for the application month, but eligible for the next month. The same application form is used for the denial and the next month's eligibility determination. (6-1-94)

**02. Food Stamps for the Application Month.** The household's Food Stamp issuance for the application month may differ from its issuance in later months. (6-1-94)

**03. Food Stamp Issuance Changes.** The Department will make changes to the household's Food Stamp issuance when it is required to act on a change. (3-30-07)

**04. Change Before Certification.** If a household reports a change in household circumstances before certification ~~and the Department can act on the change,~~ include the reported information in determining Food Stamp eligibility and amount. ~~(6-1-94)~~(11-1-13)T

**05. Change After Certification.** If a household reports a change after the initial Food Stamp benefit has been paid, the Department must act on the change ~~if it was required to be reported or would increase the household's Food Stamp benefits under these rules. Changes in the household's expenses will not be acted upon until a six-month or twelve-month contact, or recertification~~ as required by policy for acting on changes within a certification period. Notice of the change must be given to the Food Stamp household. ~~(3-29-12)~~(11-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**535. MEDICAL EXPENSES.**

Elderly or disabled household members that incur ~~M~~medical expenses over thirty-five dollars (\$35), ~~for elderly or disabled household members, are deducted from the household income~~ per month are allowed a Standard Medical

Expense (SME) deduction. Eligible households must verify monthly medical expenses of more than thirty-five dollars (\$35) at initial application. Households with medical expenses that exceed the monthly Standard Medical Expense may either verify the minimum amount to receive the SME or request and verify excess costs to receive an actual expense deduction at application and recertification. Allowable medical expense deductions are listed in Subsection 535.01 through 535.14 of these rules. The household must provide proof of the incurred or anticipated cost before a deduction is allowed. ~~(3-30-07)~~(11-1-13)T

**01. Medical and Dental Services.** Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

**02. Psychotherapy and Rehabilitation Services.** Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

**03. Hospital or Outpatient Treatment.** Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

**04. Prescription Drugs.** Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

**05. Medical Supplies and Sickroom Equipment.** Medical supplies and sickroom equipment including rental or other equipment. (6-1-94)

**06. Health Insurance.** Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

**07. Medicare Premiums.** Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)

**08. Cost-Sharing or Spend-Down Expenses.** Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)

**09. Artificial Devices.** Dentures, hearing aids, and prostheses. (6-1-94)

**10. Service Animal.** Expenses incurred buying and caring for any animal that has received special training to provide service to a disabled person. Expenses include costs for the service animal's food, training, and veterinary services. (4-4-13)

**11. Eyeglasses.** Expenses for eye examinations and prescribed eyeglasses. (4-6-05)

**12. Transportation and Lodging.** Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)

**13. Attendant Care.** Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)

**14. Attendant Meals.** An amount equal to the maximum Food Stamp allotment for a one (1) person household per month is deducted if the household provides most of the attendant's meals. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**573. ACTING ON HOUSEHOLD COMPOSITION CHANGES.**

Changes in household composition are not required to be reported. If a household does report a change in household composition, ~~and the change would increase the Food Stamp benefit, proof is needed to act on the change~~ the Department will act on the change as required by options allowed under 7 CFR 273.12(c). ~~If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next six-month or twelve-month contact, or recertification.~~ (3-29-12)(11-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**575. HOUSEHOLD COMPOSITION CHANGES FOR STUDENT.**

Ineligible students are defined as non-household members. When a student's status changes, the change is treated as a new person entering or leaving the Food Stamp household. ~~If a household reports a change in student status, and the change would increase the Food Stamp benefit, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification or twelve-month (12) contact.~~ (3-29-10)(11-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.**

The Department must follow the procedures for acting on reported changes as described in 7 CFR 273.12. (11-1-13)T

~~01. General Changes on Which Department Must Act. Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when:~~ (4-11-06)

- ~~a. The household requests closure; (4-6-05)~~
- ~~b. The TAFI or AABD grant amount changes; (4-6-05)~~
- ~~c. An individual is sanctioned or disqualified; (4-6-05)~~
- ~~d. The change would cause prohibited participation, see Section 219 of these rules; (4-11-06)~~
- ~~e. Information is received from a source the Department has defined as verified upon receipt in Section 012 of these rules; (4-11-06)~~
- ~~f. The change is required to be reported and the change is expected to continue into the next month; (4-6-05)~~
- ~~g. The Food Stamp benefit will increase and the change is not a change in expenses; (4-11-06)~~
- ~~h. The household reports that all members of the household moved out of the state of Idaho; or (4-7-11)~~
- ~~i. The U.S. Post Office returns mail to the Department because the household moved and left no forwarding address as provided in Section 735 of these rules. (4-7-11)~~

~~02. Changes Resulting in an Increase in the Food Stamp Benefit. The Department must also act on~~

~~changes that have been reported that would increase the household's Food Stamp amount as described in Section 617 of these rules.~~ (4-11-06)

~~03. Documentation. Changes must be documented in the case record, even if there is no change in the Food Stamp amount.~~ (6-1-94)

~~04. Change Report Form. A new Change Report Form (HW-0594 or HW-0586) must be given or sent to the household when a change is reported.~~ (6-1-94)

~~05. Receipt of Report Notice. The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination.~~ (6-1-94)

~~06. Proof. Give the household a written request for proof. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made.~~ (3-15-02)

~~07. Unclear Information. If the Department is unable to readily determine the effect of a change on the household's benefit amount, the Department will issue a written request advising the household of proof it must provide or actions it must take, to clarify its circumstances. The household has ten (10) days in which to respond to the Department's request, either by telephone or correspondence.~~ (4-6-05)

~~614. (RESERVED)~~

~~615. CHANGES IN SHELTER, DEPENDENT CARE, CHILD SUPPORT, OR MEDICAL EXPENSES. A household reporting a change in shelter, utility, dependent care, child support, or medical expenses will be not required to provide proof of the change until recertification and the six month or twelve month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses would cause the Food Stamp benefit to increase or decrease.~~ (3-29-12)

~~614 -- 616. (RESERVED)~~

#### 617. INCREASES IN FOOD STAMP BENEFITS.

**01. Household Reports a Change.** If a household reports a change, ~~other than a change to expenses,~~ that results in an increase in Food Stamps and the proof cannot be obtained through interfaces or data brokers, the Department must allow the household ten (10) days to provide proof. (3-29-10)(11-1-13)T

**02. Failure to Provide Proof of Change.** If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established. (3-29-10)

**03. Proof Provided Within Ten Days.** If the household provides proof within ten (10) days of reporting the change, the Department will increase the Food Stamp benefits beginning the month immediately following the month in which the change was reported. For changes reported after the 20th of the month, a supplement is issued for the next month no later than the 10th of the next month. If the change is reported and verified after the final date to adjust Food Stamp benefits for the following month in the Department's automated eligibility system, the change to the Food Stamp benefits must be made by the following month, even if a supplement must be issued. (4-11-06)

**04. Proof Not Provided Within Ten Days.** If the household fails to provide proof within ten (10) days of reporting the change, but provides proof later, benefits are increased the month after the proof of the change is provided. (3-29-10)

#### 618. DECREASES IN FOOD STAMP BENEFITS.

~~If a change that is required to be acted upon~~ If the Department acts on a change that results in a decrease in Food Stamp benefits, the Department ~~must take action and~~ must give timely notice, if required. The notice must explain the reason for the action. (3-29-10)(11-1-13)T



~~619. CHANGES NOT REQUIRED TO BE REPORTED.~~

~~If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification and the six-month or twelve-month contact. The household must be notified that no action will be taken on the reported change. (3-29-12)~~

~~619 -- 620. (RESERVED)~~

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-1301

#### 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 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code; and 42 CFR, 45 CFR, and 26 USC Part 36B.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is being initiated because of changes in federal laws that must be implemented by January 1, 2014. These rules are being aligned with changes in the eligibility criteria for medical assistance rules and with federal law.

These changes simplify and streamline verification requirements for proof of citizenship and lawful alien status. Residency requirements are being updated to reflect federal law, requirements around child support that do not meet federal requirements are being removed while retaining policies to cooperate with obtaining medical support. Updates are being made to reflect the end of "Aid to Families with Dependent Children" (AFDC), and prior changes to AABD cash.

**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:

The fiscal impact for this rulemaking is anticipated to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because federal laws require the Department to make changes to these rules and have them in place by January 1, 2014, in order to be in compliance with that law. The changes required by federal law are non-negotiable.

**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 Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock, DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

phone: (208) 334-5500  
fax: (208) 334-6558  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1301  
(Only those Sections being amended are shown.)

**005. DEFINITIONS.**

~~These definitions~~ For purposes of this chapter, the following terms apply ~~to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)".~~ (7-1-99)( )

**01. AABD Cash.** An EBT payment to a participant, a participant's guardian, or a holder of a limited power of attorney for EBT payments. AABD Cash is a payment of a supplemental cash amount to an individual who meets the program requirements. This payment may be made through direct deposit or an electronic benefits card. (5-3-03)( )

**02. Applicant.** A person applying for public assistance from the Department, ~~and whose application is not fully processed~~ including individuals referred to the Department from a health insurance exchange or marketplace. (7-1-99)( )

**03. Annuity.** A right to receive periodic payments, either for life, a term of years, or other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially-based payment from an insurance pool. (3-30-07)

**04. Asset.** Includes all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to, but does not receive because of action by: (3-30-07)

**a.** The individual or such individual's spouse; (3-30-07)

**b.** A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or (3-30-07)

**c.** A person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse. (3-30-07)

**05. Asset Transfer for Sole Benefit.** An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (5-3-03)

**06. Child.** ~~A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household.~~ Any individual from birth through the end of the month of his nineteenth birthday. (7-1-99)( )

**07. Citizen.** A person having status as a "national of the United States" defined in 8 U.S.C. 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States. ( )

~~078.~~ **Department.** The Department of Health and Welfare. (7-1-99)

~~089.~~ **Direct Deposit.** The electronic deposit of a participant's AABD cash to the participant's personal account with a financial institution. (7-1-99)

~~0910.~~ **Electronic Benefits Transfer (EBT).** A method of issuing AABD cash to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, "Rules Governing Electronic Payments of Public Assistance, Food Stamps and Child Support."

(7-1-99)

**101. Essential Person.** A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person provides the services a participant needs to live at home. (5-3-03)

**142. Fair Market Value.** The fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. (5-3-03)

**123. Long-Term Care.** Long-term care services are services provided to an institutionalized individual as defined in 42 U.S.C. 1396p(c)(1)(C). (3-30-07)

**134. Medicaid.** ~~The Federally-funded program for medical care~~ Idaho's Medical Assistance Program administered by the Department and funded with federal and state funds according to Title XIX, Social Security Act that provides medical care for eligible individuals. (~~5-3-03~~) ( )

**145. Medical Assistance Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, "Medicaid Basic Plan Benefits," ~~and~~ IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.17, "Medicare/Medicaid Coordinated Plan Benefits." (~~3-30-07~~) ( )

**156. Medicaid for Families With Children Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (7-1-99)

**167. Needy.** A person is considered needy for AABD cash payments if the person meets the nonfinancial requirements of Title XVI of the Social Security Act and the criteria in Section 514 of these rules. (4-7-11)

**18. Non-Citizen.** Same as "alien" defined in Section 101(a)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 (a)(3)), and includes any individual who is not a citizen or national of the United States. ( )

**179. Participant.** An individual ~~applying for or receiving assistance~~ who is eligible for, and enrolled in, Medicaid or other Health Care Assistance Program. (~~7-1-99~~) ( )

**1820. Partnership Policy.** A partnership policy is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986, which meets the requirements of the long-term care insurance model regulation and long-term care insurance model act promulgated by the National Association of Insurance Commissioners (NAIC), as incorporated in 42 USC 1396p(b)(5)(A). (4-2-08)

**21. Premium.** A regular, periodic charge or payment for health coverage. ( )

**22. Reasonable Opportunity Period.** A period of time allowed for an individual to provide requested proof of citizenship or identity. A reasonable opportunity period extends for ninety (90) days beginning on the 5th day after the notice requesting the proof has been mailed to the applicant. This period may be extended if the Department determines that the individual is making a "good faith" effort to obtain necessary documentation. ( )

**1923. Pension Funds.** Pension funds are retirement funds held in individual retirement accounts (IRAs), as described by the Internal Revenue Code, or in work-related pension plans, including plans for self-employed individuals sometimes referred to as Keogh plans. (4-2-08)

**204. Sole Beneficiary.** The only beneficiary of a trust, including a beneficiary during the grantor's life, a beneficiary with a future interest, and a beneficiary by the grantor's will. (7-1-99)

**245. TAFI Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho." (7-1-99)

**226. Title XVI.** Title XVI of the Social Security Act, known as "Grants to States for Aid to the Aged, Blind, or Disabled," is a program for financial assistance to needy individuals who are sixty-five (65) years of age or over, are blind, or are eighteen (18) years of age or over and permanently and totally disabled. (4-7-11)

~~237.~~ **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. ~~This program pays for medical assistance for certain individuals and families with low income and limited resources.~~ (3-30-07)(    )

~~248.~~ **Title XXI.** Title XXI of the Social Security Act, known as the ~~State~~ Children's Health Insurance Program (SCHIP). ~~This is a program that primarily pays for medical assistance for~~ federal and state partnership that provides health insurance to targeted, low-income children. (7-1-99)(    )

~~259.~~ **Treasury Rate.** The five (5) year security note rate listed in the "Daily Treasury Yield Curve Rate" by the U.S. Treasury on January 1 of each year. The January 1 rate is used for the entire calendar year. (4-2-08)

~~2630.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. Weekends and state holidays are not considered working days. (7-1-99)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. REQUIRED VERIFICATION.**

Applicants must prove their eligibility for aid. The participant is allowed ten (10) calendar days to provide requested proof. The application is denied if the applicant does not provide proof in ten (10) calendar days of the written request and does not have good cause for not providing proof. The Department may also use electronic verification sources when they are available. (7-1-99)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**092. CONCURRENT BENEFIT PROHIBITION.**

If a person is potentially eligible for ~~either~~ AABD cash, TAFI, or foster care, only one (1) program may be chosen. (7-1-99)(    )

**093. -- 099. (RESERVED)**

**100. RESIDENCY.**

The participant must be ~~voluntarily~~ living in Idaho and have no immediate intention of leaving. For Medicaid, other persons are Idaho residents if they meet a criteria in Subsections 100.01 through 100.05 of this rule. (7-1-99)(    )

**01. Foster Child.** A participant living in Idaho and receiving child foster care payments from another state. (7-1-99)

**02. Incapable Participant.** A participant ~~in an Idaho institution~~, who ~~became~~ is incapable of indicating his state of residency after age twenty-one (21). ~~The participant is a resident of the state where, is considered a resident of Idaho when:~~ (    )

**a.** ~~His~~ His parent or guardian lives ~~in Idaho; or~~ (    )

**b.** ~~A participant~~ He resides in an Idaho institution, ~~who became incapable of indicating his state of residency after age twenty-one (21), is a resident of Idaho.~~ (7-1-99)(    )

**03. Placed in Another State by Idaho.** A participant placed by the state of Idaho in an institution in another state. (7-1-99)

**04. Homeless.** A participant not maintaining a permanent home or having a fixed address who intends to remain in Idaho. (7-1-99)

05. Migrant. A migrant working and living in Idaho. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

102. ~~(RESERVED)~~ **U.S. CITIZENSHIP VERIFICATION REQUIREMENTS.**

Any individual who participates in AABD cash, Health Care Assistance, or Medicaid benefits must provide proof of U.S. citizenship unless he has otherwise met the requirements under Subsection 104.06 of these rules. ( )

**01. Citizenship Verified.** Citizenship must be verified by electronic means when available. If an electronic verification is not immediately obtainable, the Department may request documentation from the applicant. The Department will not deny the application until the applicant has had a reasonable opportunity period to obtain and provide the necessary proof of U.S. citizenship. ( )

**02. Benefits During Reasonable Opportunity Period.** Benefits are provided during the reasonable opportunity period that is provided to allow the applicant time to obtain and provide documentation to verify U.S. citizenship. No overpayment will exist for the reasonable opportunity period if the applicant does not provide necessary documentation during the reasonable opportunity period so that the application results in denial. ( )

**03. Electronic Verification.** Electronic interfaces initiated by the Department with agencies that maintain citizenship and identity information are the primary sources of verification of U.S. Citizenship and Identity. ( )

**04. Documents.** When verification is not available through an electronic interface, the individual must provide the Department with the most reliable document that is available. Documents can be: ( )

- a.** Originals; ( )
- b.** Photocopies; ( )
- c.** Facsimiles; ( )
- d.** Scanned; or ( )
- e.** Other type of copy of a document. ( )

**05. Accepted Documentation.** Other forms of documentation are accepted to the same extent as an original document, unless information on the submitted document is: ( )

- a.** Inconsistent with other information available to the Department; or ( )
- b.** The Department has good cause to question the validity of the document or the information on it. ( )

**06. Submission of Documents.** The Department accepts documents that are submitted: ( )

- a.** In person; ( )
- b.** By mail or parcel service; ( )
- c.** Through an electronic submission; or ( )
- d.** Through a guardian or authorized representative. ( )

103. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

**01. SSN Required.** The applicant must provide his social security number (SSN), or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. ( )

**a.** The SSN must be verified by the Social Security Administration (SSA) electronically. An applicant with an unverified SSN is not eligible for AABD cash, Health Care Assistance, or Medicaid benefits. ( )

**b.** The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (3-20-04)( )

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

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

**a.** Is a member of a recognized religious sect or division of the sect; and (3-20-04)

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

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

**a.** Only eligible for emergency medical services as described in Section 801 of these rules; or (3-20-04)

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

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

To be eligible for AABD cash and Medicaid, an individual must provide documentation proof of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 104.096 of this rule. The individual must provide the Department with the most reliable document that is available. ~~Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted.~~ The Department will accept original documents in-person, by mail, or through a guardian or authorized representative as described in Section 102 of these rules. (3-29-10)( )

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

**a.** A U.S. passport, including a U.S. Passport card, without regard to expiration date as long as the passport or passport card was issued without limitation; (3-30-07)( )

**b.** A Certificate of Naturalization, ~~DHS Forms N-550 or N-570;~~ or (3-30-07)( )

**c.** A Certificate of U.S. Citizenship, ~~DHS Forms N-560 or N-561.~~ (3-30-07)( )

**d.** ~~A~~ Documentary evidence issued by a federally recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. Such documents include: (3-29-10)( )

**i.** A tribal enrollment card; ( )

- ii. A certificate of Degree of Indian Blood; ( )
- iii. A tribal census document; or ( )
- iv. Documents on tribal letterhead, issued under the signature of the appropriate tribal official. ( )

**02. Documents Accepted as ~~Secondary Level Proof~~ Evidence of U.S. Citizenship ~~but Not Identity~~.**

The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 104.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.053 through and 104.074 of this rule to establish both citizenship and identity. If the applicant does not have one (1) of the documents listed below, he may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to notarized. (~~3-29-10~~)( )

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
  - i. United States fifty (50) states; (3-30-07)
  - ii. District of Columbia; (3-30-07)
  - iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
  - iv. Guam, ~~on or after April 10, 1899;~~ (~~3-30-07~~)( )
  - v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
  - vi. America Samoa; (3-30-07)
  - vii. Swain's Island; or (3-30-07)
  - viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
- d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e. A Northern Mariana Identification Card, ~~Form I-873;~~ (~~3-30-07~~)( )
- f. ~~An American Indian Card issued by the Department of Homeland Security with the classification code "KIC," Form I-873;~~ (~~3-30-07~~)
- gf. A final adoption decree showing the child's name and U.S. place of birth, or if the adoption is not final, a statement from the state-approved adoption agency that shows the child's name and U.S. place of birth; (~~3-30-07~~)( )
- hg. Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
- ih. An official U.S. Military record showing a U.S. place of birth; (4-2-08)
- ji. A certification of birth abroad, FS-545; (4-2-08)
- kj. ~~A~~ Verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; ~~or~~ (~~4-2-08~~)( )



~~k.~~ Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000; ~~(4-2-08); ( )~~

~~l.~~ Medical records, including, hospital, clinic, or doctor records, or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth; ( )

~~m.~~ Life, health, or other insurance record that indicates a U.S. place of birth; ( )

~~n.~~ Official religious record recorded in the U.S. showing that the birth occurred in the U.S.; ( )

~~o.~~ School records, including pre-school, Head Start, and daycare, showing the child's name and U.S. place of birth; or ( )

~~p.~~ Federal or state census record showing U.S. citizenship or a U.S. place of birth. ( )

~~03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)~~

~~a.~~ *A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth;* (4-2-08)

~~b.~~ *A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth;* (4-2-08)

~~c.~~ *A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization; or* (4-2-08)

~~d.~~ *An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child's parents.* (4-2-08)

~~04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 104.01 through 104.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)~~

~~a.~~ *Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth;* (3-30-07)

~~b.~~ *One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth;* (4-2-08)

~~i.~~ *Bureau of Indian Affairs tribal census records of the Navajo Indians;* (3-30-07)

~~ii.~~ *U.S. State vital Statistics official notification of birth registration;* (3-30-07)

~~iii.~~ *A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth;* (4-2-08)

~~iv.~~ *Statement signed by the physician or midwife who was in attendance at the time of birth;* (3-30-07)

~~v.~~ *Medical (clinic, doctor, or hospital) record;* (3-30-07)

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

**053.** ~~Documents Accepted for Proof~~ **Evidence of Identity but Not Citizenship.** The following documents are accepted as proof of identity, provided the document has a photograph or other identifying information including: name, age, sex, race, height, weight, eye color, or address. ~~They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 104.02 through 104.04 of this rule to establish both citizenship and identity.~~ (3-29-10)( )

- a. A state- or territory-issued driver's license, ~~bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color~~ A driver's license issued by a Canadian government authority is not a valid indicator of identity in the U. S.; (3-30-07)( )
- b. A federal, state, or local government-issued identity card ~~with the same identifying information that is included on driver's licenses as described in Subsection 104.05.a. of this rule;~~ (3-29-10)( )
- c. School identification card ~~with a photograph of the individual;~~ (3-30-07)( )
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast guard Merchant Mariner card; (3-30-07)
- g. A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; ~~or~~ (4-2-08)( )
- h. ~~A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 104.05.a. through 104.05.i. of this rule.~~ (3-29-10)
- h. A finding of identity from a federal or state governmental agency, when the agency has verified and certified the identity of the individual, including public assistance, law enforcement, internal revenue or tax bureau, or corrections agency; ( )
- i. A finding of identity from another state benefits agency or program provided that it obtained verification of identity as a criterion of participation; ( )

j. Verification of citizenship by a federal agency or another state. If the Department finds that a federal agency or an agency in another state verified citizenship on or after July 1, 2006, no further documentation of citizenship or identity is required; ( )

k. Two (2) documents containing consistent information that corroborates the applicant's identity including: employer identification cards, high school or high school equivalency diplomas, college diplomas, marriage certificates, divorce decrees, property deeds or titles; or ( )

l. When the applicant does not have any documentation as specified in Subsections 104.03.a. through k. of this rule, the applicant may submit an affidavit signed by another individual under penalty of perjury, who can reasonably attest to the applicant's identity. The affidavit must contain the applicant's name and other identifying information to establish identity stated in Subsection 104.03 of this rule. The affidavit does not have to be notarized. ( )

~~06. Additional Documents Accepted for Proof of Identity. If the participant provides citizenship documentation as described in Subsections 104.02 or 104.03 of this rule, three (3) or more corroborating documents may be used to prove identity. (3-29-10)~~

~~074. Identity Rules for Children. The following documentation of identity for children under sixteen age nineteen (169), clinic, doctor, or hospital records, including pre-school or daycare records, may be used: as additional sources of documentation of identity. (3-30-07)( )~~

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

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

~~e. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 104.02 of this rule are not available. A declaration may be used if it meets the following conditions: (3-29-10)~~

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

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

~~d. A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 104.05.a. through 104.05.e. of this rule are not available. (3-29-10)~~

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

~~085. Eligibility for Medicaid **Participants Applicants** Who Do Not Provide **U.S. Citizenship and Identity Documentation.** Medicaid participants have If verification of U.S. citizenship and identity is not obtained through electronic means, or if the applicant is unable to provide documentation at the time of application, the applicant has ninety (90) days to provide proof of U.S. citizenship and identity documentation. The ninety (90) days begins five (5) days after the date the notice is mailed requesting the documentation of citizenship and identity. Medicaid benefits will be approved pending verification if the participant applicant meets all other eligibility requirements. Medicaid will be denied if the participant applicant refuses to obtain documentation. (4-7-11)( )~~

~~096. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements.~~ The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 104.01 through 104.085 of this rule is provided: (3-29-10)( )

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

~~b. Individuals determined by the SSA to be entitled to or are receiving enrolled in any part of~~

- Medicare; ~~(4-2-08)~~( )
- c. Social Security Disability Income (SSDI) recipients; (4-7-11)
  - d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act; (4-7-11)
  - e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules; and (4-7-11)
  - f. Individuals whose name and social security number are validated by the Social Security Administration data match as meeting U.S. citizenship status. (4-7-11)

~~107.~~ **Assistance in Obtaining Documentation.** The Department will provide assistance to individuals who ~~are mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation~~ need assistance in securing satisfactory documentary evidence of citizenship. ~~(3-30-07)~~( )

~~108.~~ **Provide Documentation Verification of U.S. Citizenship and Identity One Time.** When an individual ~~s has provided U.S. citizenship and identity documents have been verified, whether through electronic data matches or provision of documentation,~~ changes in eligibility will not require an individual to provide ~~such documentation~~ the verification again, ~~unless~~ If later verification ~~of the documents~~ provided ~~s the Department with good cause to raises a question of the validity of the individual's citizenship or identity, the individual may be requested to provide further verification.~~ ~~(3-30-07)~~( )

**105. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 105.01 through 105.176 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules. ~~(3-29-10)~~( )

**01. U.S. Citizen.** A U.S. Citizen or a "national of the United States." ~~(3-30-07)~~( )

~~02. U.S. National, National of American Samoa or Swain's Island. A U. S. National, National of American Samoa or Swain's Island.~~ ~~(3-30-07)~~

**032. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)

- a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
- b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
- c. The child is under eighteen (18) years of age; (3-30-07)
- d. The child is a lawful permanent resident; and (3-30-07)
- e. If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)

**043. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)

**054. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an

unmarried dependent child of the veteran. (3-30-07)

**065. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)

**076. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (3-30-07)

**a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)

**b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

**c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

**d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; (4-7-11)

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; (4-7-11)

**f.** Is an Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007; or (4-7-11)

**g.** Is an Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. (4-7-11)

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

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

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

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

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

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

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

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

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

~~132.~~ **Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

~~143.~~ **Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

~~14.~~ **Employment Authorized Alien.** An alien granted an employment authorization document (EAD), as defined in 8 CFR Part 274a.12(c). ( )

~~15.~~ **Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** An individual\* who does not meet the citizenship or qualified non-citizen requirements in Subsections 105.01 through 105.14 of this rule, may be eligible for emergency medical services if ~~they~~ he meets all other conditions of eligibility. (4-7-11)( )

(BREAK IN CONTINUITY OF SECTIONS)

**502. SPECIAL NEEDS ALLOWANCES.** Special needs allowances are a restaurant meals allowance and a service animal food allowance. (4-11-06)

**01. Restaurant Meals.** The restaurant meals allowance is fifty dollars (\$50) monthly. A physician must state the participant is physically unable to prepare food in his home. A participant able to prepare his food, but living in a place where cooking is not permitted, may be budgeted the restaurant meals allowance for up to three (3) months. (7-1-99)

**02. Service Animal Food.** The service animal food allowance is seventeen dollars (\$17) monthly. The allowance is budgeted for a blind or disabled participant, using a trained service animal ~~trained by a recognized school.~~ (4-11-06)( )

(BREAK IN CONTINUITY OF SECTIONS)

**515. RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.**

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the ~~Regional Medicaid Services (RMS)~~ Bureau of Long-Term Care Services (BLTCS) when a participant is admitted. The ~~RMS~~ BLTCS must approve the placement before Medicaid can be approved. (4-7-11)( )

**516. CHANGE IN LEVEL OF CARE.** A change in the participant's level of care affects eligibility as described in Subsections 516.01 and 516.02 of this rule. (4-7-11)

**01. Increase in Level of Care.** An increase in level of care is effective the month the ~~RMS~~ BLTCS reassesses the level of care. (5-3-03)( )

**02. Decrease in Level of Care.** When the ~~RMS~~ BLTCS verifies the participant has a decrease in his level of care, and his income exceeds his new level of care, his Medicaid must be stopped after timely notice. When the ~~RMS~~ BLTCS determines the participant no longer meets any level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (4-7-11)( )

(BREAK IN CONTINUITY OF SECTIONS)

**618. CONTINUED BENEFITS PENDING A HEARING DECISION.**

The participant may continue to receive benefits upon request, pending the hearing decision. The Department must receive the participant's request for continued benefits before the effective date of the Department's action stated in the notice of decision. An applicant cannot receive continued benefits when appealing a denial for failure to provide citizenship and identity verification after the expiration of a reasonable opportunity period. (4-2-08)( )

**01. Amount of Assistance.** The Department will continue the participant's assistance at the current month's level while the hearing decision is pending, unless another change affecting assistance occurs. (3-15-02)

**02. Continued Eligibility.** The participant must continue to meet all eligibility requirements not related to the hearing issue. (3-15-02)

**03. Overpayment.** When the hearing decision is in the Department's favor, the participant must repay assistance received while the hearing decision was pending. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**621. COLLECTING ~~UNDERPAID~~ PATIENT LIABILITY.**

An overpayment ~~due to or underpaid~~ payment in patient liability ~~or client participation~~ is collected ~~by withholding funds from the nursing home or HCBS provider. Adjust the underpaid patient liability or client participation adjusted retroactively for each underpaid month. Funds are not withheld if~~ from or paid directly to the participant ~~repays the Department.~~ (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. MEDICAID APPLICATION.**

An adult participant, a legal guardian or a representative of the participant must sign the application ~~form~~. The participant must submit the application form to the Department. A Medicaid application may be made for a deceased person. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. CHILD SUPPORT COOPERATION.**

The participant must cooperate to identify and locate the noncustodial parent, establish paternity, and establish, modify and enforce a child medical support order, to be eligible for Medicaid. ~~After CSS establishes a case, the participant must forward all support payments to CSS for distribution.~~ This includes support payments received directly from the noncustodial parent. The cooperation requirement is waived for poverty level pregnant women exempt from cooperating in establishing paternity and obtaining medical support ~~and payments~~ from, or derived from, the father of a child born out of wedlock. A participant who cannot legally assign his own rights must not be denied Medicaid if the legally responsible person does not cooperate. (4-5-00)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.**

For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through

723.03 of this rule. (5-3-03)

**01. Income of Participants in Long-Term Care.** For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03 of this rule. (5-3-03)

**02. Community Property Income of Long-Term Care Participant with Long-Term Care Spouse.** Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) his share of the couple's community income, plus his own separate income. The deductions in Table 723.03 are subtracted from his income. (7-1-99)

**03. Income of Participant in Facility.** A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-15-02)

**a. AABD Income Exclusions.** Subtract income excluded in determining eligibility for AABD cash. (7-1-99)

**b. Aid and Attendance and UME Allowances.** Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)

**c. SSI Payment Two (2) Months.** Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)

**d. AABD Payment.** Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)

**e. First Ninety (\$90) Dollars of VA Pension.** Subtract the first ninety (\$90) dollars of a VA pension for a veteran in a private long-term care facility or a State Veterans Nursing Home. (5-3-03)

**f. Personal Needs.** Subtract forty dollars (\$40) for the participant's personal needs. For a veteran or surviving spouse in a private long-term care facility or a State Veterans Nursing Home the first ninety (\$90) dollars of VA pension substitutes for the forty dollar (\$40) personal needs deduction. (5-3-03)

**g. Employed and Sheltered Workshop Activity Personal Needs.** For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars (\$200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)

**h. Home Maintenance.** Subtract two hundred and twelve dollars (\$212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)

**i. Maintenance Need.** Subtract a maintenance need deduction for a family member, living in the long-term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)



**j.** Medicare and Health Insurance Premiums. Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (7-1-99)

**k.** Mandatory Income Taxes. Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (7-1-99)

**l.** Guardian Fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee ~~are~~ is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (7-1-99)( )

**m.** Trust Fees. Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust. (7-1-99)

**n.** Impairment Related Work Expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services; that are purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (7-1-99)( )

**o.** Income Garnished for Child Support. Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the maintenance need standard. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. NEWBORN CHILD OF MEDICAID MOTHER.**

A child is deemed eligible for Medicaid without an application if born to a woman receiving Medicaid on the date of the child's birth, including during a period of retroactive eligibility for the mother. The child remains eligible for Medicaid for up to one (1) year without an application. An application for Medicaid must be filed on behalf of the child no later than his first birthday. He must qualify for Medicaid in his own right after the month of his first birthday. (3-29-10)( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.06 - REFUGEE MEDICAL ASSISTANCE

DOCKET NO. 16-0306-1301

### 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 56-202, and 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code; and 42 CFR, 45 CFR, and 26 USC Part 36B.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is being done because of changes in federal laws that must be implemented by January 1, 2014. The proposed amendments to these rules are required for compliance with federal laws. Changes are being made to definitions and for eligibility determination.

**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:

The fiscal impact for this rulemaking is anticipated to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because federal laws require the Department to make changes to these rules and have them in place by January 1, 2014, in order to be in compliance with that law. The changes required by federal law makes these rules non-negotiable.

**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 Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET 16-0306-1301  
(Only those Sections being amended are shown.)

**010. DEFINITION OF TERMS AND ABBREVIATIONS.**

For the purposes of these rules, the following terms and abbreviations *are used as defined below* apply: (4-2-08)( )

~~01.~~ **AFDC.** *Aid to Families with Dependent Children. AFDC is the family assistance program in effect on June 30, 1997. It was replaced by Temporary Assistance for Families in Idaho (TAFI).* (4-2-08)

~~02.~~ **Caretaker.** A person related by blood or marriage who holds legal responsibility for the care and support of a minor child or otherwise dependent individual and who is needed in the home to care for such dependent. (4-2-08)

~~03.~~ **Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (4-2-08)

~~04.~~ **Eligible Amerasian.** A citizen of Vietnam born between January 1, 1962, and January 1, 1976, who has one (1) American parent. (4-2-08)

~~05.~~ **Entrant.** A person from Cuba or Haiti who has been granted special immigration status by USCIS. (4-2-08)

~~06.~~ **Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the Department of Health and Human Services (HHS). (4-2-08)

~~07.~~ **HHS.** United States Department of Health and Human Services. (4-2-08)

~~08.~~ **INA.** Immigration and Nationality Act, 8 USC Sections 1101-1537. (4-2-08)

~~09.~~ **IRSP.** Idaho Refugee Service Program. (4-2-08)

~~10.~~ **I-94.** A white three by five (3x5) inch alien identification card issued to refugees prior to their release to a sponsor. This card gives the refugee's name, United States address, and other identifying data. The refugee status will be printed in the lower right hand corner. If a refugee does not have this card, he should be referred to USCIS to obtain one. The dependent of a repatriated United States citizen may also have an I-94 card. (4-2-08)

~~11.~~ **Medical Assistance Program.** Services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (4-2-08)

~~12.~~ **Refugee.** An alien who: (4-2-08)

**a.** Because of persecution or fear of persecution on account of race, religion, or political opinion fled from his homeland; and (4-2-08)

**b.** Cannot return there because of fear of persecution on account of race, religion or political opinion. (4-2-08)

~~13.~~ **State Children's Health Insurance Program (SCHIP).** SCHIP is Title XXI of the Social Security Act. It is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low-income children. (4-2-08)( )

~~14.~~ **TAFI.** Temporary Assistance for Families in Idaho. TAFI is Idaho's family assistance program whose purpose is to provide temporary cash assistance for Idaho families who meet the eligibility requirements under

IDAPA 16.03.08, "Rules Governing the Temporary Assistance for Families in Idaho (TAFI)" program. ~~TAFI replaced the Aid to Families With Dependent Children (AFDC) program.~~ (4-2-08)( )

**14. Third Party.** Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a medical assistance participant. ( )

**15. USCIS.** United States Citizenship and Immigration Services; ~~formerly known as Immigration and Naturalization Services (INS).~~ (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**135. PRECEDENCE OF CATEGORICAL ASSISTANCE PROGRAMS.**

**01. New Applicants.** An applicant for medical assistance must first have his eligibility determined for Medicaid or SCHIP. To be eligible for Medicaid or SCHIP, the refugee must meet all the eligibility criteria for the applicable category of assistance. If the applicant is determined ineligible for Medicaid or SCHIP, then the Department will determine his eligibility for the Refugee Medical Assistance Program. (4-2-08)( )

**02. Transfer of Cases.** At the end of the eight (8) month time limit for Refugee Medical Assistance, a refugee who is determined Medicaid-eligible in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children" or IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," will be transitioned to Medicaid without the need to submit an additional application. (4-2-08)

**136. -- 149. (RESERVED)**

**150. REFUGEE MEDICAL ASSISTANCE PROGRAM.**

**01. Time Limitation.** Medical assistance under the Refugee Medical Assistance Program will be limited to eight (8) consecutive months beginning with the month the refugee enters the United States. The eligibility period for a child born in the United States to parents receiving Refugee Medical Assistance expires when both of his parents with whom he is living are no longer eligible. (4-2-08)

**02. Medical Only.** A refugee is not required to apply for or receive Cash Assistance as a condition of eligibility for Refugee Medical Assistance. Denial or closure of Refugee Cash Assistance is not a reason to deny or close Refugee Medical Assistance. (4-2-08)

**03. Refugee Cash Assistance Excluded.** Refugee Cash Assistance is excluded from income ~~and resources~~ when determining eligibility for Refugee Medical Assistance. (4-2-08)( )

**04. Automatic Eligibility.** Refugees whose countable income does not exceed one hundred fifty percent (150%) of the Federal Poverty Guidelines are automatically eligible for Refugee Medical Assistance. (4-2-08)

**05. Refugee Medical Assistance with "Spend Down."** An applicant for Refugee Medical Assistance whose countable income exceeds one hundred fifty percent (150%) FPG for his family size may become eligible for Refugee Medical Assistance under certain conditions. A special provision, for refugees only, will allow those refugees whose income exceeds one hundred fifty percent (150%) FPG for his family size to subtract his medical costs from his income and thus "spend down" to the FPG limit for his family size. This "spend down" will be determined on a quarterly basis; the quarter begins with the month of application. The amount by which the refugee's income exceeds one hundred fifty percent (150%) FPG for his family size on a monthly basis is determined by:

**a.** Using the best estimate of income to be received during the quarter; and (4-2-08)

- b. Multiplying the monthly excess by three (3) to determine the quarterly “spend down.” (4-2-08)
- 06. Counting Income ~~and Resources~~ for Refugee Medical Assistance with a “Spend Down.”** ~~(4-2-08)~~( )
- a. Income ~~and resources are~~ **is** counted or excluded in accordance with IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” The sole exception is that Refugee Cash Assistance is excluded from income ~~and resources~~ when determining eligibility for Refugee Medical Assistance. ~~(4-2-08)~~( )
- b. The Federal Poverty Guideline applicable for the size of the family determines the amount to which an individual or family must “spend down” to be eligible for Refugee Medical Assistance. (4-2-08)
- ~~e. Total countable resources for the family must not exceed one thousand dollars (\$1,000). (4-2-08)~~
- ~~d. Financial resources that are not available to the refugee, including resources remaining in his homeland, can not be considered in determining eligibility for Refugee Medical Assistance. (4-2-08)~~
- ~~ec.~~ The income ~~and resources~~ of sponsors, and the in-kind services and shelter provided to refugees by their sponsors, will not be considered in determining eligibility for Refugee Medical Assistance. A shelter allowance must not be given for any in-kind shelter provided. ~~(4-2-08)~~( )
- 07. Financially Responsible Relatives.** (4-2-08)
- a. The Department must consider the income ~~and resources~~ of nonrefugee spouses or parents as available to the refugee whether or not they are actually contributed, if they live in the same household. ~~(4-2-08)~~( )
- b. If the nonrefugee spouse or parent does not live with the individual, the Department must consider income ~~and resources~~ that are actually contributed by the spouse or parent as available to the refugee. ~~(4-2-08)~~( )
- 08. Deduction of Incurred Medical Expenses.** If countable income exceeds one hundred fifty percent (150%) of the Federal Poverty Guidelines for the family size, the Department must deduct from income, in the following order, incurred medical expenses that are not subject to payment by a third party: (4-2-08)
- a. Medicare premiums, other health insurance premiums, deductibles, or coinsurance charges incurred by the individual, family, or financially responsible relatives. (4-2-08)
- b. Expenses incurred by the individual, family, or financially responsible relatives for necessary medical and remedial services not covered under the scope of the Medical Assistance Program. (4-2-08)
- c. Expenses incurred by the individual, family, or financially responsible relatives for necessary medical and remedial services covered in the scope of the Medical Assistance Program. (4-2-08)
- d. On a case by case basis, the Department may set reasonable limits on expenses to be deducted from income under Subsections 150.08.a. and 150.08.b. of this rule. (4-2-08)
- 09. Determining Eligibility for Refugee Medical Assistance for Refugees Who Must Meet a “Spend Down.”** The refugee applicant must provide verification of expenses incurred pursuant to Subsection 150.08 of this rule. If the applicant has medical coverage from a third party, he must verify that charges will not be paid by this third party by providing an Explanation of Benefits or other written statement from the third party. (4-2-08)
- a. As the applicant submits medical expenses, the charges should be added in the order listed in Subsection 150.08 of this rule. The expenses that come under Subsection 150.08.c. must be put in chronological order by the date of service. (4-2-08)
- b. When the charges equal or exceed the amount of the “spend down,” the applicant becomes eligible

for Refugee Medical Assistance. (4-2-08)

**c.** The date of eligibility is the date of service on the last bill which is covered under the scope of the Medical Assistance Program. (4-2-08)

**d.** It is the responsibility of the Department caseworker who is determining the applicant's eligibility to determine when the "spend down" has been met. (4-2-08)

**10. Issuing a Medical Card to a Refugee Who Must Meet a "Spend Down."** A Medical Card will not be issued until the applicant has met the "spend down." The dates on the Medical Card under "Valid Only During" will be the date the applicant becomes eligible for Medicaid benefits "to" the last day of the last month in the quarter for which the "spend down" has been determined. (4-2-08)

**11. Continued Coverage.** If a refugee who is receiving Refugee Medical Assistance receives earnings from employment, the earnings do not affect the refugee's continued eligibility for Refugee Medical Assistance. Once a refugee begins receiving Refugee Medical Assistance, he continues to receive it through his eighth month in the United States. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. INCOME ~~AND RESOURCES~~ ON DATE OF APPLICATION.**

Eligibility is determined using income ~~and resources~~ on the date of application. Income is not averaged over the application processing period. (4-2-08)( )

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

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1302**

**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, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 447.90 - Credible allegations of fraud; 42 CFR 455 - Provider Screening and Enrollment; and 42 CFR 498 - Appeal rights; and Subtitle E, Section 6401 of the Patient Protection and Affordable Care Act (Affordable Care Act).

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>Tuesday, October 15, 2013 at 2:00 p.m. MDT</b>
<b>Medicaid Central Office Conference Room D-East 3232 Elder St, Boise, ID</b>
You may also participate in this hearing via conference call: Call-in Number: <b>1-888-706-6468</b> When prompted, enter Participant ID: <b>8617015</b>

<b>Thursday, October 17, 2013 at 2:00 p.m. MDT</b>
<b>IDHW Region VI Office 2nd Floor Conf. Room 1070 Hiline Road Pocatello, ID</b>

<b>Friday, October 18, 2013 at 2:00 p.m. PDT</b>
<b>IDHW Region I Office Suite 102, (lower level large conference room) 1120 Ironwood Drive Coeur d'Alene, ID</b>

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

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

The proposed rule changes are being done to align with changes in federal regulations and to comply with CMS requirements related to missed appointments.

The proposed rule changes will align state rules with federal regulations in 42 CFR 447.90, 42 CFR 455, and 42 CFR 498 that require the Medicaid agency to:

1. Re-validate all provider enrollment information no less frequently than every five (5) years;
2. Ensure all providers prescribing drugs or ordering services for Medicaid participants are enrolled with the agency;
3. Ensure that all providers complete a screening process involving site visits and payment of fees for certain types of providers, either through the Medicaid agency itself or through Medicare; and
4. Align the appeals process for providers denied enrollment with federal requirements.

This rule change will also clarify language about provider charges for missed appointments in accordance with federal requirements.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

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

These changes will be accomplished with existing resources and modifications to existing operational processes and are expected to be cost neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that these rule changes are being done to comply with federal requirements under 42 CFR. The Department has selected the means of compliance that are the least burdensome and the least costly to both providers and the state.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jeanne Siroky at (208) 364-1897.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1302**  
**(Only those Sections being amended are shown.)**

**160. RESPONSIBILITY FOR KEEPING APPOINTMENTS.**

The participant is solely responsible for making and keeping an appointment with the provider. *If a participant makes an appointment and subsequently does not keep it, the participant may be required to pay the provider an amount*



~~established by the provider's missed appointment policy that is applicable to all patients of the provider. The Department will not reimburse providers when participants do not attend scheduled appointments. Providers may not bill participants for missed appointments.~~ (4-2-08)( )

(BREAK IN CONTINUITY OF SECTIONS)

200. PROVIDER APPLICATION PROCESS.

**01. Provider Application.** ~~Providers may apply for provider numbers with the Department. Those in-state providers who have previously been assigned a Medicare number may retain that same number. The Department will confirm the status for all applicants with the appropriate licensing board and assign Medicaid provider numbers. Providers who meet Medicaid enrollment requirements may apply for Idaho Medicaid provider status with the Department. All healthcare providers who are eligible for a National Provider Identifier (NPI) must apply using that identifying number. For providers not eligible for a NPI, the Department will assign a provider number upon approval of the application.~~ (3-30-07)( )

**02. Denial of Provider Application Screening Levels.** ~~The Department must not accept the application of a provider who is suspended from Medicare or Medicaid in another state. In accordance with 42 CFR 455.450, the Department will assign risk levels of "limited," "moderate," or "high" to defined groups of providers. These assignments and definitions will be published in the provider handbook.~~ (3-30-07)( )

**03. Medicare Enrollment Requirement for Specified Providers.** The following providers must enroll as Medicare providers prior to enrollment or revalidation as a Medicaid provider. ( )

**a.** Any providers classified in the "moderate" or "high" categorical risk level, as defined in the provider handbook. ( )

**b.** Any provider type classified as an institutional provider by Medicare. ( )

**04. Disclosure of Information by Providers and Fiscal Agents.** All enrolling providers and their fiscal agents must comply with the disclosure requirements as stated in 42 CFR 455, Subpart B, "Disclosure of Information by Providers and Fiscal Agents." ( )

**05. Denial of Provider Agreement.** The Department may deny provider status by refusing a request to enter into a provider agreement, refusing to extend an existing agreement, or refusing to enter into additional agreements with any individual or entity. Reasons for denying provider status include those described in IDAPA 16.05.07, "The Investigation and Enforcement of Fraud, Abuse, and Misconduct," Section 265. ( )

**06. Mandatory Denial of Provider Agreement.** The Department will deny a request for a provider agreement when: ( )

**a.** The provider fails to meet the qualifications required by rule or by any applicable licensing board; ( )

**b.** The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that was previously found by the Department to have engaged in fraudulent conduct, or abusive conduct related to the Medicaid program, or has demonstrated an inability to comply with the requirements related to the provider status for which application is made, including submitting false claims or violating provisions of any provider agreement; ( )

**c.** The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that failed to repay the Department for any overpayments, or to repay claims previously found by the Department to have been paid improperly, whether the failure resulted from refusal, bankruptcy, or otherwise, unless prohibited by law; ( )

d. The provider employs as a managing employee, contracts for any management services, shares any ownership interests, or would be considered a related party to any individual or entity identified in Subsections 200.06.a. through 200.06.c. of this rule. ( )

e. The provider fails to comply with any applicable requirement under 42 CFR 455. ( )

f. The provider is precluded from enrollment due to a temporary moratorium issued by the Secretary of Health and Human Services in accordance with 42 CFR 455.470. ( )

g. The provider is currently suspended from Medicare or Medicaid in any state, or has been terminated from Medicare or Medicaid in any state. ( )

201. -- 204. (RESERVED)

205. AGREEMENTS WITH PROVIDERS.

**01. In General.** ~~The Department will enter into written agreements with each provider or group of providers of supplies or services under the Program. All individuals or organizations must enter into a written provider agreement accepted by the Department prior to receipt of any reimbursement for services.~~ Agreements may contain any terms or conditions deemed appropriate by the Department. ~~Each agreement will contain, among others, the following terms and conditions requiring the provider: All provider agreements must be signed by the provider or by an owner or officer who has the legal authority to bind the provider in the agreement.~~ (3-30-07)( )

~~a. To retain for a minimum of six (6) years any records necessary for a determination of the services the provider furnishes to participants; and~~ (3-30-07)

~~b. To furnish to the Department, the U.S. Department of Health and Human Services, the Fraud Investigation Unit, or the Idaho State Police any information requested regarding payments claimed by the provider for services; and~~ (3-30-07)

~~e. To furnish to the Department, the U.S. Department of Health and Human Services, the Fraud Investigation Unit, or the Idaho State Police, information requested on business transactions as follows:~~ (3-30-07)

~~i. Ownership of any subcontractor with whom the provider has had business transactions of more than twenty five thousand dollars (\$25,000) during a twelve (12) month period ending on the date of request; and~~ (3-30-07)

~~ii. Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor during the five (5) year period ending on the date of request.~~ (3-30-07)

**02. Federal Disclosure Requirements.** To comply with the disclosure requirements in 42 CFR 455, Subpart B, each provider, other than an individual practitioner or a group of practitioners, must disclose to the Department: (3-30-07)

**a.** The full name and address of each individual who has either direct or indirect ownership interest in the disclosing entity or in any subcontractor of five percent (5%) or more prior to entering into an agreement or at the time of survey and certification; and (3-30-07)

**b.** Whether any person named in the disclosure is related to another person named in the disclosure as a spouse, parent, or sibling. (3-30-07)

**03. ~~Termination of~~ Provider Agreements Enforcement Actions and Terminations.** Provider agreements may be terminated with or without cause. Terminations for cause may be appealed as a contested case in accordance with the IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The Department may, at its discretion, take any of the following actions for cause based on the provider's conduct or the conduct of its employees or agents, or when the provider fails to comply with any term or provision of the provider

agreement, or any applicable state or federal regulation: (3-30-07)( )

~~a. The Department may, in its discretion, terminate a provider's agreement for cause based on its conduct or the conduct of its employees or agents, when the provider fails to comply with any term or provision of the provider agreement. Other action may also be taken, based on the conduct of the provider as provided in Section 205 of this chapter of rules, and notice of termination must be given as provided therein. Terminations for cause may be appealed as a contested case in accordance with the IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Ruling."~~ Require corrective actions as described in IDAPA 16.05.07, "The Investigation and Enforcement of Fraud, Abuse, and Misconduct," Section 270. (3-30-07)( )

b. Require a corrective action plan to be submitted by the provider to address noncompliance with the provider agreement; ( )

c. Reduce, limit, or suspend payment of claims pending the submission, acceptance, or completion of a corrective action plan; ( )

d. Limit or suspend provision of services to participants who have not previously established services with the provider pending the submission, acceptance, or completion of a corrective action plan; or ( )

e. Terminate the provider's agreement. ( )

~~b04. Termination of Provider Agreements.~~ b04. Termination of Provider Agreements. Due to the need to respond quickly to state and federal mandates, as well as the changing needs of the State Plan, the Department may terminate provider agreements without cause by giving written notice to the provider as set forth in the agreement. If an agreement does not provide a notice period, the period is twenty-eight (28) days. Terminations without cause may result from, but are not limited to, elimination or change of programs or requirements, or the provider's inability to continue providing services due to the actions of another agency or board. Terminations without cause are not subject to contested case proceedings since the action will either affect a class of providers, or will result from the discretionary act of another regulatory body. (3-30-07)( )

~~04. Denial of Provider Agreement. The Department may deny provider status by refusing a request to enter into a provider agreement, refusing to extend an existing agreement, or refusing to enter into additional agreements with any individual or entity, that:~~ (3-30-07)

~~a. Fails to meet the qualifications required by rule or by any applicable licensing board;~~ (3-30-07)

~~b. Has previously been, or was a managing employee, or had an ownership interest, as defined in 42 C.F.R. Section 455.101, in any entity which was previously found by the Department to have engaged in fraudulent conduct, or abusive conduct related to the Medicaid program or has demonstrated an inability to comply with the requirements related to the provider status for which application is made, including, but not limited to submitting false claims or violating provisions of any provider agreement;~~ (3-30-07)

~~c. Has failed, or was a managing employee, or had an ownership interest, as defined in 42 C.F.R. Section 455.101, in any entity that failed to repay the Department for any overpayments, or to repay claims previously found by the Department to have been paid improperly, whether the failure resulted from refusal, bankruptcy, or otherwise, unless prohibited by law; or~~ (3-30-07)

~~d. Employs as a managing employee, contracts for any management services, shares any ownership interests, or would be considered a related party to any individual or entity identified in Subsections 205.04.a. through 205.04.e., of this rule.~~ (3-30-07)

206. -- 209. (RESERVED)

## 210. CONDITIONS FOR PAYMENT.

**01. Participant Eligibility.** The Department will reimburse providers for medical care and services, regardless of the current eligibility status of the medical assistance participant in the month of payment, provided ~~that~~

a complete and properly submitted claim for payment has been received and each of the following conditions are met:  
(3-30-07)( )

**a.** The participant was found eligible for medical assistance for the month, day, and year during which the medical care and services were rendered; (3-30-07)

**b.** The participant received such medical care and services no earlier than the third month before the month in which application was made on such participant's behalf; and (3-30-07)

**c.** The provider verified the participant's eligibility on the date the service was rendered and can provide proof of the eligibility verification. ( )

**ed.** Not more than twelve (12) months have elapsed since the month of the latest participant services for which such payment is being made. Medicare cross-over claims are excluded from the twelve (12) month submittal limitation. (3-30-07)

**02. Time Limits.** The time limit set forth in Subsection 210.01.ed. of this rule does not apply with respect to retroactive eligibility adjustment ~~payments~~. When participant eligibility is determined retroactively, the Department will reimburse providers for services within the period of retroactive eligibility if a claim for those services is submitted within twelve (12) months of the date of the participant's eligibility determination.  
(3-30-07)( )

**03. Acceptance of State Payment.** By participating in the Medical Assistance Program, providers agree to accept, as payment in full, the amounts paid by the Department for services to Medicaid participants. Providers also agree to provide all materials and services without unlawfully discriminating on the grounds of race, age, sex, creed, color, national origin, or physical or intellectual disability. (3-30-07)

**04. Payment in Full.** If a provider accepts Medicaid payment for a covered service, the Medicaid payment must be accepted as full payment for that service, and the participant cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-30-07)

**05. Medical Care Provided Outside the State of Idaho.** Out-of-state medical care is subject to the same utilization review and other Medicaid coverage requirements and restrictions as medical care received within the state of Idaho. (3-30-07)

**06. Ordering, Prescribing, and Referring Providers.** Any service or supply ordered, prescribed, or referred by a physician or other professional who is not an enrolled Medicaid provider will not be reimbursed by the Department. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~342. -- 349. (RESERVED)~~

~~350. CRITERIA FOR PARTICIPATION IN THE MEDICAID PROGRAM.~~

~~01. Application for Participation and Reimbursement. Prior to participation in the Medicaid Program, the Department must certify a facility for participation in the Program. Their recommendations are forwarded to the Division of Welfare, Division of Medicaid or its successor organization, for approval. The Division of Medicaid or its successor organization issues a provider number to the facility which becomes the primary provider identification number. The Division of Medicaid or its successor organization will need to establish an interim rate for the new applicant facility. This facility is now authorized to offer services at the level for which the provider agreement was issued.~~ (3-30-07)

~~02. Reimbursement. The reimbursement mechanism for payment to providers that Medicaid~~

~~reimburses under a cost-based methodology under Sections 300 through 389 of these rules. The Medical Assistance Program will not reimburse a facility until it is certified, has a signed agreement for participation and an established interim per diem rate.~~ (3-30-07)

~~351.~~—359. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**735. THERAPY SERVICES: PROVIDER REIMBURSEMENT.**

**01. Payment for Therapy Services.** The payment for therapy includes the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the participant for the use of such equipment. (4-2-08)

**02. Payment Procedures.** Payment procedures are as follows: (3-30-07)

**a.** Therapy provided by home health agencies will be paid at a per visit rate as described in Section 725 of these rules and in accordance with IDAPA 16.03.07, “Rules for Home Health Agencies.” (4-2-08)

**b.** Therapists ~~identified by Medicare~~ **enrolled with Medicaid** as independent practitioners, ~~and licensed by the appropriate state licensing board and enrolled as Medicaid providers~~ will be reimbursed on a fee-for-service basis. ~~Exceptions to the requirement for Medicare certification include:~~ (5-8-09)

~~i. Provider types that Medicare does not certify as is the case for speech-language pathologists; and~~ (5-8-09)

~~ii. Providers that only treat pediatric participants and do not expect to treat Medicare participants.~~ (5-8-09)

~~iii.~~ Only those independent practitioners who have been enrolled as Medicaid providers can bill the Department directly for their services. A therapy assistant cannot bill Medicaid directly. The maximum fee will be based upon the Department’s fee schedule, available from the central office for the Division of Medicaid, the contact information for which is found in Section 005 of these rules. (5-8-09)( )

**c.** Therapy rendered on-site to hospital inpatients or outpatients will be paid at a rate not to exceed the payment determined as reasonable cost using Title XVIII (Medicare) standards and principles. (4-2-08)

**d.** Payment for therapy services rendered to participants in long-term care facilities is included in the facility reimbursement as described in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (7-1-13)

**e.** Payment for therapy services rendered to participants in school-based services is described in Section 855 of these rules. (4-2-08)

**f.** Payment for therapy services rendered by the Idaho Infant Toddler Program will be reimbursed on a fee-for-service basis. (7-1-13)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1303

### 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 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also the Patient Protection and Affordable Care Act (Affordable Care Act - P.L. 111-148), Section 2502(a)(2).

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

<b>Tuesday, October 15, 2013 at 11:00 a.m. MDT</b>
<b>Medicaid Central Office Conference Room D-East 3232 Elder St, Boise, ID</b>

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

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

Changes to federal laws governing Medicaid programs require all states to cover tobacco cessation drug benefits for all Medicaid eligible participants effective January 1, 2014.

This rule change will add the federally required tobacco cessation counseling for all non-pregnant Medicaid eligible adults over the age of 21. These products are already covered for pregnant women and children under age 21.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

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

These benefits are already available to Medicaid participants through the Preventive Health Assistance (PHA) program. These rules shift coverage from that program to pharmacy coverage and the net impact is expected to be cost neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that these rule changes will be publishing as Temporary. Note that the Temporary rule will publish with the pending rule in the January 2014, Idaho Administrative Bulletin. The temporary rule is being done to comply with the requirements in the Affordable Care Act that add mandatory coverage for tobacco cessation drug benefits under Medicaid programs, effective January 1, 2014.

**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 Arla Farmer (208) 364-1958.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1303**  
**(Only those Sections being amended are shown.)**

**620. PREVENTIVE HEALTH ASSISTANCE (PHA): DEFINITIONS.**

**01. Behavioral PHA.** Benefits available to a participant specifically to support ~~tobacco cessation or~~ weight control. ~~(3-30-07)( )~~

**02. Benefit Year.** A benefit year is twelve (12) continuous months. A participant's PHA benefit year begins the date his initial points are earned. (3-30-07)

**03. PHA Benefit.** A mechanism to reward healthy behaviors and good health choices of a participant eligible for preventive health assistance. (3-30-07)

**04. Wellness PHA.** Benefits available to a participant to support wellness ~~and safety.~~ ~~(3-30-07)( )~~

**621. PREVENTIVE HEALTH ASSISTANCE (PHA): PARTICIPANT ELIGIBILITY.**

**01. Behavioral PHA.** The participant must have a Health Questionnaire on file with the Department. The Health Questionnaire is used to determine eligibility for a Behavioral PHA. The participant must indicate on the Health Questionnaire that he wants to change a behavior related to weight management ~~or tobacco cessation.~~ The participant must meet one of the following criteria: ~~(3-30-07)( )~~

**a.** For an adult, a body mass index (BMI) of thirty (30) or higher or eighteen and one-half (18 1/2) or lower. (3-30-07)

**b.** For a child, a body mass index (BMI) that falls in either the overweight or the underweight category as calculated using the Centers for Disease Control (CDC) Child and Teen BMI Calculator. (3-30-07)

~~**e.** For either an adult or a child, use of tobacco products. (3-30-07)~~

**02. Wellness PHA.** A participant who is required to pay premiums to maintain eligibility under IDAPA 16.03.01, "Eligibility for Health Assistance for Families and Children," is eligible for Wellness PHA. (3-30-07)

**622. PREVENTIVE HEALTH ASSISTANCE (PHA): COVERAGE AND LIMITATIONS.**

**01. Point System.** The PHA benefit uses a point system to track points earned and used by a participant. Each point equals one (1) dollar. (3-29-10)

**a.** Maximum Benefit Points. (3-30-07)

i. The maximum number of points that can be earned for a Behavioral PHA is two hundred (200) points each benefit year. (3-30-07)

ii. The maximum number of points that can be earned for a Wellness PHA benefit is one hundred twenty (120) points each benefit year. (3-30-07)

~~b. Each participant is limited to one (1) Behavioral PHA benefit at any point in time. (3-30-07)~~

~~eb.~~ Points expire and are removed from a participant's PHA benefit at the end of the participant's benefit year. (3-30-07)

~~ec.~~ Points earned for a specific participant's PHA benefit cannot be transferred to or combined with points in another participant's PHA benefit. (3-30-07)

~~02. Medications and Pharmaceutical Supplies. Medications and pharmaceutical supplies must be purchased from a licensed pharmacy. (3-30-07)~~

~~a. Each medication and pharmaceutical supply must have a primary purpose directly related to weight management or tobacco cessation. (3-30-07)~~

~~b. Each medication and pharmaceutical supply must be approved by the FDA, or specifically recommended by the participant's PCP, or a referred physician specialist. (3-30-07)~~

~~032.~~ **Weight Management Program.** Each program must provide weight management services and must include a curriculum that includes at least one (1) of the three (3) following areas: (3-30-07)

a. Physical fitness; (3-30-07)

b. Balanced diet; or (3-30-07)

c. Personal health education. (3-30-07)

~~043.~~ **Participant Request for Coverage.** A participant can request that a previously unidentified ~~product or~~ service be covered. The Department will approve a request if the product or service meets the requirements described in this section of rule and the vendor meets the requirements in Section 624 of these rules. (3-30-07)( )

~~054.~~ **Premiums.** (3-30-07)

a. Wellness PHA benefit points must be used to offset a participant's premiums. (3-29-10)

b. Only premiums that must be paid to maintain eligibility under IDAPA 16.03.01, "Eligibility for Health Assistance for Families and Children" can be offset by PHA benefit points. (3-30-07)

~~065.~~ **Hearing Rights.** A participant does not have hearing rights for issues arising between the participant and a chosen vendor. (3-30-07)

## 623. PREVENTIVE HEALTH ASSISTANCE (PHA): PROCEDURAL REQUIREMENTS.

**01. Behavioral PHA.** (3-30-07)

a. A PHA benefit will be established for each participant who meets the eligibility criteria for Behavioral PHA. A participant must complete a PHA Benefit Agreement Form prior to earning any points. (3-30-07)

~~b. Each participant who chooses a goal of tobacco cessation must enroll in a tobacco cessation program. (3-30-07)~~



**eb.** Each participant who chooses ~~a goal of~~ to enroll in weight management must participate in a physician approved or monitored weight management program. (3-30-07)( )

**dc.** An initial one hundred (100) points are earned when the agreement form is received by the Department and the benefit is established. (3-30-07)

**ed.** An additional one hundred (100) points can be earned by a participant who completes his program or reaches a chosen, defined goal. The vendor monitoring the participant's progress must verify that the program was completed or the goal was reached. (3-30-07)

**02. Wellness PHA.** (3-30-07)

**a.** A PHA benefit will be established for each participant who meets the eligibility criteria for Wellness PHA. Each participant must demonstrate that he has received recommended wellness visits and immunizations for his age prior to earning any points. (3-30-07)

**b.** Ten (10) points can be earned each month by a participant who receives all recommended wellness visits and immunizations for his age during the benefit year. (3-29-10)

**03. Approved Products and Services.** The reimbursable products and services of each vendor must be prior approved by the Department. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**662. PRESCRIPTION DRUGS: COVERAGE AND LIMITATIONS.**

**01. General Drug Coverage.** The Department will pay for those prescription drugs not excluded by Subsection 662.04 of these rules which are legally obtainable by the order of a licensed prescriber whose licensing allows for the prescribing of legend drugs, as defined under Section 54-1705(28), Idaho Code, and which are deemed medically necessary as defined in Section 011 of these rules. (3-30-07)

**02. Dispensing Fee.** Dispensing Fee is defined as the cost of filling a prescription including direct pharmacy overhead, and is for all services pertaining to the usual practice of pharmacy, including: (4-4-13)

- a.** Interpretation, evaluation, compounding, and dispensing of prescription drug orders; (3-30-07)
- b.** Participation in drug selection; (3-30-07)
- c.** Drug administration; (3-30-07)
- d.** Drug regimen and research reviews; (3-30-07)
- e.** Proper storage of drugs; (3-30-07)
- f.** Maintenance of proper records; (3-30-07)
- g.** Prescriber interaction; and (3-30-07)
- h.** Patient counseling. (3-30-07)

**03. Limitations on Payment.** Medicaid payment for prescription drugs will be limited as follows: (3-30-07)

**a.** Days' Supply. Medicaid will not cover any days' supply of prescription drugs that exceeds the quantity or dosage allowed by these rules. (3-30-07)

**b.** Brand Name Drugs. Medicaid will not pay for a brand name product that is part of the federal upper limit (FUL) or state maximum allowable cost (SMAC) listing when the physician has not specified the brand name drug to be medically necessary. (3-30-07)

**c.** Medication for Multiple Persons. When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid. (3-30-07)

**d.** No Prior Authorization. Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules. (3-30-07)

**e.** Limitations to Discourage Waste. Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department. (3-30-07)

**04. Excluded Drug Products.** The following categories and specific products are excluded from coverage by Medicaid: (3-30-07)

**a.** Non-Legend Medications. Federal legend medications that change to non-legend status, as well as their therapeutic equivalents regardless of prescription, status unless: (3-30-07)

**i.** They are included in Subsection 662.05.b. of these rules; or (3-30-07)

**ii.** The Director determines that non-legend drug products are covered based upon appropriate criteria including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee. Therapeutically interchangeable is defined in Subsection 663.01.e. of these rules. (3-30-07)

**b.** Legend Drugs. Any legend drugs for which federal financial participation is not available. (3-30-07)

**c.** Diet Supplements. Diet supplements and weight loss products, except lipase inhibitors when prior authorized as outlined in Section 663 of these rules. (3-30-07)

**d.** Amphetamines and Related Products. Amphetamines and related products for cosmetic purposes or weight loss. Amphetamines and related products which are deemed to be medically necessary may be covered if prior authorized as outlined in Section 663 of these rules. (3-30-07)

**e.** Ovulation/Fertility Drugs. Ovulation stimulants, fertility drugs, and similar products. (3-30-07)

**f.** Impotency Aids. Impotency aids, either as medication or prosthesis. (3-30-07)

~~**g.** Tobacco Cessation Products. Nicotine chewing gum, sprays, inhalers, transdermal patches and related products, with the exception that both legend and non-legend tobacco cessation products will be covered for children and pregnant women when prescribed by their physician. (4-4-13)~~

~~**h.g.** Medications Utilized for Cosmetic Purposes. Medications utilized for cosmetic purposes or hair growth. Prior authorization may be granted for these medications if the Department finds other medically necessary indications. (3-30-07)~~

~~**h.** Vitamins. Vitamins unless included in Subsection 662.05.a. of these rules. (3-30-07)~~

~~**h.j.** Dual Eligibles. Drug classes covered under Medicare, Part D, for Medicaid participants who are also eligible for Medicare. (3-30-07)~~

- 05. Additional Covered Drug Products.** Additional drug products will be allowed as follows: (3-30-07)
- a.** Therapeutic Vitamins. Therapeutic vitamins may include: (3-30-07)
    - i. Injectable vitamin B12 (cyanocobalamin and analogues); (3-30-07)
    - ii. Vitamin K and analogues; (3-30-07)
    - iii. Pediatric legend vitamin-fluoride preparations; (3-30-07)
    - iv. Legend prenatal vitamins for pregnant or lactating women; (3-30-07)
    - v. Legend folic acid; (3-30-07)
    - vi. Oral legend drugs containing folic acid in combination with Vitamin B12 and/or iron salts, without additional ingredients; (4-4-13)
    - vii. Legend vitamin D and analogues; and (4-4-13)
    - viii. Legend ~~smoking tobacco~~ cessation products ~~for pregnant women and children.~~ (4-4-13)( )
  - b.** Prescriptions for Nonlegend Products. Prescriptions for nonlegend products may include: (3-30-07)
    - i. Insulin; (3-30-07)
    - ii. Disposable insulin syringes and needles; (3-30-07)
    - iii. Oral iron salts; (4-4-13)
    - iv. Permethrin; and (4-4-13)
    - v. ~~Smoking Tobacco~~ cessation products ~~for pregnant women and children.~~ (4-4-13)( )
- 06. Limitation of Quantities.** Medication refills provided before at least seventy-five percent (75%) of the estimated days' supply has been utilized are not covered, unless an increase in dosage is ordered. Days' supply is the number of days a medication is expected to last when used at the dosage prescribed for the participant. No more than a thirty-four (34) days' supply of continuously required medication is to be purchased in a calendar month as a result of a single prescription with the following exceptions: (3-30-07)
- a.** Doses of Medication. Up to one hundred (100) doses of medication may be dispensed, not to exceed a one hundred (100) day supply for: (3-30-07)
    - i. Cardiac glycosides; (3-30-07)
    - ii. Thyroid replacement hormones; (3-30-07)
    - iii. Prenatal vitamins; (3-30-07)
    - iv. Nitroglycerin products - oral or sublingual; (3-30-07)
    - v. Fluoride and vitamin/fluoride combination products; and (3-30-07)
    - vi. Nonlegend oral iron salts. (3-30-07)
  - b.** Oral Contraceptive Products. Oral contraceptive products may be dispensed in a quantity sufficient for one (1), two (2), or three (3) cycles. (3-30-07)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.05.04 - RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE**  
**AND VICTIM ASSISTANCE GRANT FUNDING**

**DOCKET NO. 16-0504-1301**

**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 39-5209, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 Idaho Council on Domestic Violence and Victim Assistance (ICDVVA) is revising the "Incorporation by Reference" section of these rules. Specifically, the documents entitled: "Domestic Violence Program and Personnel Standards" and the "Sexual Assault Program and Personnel Standards" are being combined into a single standards manual entitled: "Service Standards for ICDVVA-Funded Programs." This revision is being done to reflect changes in federal regulations and program practices made since 1998, as well as incorporate program enhancements developed with providers to improve the quality of services to victims of crime in Idaho.

**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 and deemed not feasible because informal negotiated rulemaking has already been conducted. Changes to the standards manuals have been drafted in collaboration with the program's service providers.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the standards manual entitled: *Service Standards for ICDVVA-Funded Programs*, edition 2014-1, effective July 1, 2014, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from the Idaho Council on Domestic Violence and Victim Assistance or at: <http://www.icdv.idaho.gov>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luann Dettman at (208) 332-1540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock, DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

phone: (208) 334-5500  
fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0504-1301  
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.

~~01. **General.** Unless provided otherwise, any reference in these rules to any document identified in Section 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "document" includes codes, standards, or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)~~

~~02. **Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available: (5-3-03)~~

~~a. At the Idaho Council on Domestic Violence and Victim Assistance, 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (3-30-11)~~

~~b. On the internet at: <http://www.icdv.idaho.gov>. (5-3-03)~~

~~031. **Documents Incorporated by Reference.** In accordance with Section 67-5229, Idaho Code, the following documents are incorporated by reference into ~~these~~ this chapter of rules: (5-3-03)( )~~

~~a. "Domestic Violence Program and Personnel Standards," "Service Standards for ICDVVA-Funded Programs," Edition 2014-1, published by the Idaho Council on Domestic Violence and Victim Assistance, effective November 20, 1998 July 1, 2014. (5-3-03)( )~~

~~b. "Minimum Standards for Domestic Violence Offender Intervention Programs," published by the Idaho Council on Domestic Violence and Victim Assistance, edition 2011-1, effective July 1, 2011. (3-29-12)~~

~~c. "Sexual Assault Program and Personnel Standards," published by the Idaho Council on Domestic Violence and Victim Assistance, effective April 27, 2001. (5-3-03)~~

~~02. **Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available: ( )~~

~~a. At the Idaho Council on Domestic Violence and Victim Assistance, 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. ( )~~

~~b. On the internet at: <http://www.icdv.idaho.gov>. ( )~~

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.05.07 - THE INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT

DOCKET NO. 16-0507-1301

#### 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 56-202(b), 56-203(1) and (2), 56-209, 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Statutes governing this chapter of rules encompass all public assistance programs and providers, but the current rules limit the scope for investigations and enforcement actions to Medicaid providers and services. This rulemaking is being done to include all public assistance providers and programs in order to align these rules with statutes. By aligning the rules with statutes, the Department will increase accountability for all public assistance programs to help prevent fraud and abuse of public funds.

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

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

This rulemaking has no anticipated fiscal impact to state general funds or any other funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it is not feasible to negotiate rules which are being changed to mirror statutes for public assistance programs.

**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 Ben Johnson at (208) 334-6661.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET 16-0507-1301  
(Only those Sections being amended are shown.)

**010. DEFINITIONS AND ABBREVIATIONS.**

For purposes of this chapter of rules, the following terms ~~will be used as defined below~~ apply. (3-30-07)( )

**01. Abuse or Abusive.** Provider practices that are inconsistent with sound fiscal, business, child care, or medical practices, and result in an unnecessary cost to ~~the Medicaid~~ a public assistance program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a medical assistance recipient. ~~It also includes recipient practices that result in unnecessary cost to the Medicaid program, or recipient utilization practices which may endanger their personal health or safety.~~ (3-30-07)( )

**02. Access to Documentation and Records.** To review and copy records at the time a written request is made during normal business hours. Documentation includes all materials as described in Section 101 of these rules. (3-30-07)

**03. Claim.** Any request or demand for payment, or document submitted to initiate payment, of for items or services provided under ~~the state's medical~~ a public assistance program, whether under a contract or otherwise. (3-30-07)( )

**04. Conviction.** An individual or entity is considered to have been convicted of a criminal offense: (3-30-07)

**a.** When a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (3-30-07)

**b.** When there has been a finding of guilt against the individual or entity by a federal, state, or local court; (3-30-07)

**c.** When a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court; or (3-30-07)

**d.** When the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. (3-30-07)

**05. Department.** The Idaho Department of Health and Welfare, its authorized agent or designee. (3-30-07)

**06. Exclusion.** A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid. (3-30-07)

**07. Fraud or Fraudulent.** An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. (3-30-07)

**08. Knowingly, Known, or With Knowledge.** A person, with respect to information or an action, who: ( )

**a.** ~~h~~Has actual knowledge of the information or an action; ( )

**b.** ~~a~~Acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or ( )

~~c.~~ ~~A~~cts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (3-30-07)( )

**09. Managing Employee.** A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. (3-30-07)

**10. Medicaid.** Idaho's Medical Assistance Program. (3-30-07)

**11. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-30-07)

**12. Ownership or Control Interest.** A person or entity that: ( )

**a.** ~~H~~as an ownership interest totaling twenty-five percent (25%) or more in an entity; ( )

**b.** ~~I~~s an officer or director of an entity that is organized as a corporation; ( )

**c.** ~~I~~s a partner in an entity that is organized as a partnership; or ( )

**d.** ~~I~~s a managing member in an entity that is organized as a limited liability company. (3-30-07)( )

**13. Participant.** An individual or recipient who is eligible and enrolled in any public assistance program. ( )

**134. Person.** An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private. (3-30-07)

**145. Program.** The Any public assistance program, including the Medicaid P program and Idaho's State Plan, or any parts thereof, including Idaho's State Plan. (3-30-07)( )

**156. Provider.** Any individual, organization, agency, or business other entity furnishing medical goods providing items or services in compliance with Department rules who has a Medicaid provider number and has entered into a written provider agreement with the Department under a public assistance program. (3-30-07)( )

**167. Provider Agreement.** A written agreement between the Department and a provider or group of providers of supplies or services. This agreement contains any terms or conditions deemed appropriate by the Department. (3-30-07)

**18. Public Assistance Program.** Assistance for which provision is made in any federal or state law existing, or hereafter enacted, by the state of Idaho or the congress of the United States by which payments are made from the federal government to the state in aid, or in respect to payment by the state for welfare purposes to any category of needy person, and any other program of assistance for which provision for federal or state funds for aid may from time to time be made. ( )

**179. Recoup and Recoupment.** The collection of funds for the purpose of recovering overpayments made to providers for items or services the Department has determined should not have been paid. The recoupment may occur through the collection of future claims paid or other means. (3-30-07)

~~1820.~~ **Sanction.** Any abatement or corrective action taken by the Department which is appealable under Section 003 of these rules. (3-30-07)

~~1921.~~ **State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-30-07)

~~202.~~ **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program



jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)

~~243.~~ **Title XXI.** Title XXI of the Social Security Act, known as the *State* Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-30-07)( )

**011. -- 019. (RESERVED)**

**020. DEPARTMENT ACTIONS.**

When an instance of fraud, abuse, or other misconduct is identified, the Department will take action to correct the problem as provided in this section. Such corrective action may include, denial of payment, recoupment, payment suspension, provider agreement suspension, termination of provider agreement, imposition of civil monetary penalties, exclusion, *recipient participant* lock-in, referral for prosecution, or referral to state licensing boards. (3-30-07)( )

**021. - 099. (RESERVED)**

**100. INVESTIGATION AND AUDITS.**

Investigation and audits of provider fraud, abuse or misconduct conducted by the Department's Bureau of Audits and Investigations or its successor are governed under this chapter of rules. (3-30-07)

**01. Investigation Methods.** Under Section 56-227(e5), Idaho Code, the Department will investigate and identify potential instances of fraud, abuse, or other misconduct by any person related to *or involvement* in *the public assistance* programs *administered by the Department*. Methods may include: review of computerized reports, referrals to or from other agencies, health care providers or persons, or conducting audits and interviews, probability sampling and extrapolation, and issuing subpoenas to compel testimony or the production of records. Reviews may occur on either pre-payment or post-payment basis. (3-30-07)( )

**02. Probability Sampling.** Probability sampling shall be done in conformance with generally accepted statistical standards and procedures. "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability, a mathematical theory used to study the occurrence of random events. (3-30-07)

**03. Extrapolation.** Whenever the results of a probability sample are used to extrapolate the amount to be recovered, the demand for recovery will be accompanied by a clear description of the universe from which the sample was drawn, the sample size and method used to select the sample, the formulas and calculation procedures used to determine the amount to be recovered, and the confidence level used to calculate the precision of the extrapolated overpayment. "Extrapolation" means the methodology whereby an unknown value can be estimated by projecting the results of a probability sample to the universe from which the sample was drawn with a calculated margin of error. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. SUSPENSION OF PAYMENTS PENDING INVESTIGATION.**

The Department may suspend *public-assistance* payments in whole or part in a suspected case of fraud or abuse pending investigation and conclusion of legal proceedings related to the provider's alleged fraud or abuse. When payments have been suspended under this section of rule, the Department will provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal. (3-30-07)( )

**01. Basis for Suspension of Payments.** When the Department through reliable evidence suspects fraud or abuse, or when a provider fails to provide immediate access to records, *Medicaid public-assistance* payments may be withheld or suspended. (3-30-07)( )

**02. Notice of Suspension of Payments.** The Department may **not** withhold **public-assistance** payments without first notifying the provider of its intention to do so. The Department will send written notice **according to 42 CFR 455-23(b)** within five (5) days of taking such action. **(3-30-07)( )**

**03. Duration of Suspension of Payments.** The withholding of payment actions under this section of rule will be temporary and will not continue after: **(3-30-07)**

**a.** The Department or the prosecuting authorities determine there is insufficient evidence of fraud or willful misrepresentation by the provider; or **(3-30-07)**

**b.** Legal proceedings related to the provider's alleged fraud or abuse are completed. **(3-30-07)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**230. TERMINATION OF PROVIDER STATUS.**

Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period of five (5) years from the date the Department's action becomes final to, any individual or entity who: **(3-30-07)**

**01. Submits an Incorrect Claim.** Submits a claim with knowledge that the claim is incorrect, including reporting costs as allowable which were known to be disallowed in a previous audit, unless the provider clearly indicates that the item is being claimed to establish the basis for an appeal and each disputed item or amount is specifically identified. **(3-30-07)**

**02. Fraudulent Claim.** Submits a fraudulent claim. **(3-30-07)**

**03. Knowingly Makes a False Statement.** Knowingly makes a false statement or representation of material fact in any document required to be maintained or submitted to the Department. **(3-30-07)**

**04. Medically Unnecessary.** Submits a claim for an item or service known to be medically unnecessary. **(3-30-07)**

**05. Immediate Access to Documentation.** Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. **(3-30-07)**

**06. Non-Compliance With Rules and Regulations.** Fails repeatedly or substantially to comply with the rules and regulations governing medical assistance payments **or other public assistance program payments.** **(3-30-07)( )**

**07. Violation of Material Term or Condition.** Knowingly violates any material term or condition of its provider agreement. **(3-30-07)**

**08. Failure to Repay.** Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. **(3-30-07)**

**09. Fraudulent or Abusive Conduct.** Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of health care **or public assistance** items or services. **(3-30-07)( )**

**10. Failure to Meet Qualifications.** Fails to meet the qualifications specifically required by rule or by any applicable licensing board. **(3-30-07)**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-1301**

**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 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is to clarify and reflect current practices around in-home child care. ICCP respects the rights of these families and have not required health inspections in order for them to be eligible for a child-care subsidy. The current rules do not provide an exception for the health and safety inspections, which needs to be in rule. Federal law allows states to waive in-home child care health and safety inspection requirements but not training requirements.

**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:

This rulemaking has no anticipated fiscal impact to any funds, because the change is being made to reflect current practice.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not feasible because the change being made was putting into rule what is current practice for conducting business for in-home child care and would not impact those individuals affected by the change.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET 16-0612-1301  
(Only those Sections being amended are shown.)

**401. IN-HOME CARE HEALTH AND SAFETY REQUIREMENTS.**

Each in-home care provider is responsible to ensure that health and safety requirements are met for children being cared for in the children's own home. ( )

01. **Health and Safety Inspections.** In-home health and safety inspections, described in Section 802 of these rules, are not required for in-home care providers caring for children in the children's own home. ( )

02. **Health and Safety Training.** Because in-home care providers are exempt from health and safety inspections, each in-home care provider must complete health and safety training provided by the local Health District covering requirements listed in Section 802 of these rules. ( )

~~401.2.~~ -- 499. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. HEALTH AND SAFETY REQUIREMENTS.**

All providers must comply with the health and safety requirements listed in Subsections 802.01 through 802.10 of this rule. ~~The~~ All providers must agree to a health and safety inspection, with the exception of in-home child care described in Section 401 of these rules. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law.

~~(7-1-09)~~( )

**01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)

**02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)

**03. Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (4-2-08)

**04. Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be stored out of the reach of children. (4-2-08)

**05. Emergency Communication.** A telephone or some type of emergency communication system is required. (4-2-08)

**06. Smoke Detectors, Fire Extinguishers, and Exits.** A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)

**07. Hand Washing.** Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)

**08. CPR/First Aid.** Providers must insure that at all times children are present at least one (1) adult on

the premises has current certification in pediatric rescue breathing and first aid treatment from a certified instructor. (4-2-08)

**09. Health of Provider.** Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)

**10. Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (4-2-08)

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

**16.07.30 - BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS**

**DOCKET NO. 16-0730-1301 (NEW CHAPTER)**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the Regional Mental Health Services Act, Title 39, Chapter 31, Idaho Code; also Sections 56-1003, 56-1004, 56-1004A, 56-1007 and 56-1009, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**\*ORIGINATING LOCATION -- LIVE MEETING\***

**Friday, October 18, 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\***

<b>Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814</b>	<b>Region II Office – Lewiston 1st Floor Conference Rm. 1118 “F” Street Lewiston, ID 83501</b>
<b>Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605</b>	<b>Region IV Office – Boise Room 137 1720 Westgate Drive, Suite A Boise, ID 83704</b>
<b>Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301</b>	<b>Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201</b>
<b>Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402</b>	

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

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

The proposed chapter establishes the benefit and eligibility process for behavioral health community crisis centers in the state of Idaho. These programs will provide behavioral health crisis services to persons residing in Idaho.

**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:

These rules will provide an opportunity for the development of behavioral health community crisis centers. The Department of Health and Welfare may be making a budget request separate from these rules. However, there is no anticipated fiscal impact to the state general fund or any other funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that there is currently a lack of identifiable representatives of affected interests. Behavioral health community crisis centers are a component of the Idaho Behavioral Health system of care transformation. In the transformed structure, the Department of Health and Welfare retains its role as the state mental health authority and has responsibility for oversight of the behavioral health system of care. The proposed chapter establishes behavioral health community crisis centers and does not impact existing processes for private providers. There are no stakeholders outside of the Department at this time.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following two items are being incorporated by reference into these rules to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication.

1. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-V), 2013.
2. *Idaho Behavioral Health Standards*, Idaho Department of Health and Welfare, 2013.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Casey Moyer at (208) 334-4916.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500; fax: (208) 334-6558  
email: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0730-1301**

**IDAPA 16**  
**TITLE 07**  
**CHAPTER 30**

**16.07.30 - BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS**

**000. LEGAL AUTHORITY.**

The Idaho Legislature has delegated to the Department of Health and Welfare, as the state mental health authority, the responsibility to ensure that mental health services are available throughout the state of Idaho to individuals who need such care and who meet certain eligibility requirements under the Regional Mental Health Services Act. This chapter is authorized under the Regional Mental Health Services Act, Title 39, Chapter 31, Idaho Code, as well as Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.07.30, "Behavioral Health Community Crisis Centers." ( )

**02. Scope.** These rules establish the benefit and eligibility process for behavioral health community crisis centers in the state of Idaho. These programs provide behavioral health crisis services to persons residing in Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These materials are available for public inspection and copying at cost in the main office of the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ( )

**003. ADMINISTRATIVE APPEALS.**

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

**004. INCORPORATION BY REFERENCE.**

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

**01. DSM-V.** American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), Arlington, VA, American Psychiatric Association, 2013, copies of the manual are available from the American Psychiatric Association, 1000 Wilson Blvd., Arlington VA 22209-3901. A copy of the manual is also available for public review at the Department of Health And Welfare, 450 West State Street, Boise, Idaho, 83702. ( )

**02. Idaho Behavioral Health Standards.** Idaho Behavioral Health Standards, Boise, Idaho, Idaho Department of Health and Welfare, 2013. A copy of the manual is available for public review at the Department of Health And Welfare, 450 West State Street, Boise, Idaho, 83702. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except



holidays designated by the state of Idaho. ( )

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

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

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

**05. Internet Websites.** The Department internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality of Records.** Any disclosure of confidential information used or disclosed in the course of the Departments business is subject to the restrictions in state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

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

**007. -- 008. (RESERVED)**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History and Background Check.** All owners, operators, employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide direct 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." ( )

**02. Availability to Work or Provide Service.** 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. ( )

**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 a behavioral health community crisis center. ( )

**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 a behavioral health community crisis center. 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 choose 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 are 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 AND ABBREVIATIONS.**  
For the purposes of these rules, the following terms are used as defined below: ( )
- 01. Adolescent.** An individual between the ages of fourteen (14) and eighteen (18). ( )
- 02. Adult.** An individual eighteen (18) years of age or older. ( )
- 03. Applicant.** An adult individual who is seeking crisis services through a behavioral health community crisis center who has completed, or has had completed on his behalf, an application for services. ( )
- 04. Behavioral Health Community Crisis Center.** An outpatient facility operated by a hospital or mental health center that provides evaluation, intervention, and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with co-occurring substance use disorder. The facility may not provide services to a client for more than twenty-three (23) hours and fifty-nine (59) minutes from the time the client arrives at the facility. The facility must discharge or transfer the client to the appropriate level of care. ( )
- 05. Child.** An individual under the age of fourteen (14) years. ( )
- 06. Client.** A person receiving services through a behavioral health community crisis center. The term “client” is synonymous with the following terms: patient, participant, resident, consumer, or recipient of treatment or services. ( )
- 07. 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. ( )

- 08. Facility.** A behavioral health community crisis center, or a person authorized to act on its behalf. ( )
- 09. 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 pass a criminal history and background check. ( )
- 10. Individualized Service Plan.** A written action plan based on an intake assessment that identifies the applicant's needs, strategies for services to meet those needs, treatment goals, and objectives. ( )
- 11. Intake Assessment.** The collection of data, analysis, and review used to screen and determine whether an applicant is eligible for behavioral health community crisis services. ( )
- 12. Outpatient Crisis Services.** An organized non-residential service, delivered in a variety of settings, in which behavioral health treatment personnel provide professionally directed evaluation and treatment for individuals experiencing crisis situations. ( )
- 011. -- 099. (RESERVED)**

**GENERAL PROVISIONS OF BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS**  
**(Sections 100 through 250)**

- 100. ACCESSING BEHAVIORAL HEALTH COMMUNITY CRISIS CENTER SERVICES.** Services may be accessed by eligible applicants through an application and request for an initial intake eligibility assessment. ( )
- 01. Application for Services.** An application for services is completed by the applicant upon entry into the facility. The voluntarily completed application serves as consent for further assessment of the applicant. ( )
- 02. Intake Assessment.** The facility will conduct a mental health screening using a Department approved instrument. The facility staff will gather information as needed, in order to complete the screening and intake process. ( )
- 101. INTAKE ASSESSMENT.** The facility must establish admission criteria that assess the individual client's needs and the appropriateness of the services to meet those needs. ( )
- 01. Eligibility.** At a minimum, admission criteria must require that the client: ( )
- a.** Be at least eighteen (18) years of age; ( )
  - b.** Be medically stable, with the exception of the person's mental illness or serious mental illness with a co-occurring substance use disorder; ( )
  - c.** Have a DSM-V mental health diagnosable condition; and ( )
  - d.** Be in need of frequent observation on an ongoing basis. ( )
- 02. The Facility Determines Eligibility and Capacity for Community Crisis Services.** The total number of adults who are eligible for behavioral health community crisis services through the facility will be established by the facility. The facility may, in its sole discretion, limit or prioritize behavioral health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as availability of funding, the degree of financial need, the degree of clinical need, or other factors. ( )
- 03. Ineligibility Conditions.** An adult who does not meet the requirements under Subsection 101.01 of

this rule is not eligible for behavioral health community crisis services. An adult with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorder Services," or IDAPA 16.04.11, "Developmental Disability Agencies," for substance use or developmental disability services. ( )

**102. ELIGIBILITY DETERMINATION.**

**01. Notification of Eligibility Determination.** The facility will determine the adult's eligibility for behavioral health community crisis services in accordance with Section 101 of these rules within one (1) hour of completing an intake assessment. The written notice will include: ( )

- a. Client name and identifying information; ( )
- b. A statement of the decision; ( )
- c. A concise statement of the reasons for the decision; and ( )
- d. Referral to other appropriate community resources, when applicable. ( )

**02. Right to Accept or Reject Services.** If the facility determines that an applicant is eligible for services through the facility, an individual has the right to accept or reject services offered by the facility. ( )

**03. Reapplication for Community Crisis Services.** If the facility determines that an applicant is not eligible for services through the facility, the applicant may reapply after twenty-four (24) hours, or at any time upon a showing of a substantial, material change in circumstances. ( )

**04. Information that Must be Provided to the Participant.** Upon admission, or as soon as possible if not clinically appropriate upon admission, the facility must provide each client with the following: ( )

- a. A written statement of client rights which, at a minimum, includes the applicable patient rights; ( )
- b. A copy of the crisis response facility grievance procedure; and ( )
- c. The written rules of conduct, including the consequences for violating the rules. ( )

**103. EMERGENCY SERVICES.**

**01. Identification of Emergency Services Needed.** If emergency services are clinically necessary, as determined by facility staff, the facility will identify the emergency services that are consistent with the applicant's level of need and a preliminary finding from the intake assessment. ( )

**02. Immediate Intervention.** The facility must ensure inpatient care is available through a transfer agreement for clients in need of a higher level of care. ( )

**03. Client Management.** Use of de-escalation techniques including physical and nonphysical methods, by trained staff is permissible. ( )

**104. -- 199. (RESERVED)**

**200. INDIVIDUALIZED SERVICE PLAN.**

**01. Individualized Service Plan.** A service plan will be developed by the facility in collaboration with the client, and may include service providers. This plan will be specific, measurable, and realistic in identification of the goal(s) for crisis stabilization, relevant areas of concern, and desired results as outlined in the Idaho Behavioral Health Standards. ( )

**02. Referrals.** The facility must make referrals for services that would help prevent or diminish future crises at the time of the client's discharge. Referrals may include additional treatment, training, or community-based services, such as assistance securing housing. ( )

**201. -- 205. (RESERVED)**

**206. OUTCOMES FOR COMMUNITY CRISIS CENTERS.**

Outcomes for behavioral health community crisis centers are measured through the administration of a satisfaction survey and a standardized assessment tool. ( )

**207. USE OF PUBLIC FUNDS AND BENEFITS.**

Public funds and benefits will be used to provide services for eligible adults under Section 102 of these rules. Services are planned and implemented to maximize community integration and the individual's ability to provide adequate safety and well-being in his community. Services are individually planned to meet the unique needs of each participant. ( )

**208. -- 210. (RESERVED)**

**211. CLINICAL RECORDS.**

Every behavioral health community crisis center must maintain, control, and supervise client records and is responsible for maintaining their quality in accordance with the requirements set forth in these rules. ( )

**01. Active Client Records Kept at the Facility Site.** The active client's records must be kept at the facility site where the client is being treated. ( )

**02. Compilation, Storage, Dissemination, and Accessibility of Client Records.** The facility must have written policies and procedures governing the compilation, storage, dissemination, and accessibility of client records. ( )

**03. Electronic Storage of Client Data.** When a facility stores client data in electronic or other types of automated information systems, they must have security measures to prevent inadvertent or unauthorized access to such data. ( )

**04. Length of Maintenance of Client Records.** Client records must be maintained for a minimum of five (5) years from the date they are officially closed. ( )

**212. CONTENTS OF CLIENT RECORDS.**

**01. Intake Assessment.** As defined in Section 101 of these rules. ( )

**02. Eligibility Determination.** As defined in Section 102 of these rules. ( )

**03. Service Plan.** As defined in Section 200 of these rules. ( )

**04. Progress Notes.** ( )

**a.** The facility must maintain progress notes for each client. ( )

**b.** The progress notes must be completed following the intake assessment and eligibility determination and updated by the end of each shift into the client's clinical record. ( )

**c.** The progress notes must describe at minimum the following: ( )

**i.** Client's physical condition; ( )

**ii.** Mental status; ( )

- iii. Involvement in treatment services; and ( )
- iv. Contain a signature and date of staff member completing the note. ( )
- 05. Discharge Summary.** A discharge summary must be entered into the client record and will contain at minimum: ( )
  - a. Client status at discharge; ( )
  - b. Treatment progress; ( )
  - c. Summary of services provided; and ( )
  - d. Referral for further treatment. ( )

**213. -- 249. (RESERVED)**

**250. FINANCIAL RESPONSIBILITY FOR COMMUNITY CRISIS CENTER SERVICES.**

Individuals receiving behavioral health community crisis services through the Department are responsible for paying for the services provided. Individuals must complete a "Fee Determination Form" prior to the delivery of behavioral health community crisis services. The financial responsibility for each service will be in accordance with the individual's ability to pay as determined under Sections 300 and 400 of IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." ( )

**251. -- 999. (RESERVED)**

## IDAPA 17 - INDUSTRIAL COMMISSION

### 17.02.09 - MEDICAL FEES

#### DOCKET NO. 17-0209-1301

### 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 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 Rule adjusts the dispensing fees for pharmacies allowed under the pharmaceutical fee schedule. These fees were determined in collaboration with interested stakeholders. Under the physician fee schedule, a correction is made to a range of CPT codes in the conversion factor table that had been improperly included in Surgery Group 2. This Rule seeks to make permanent the changes already in effect by the Temporary Rule.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

**FISCAL IMPACT:** The following is a specific 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 negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule complies with the requirements of Section 72-803, Idaho Code, requiring the Commission to adopt, and adjust as necessary each year, rules governing the approval of fees for medical services in workers' compensation cases.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst 208-334-6084.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 26th day of August, 2013.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-5145



Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.  
 The temporary effective date is July 1, 2013.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,  
 Volume 13-7, July 3, 2013, pages 60 through 63.

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO 17-0209-1301**  
**(Only those Sections being amended are shown.)**

**031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter “the Commission”) hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. (4-7-11)

**01. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services provided by physicians. (4-7-11)

**02. Adoption of Standard for Physicians.** The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. (4-7-11)

**03. Conversion Factors.** The following conversion factors shall be applied to the *fully implemented total* facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	\$60.33
Surgery - Group One	22000 - 22999	Spine	\$135.00
	23000 - 24999	Shoulder, Upper Arm, & Elbow	
	25000 - 27299	Forearm, Wrist, Hand, Pelvis & Hip	
	27300 - 27999	Leg, Knee, & Ankle	
	29800 - 29999	Endoscopy & Arthroscopy	
	61000 - 61999	Skull, Meninges & Brain	
	62000 - 62259	Repair, Neuroendoscopy & Shunts	
Surgery - Group Two	63000 - 63999	Spine & Spinal Cord	\$124.00
	28000 - 28999	Foot & Toes	
	64000 <del>00</del> 550 - 64999	Nerves & Nervous System	

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
Surgery - Group Three	10000 - 19999	Integumentary System	\$88.54
	20000 - 21999	Musculoskeletal System	
	29000 - 29799	Casts & Strapping	
	30000 - 39999	Respiratory & Cardiovascular	
	40000 - 49999	Digestive System	
	50000 - 59999	Urinary System	
	60000 - 60999	Endocrine System	
	62260 - 62999	Spine & Spinal Cord	
	<u>64000 - 64549</u>	<u>Nerves &amp; Nervous System</u>	
	65000 - 69999	Eye & Ear	
Radiology	70000 - 79999	Radiology	\$88.54
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799	Immunization, Injections, & Infusions	\$49.00
	94000 - 94999	Pulmonary / Pulse Oximetry	
	97000 - 97799	Physical Medicine & Rehabilitation	
	97800 - 98999	Acupuncture, Osteopathy, & Chiropractic	
Medicine - Group Two	90800 - 92999	Psychiatry & Medicine	\$70.00
	93000 - 93999	Cardiography, Catheterization, Vascular Studies	
	95000 - 96020	Allergy / Neuromuscular Procedures	
	96040 - 96999	Assessments & Special Procedures	
	99000 - 99607	E / M & Miscellaneous Services	

(7-1-13)( )

**04. Anesthesiology.** The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-7-11)

**05. Adjustment of Conversion Factors.** The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions in accordance with Section 72-803, Idaho Code. (4-7-11)

**06. Services Without CPT Code, RVU or Conversion Factor.** The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 0345, below. (4-7-11)( )

**07. Coding.** The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers

will be reimbursed as follows: (4-7-11)

- a. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)
- b. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (4-7-11)
- c. Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)
- d. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

**08. Medicine Dispensed By Physicians.** Reimbursement to physicians for any medicine shall not exceed the acceptable charge calculated for that medicine as if provided by a pharmacy under Section 033 of this rule without a dispensing or compounding fee. Reimbursement to physicians for repackaged medicine shall be the Average Wholesale Price (AWP) for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer. Reimbursement may be withheld until the original manufacturer's National Drug Code (NDC) is provided by the physician. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**033. ACCEPTABLE CHARGES FOR MEDICINE PROVIDED BY PHARMACIES.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medicine provided by a pharmacy under the Idaho Workers' Compensation Law. (7-1-13)

**01. Acceptable Charge.** Payors shall pay providers the acceptable charge for medicine provided by a pharmacy. (7-1-13)

**02. Adoption of Standards for Pharmacies.** The following standards shall be used to determine the acceptable charge for medicine provided by pharmacies. (7-1-13)

a. Brand/Trade Name Medicine. The standard for determining the acceptable charge for brand/trade name medicine shall be the Average Wholesale Price (AWP), plus a ~~two~~ five dollar (~~\$2~~5) dispensing fee. (7-1-13)(    )

b. Generic Medicine. The standard for determining the acceptable charge for generic medicine shall be the Average Wholesale Price (AWP), plus an five ~~eight~~ dollar (~~\$8~~5) dispensing fee. (7-1-13)(    )

c. Compound Medicine. The standard for determining the acceptable charge for compound medicine shall be the sum of the Average Wholesale Price (AWP) for each drug included in the compound medicine, plus a five dollar (\$5) dispensing fee and a two dollar (\$2) compounding fee. All components of the compound medicine shall be identified by their original manufacturer's National Drug Code (NDC) when submitted for reimbursement. Payors may withhold reimbursement until the original manufacturer's NDC assigned to each component of the compound medicine is provided by the pharmacy. Components of a compound medicine without an NDC may require medical necessity confirmation by the treating physician prior to reimbursement. (7-1-13)

d. Prescribed Over-The Counter (OTC) Medicine. The standard for determining the acceptable charge for prescribed over-the-counter (OTC) medicine filled by a pharmacy shall be the reasonable charge, ~~but no plus a two dollar (\$2)~~ dispensing fee. (7-1-13)(    )

**03. Disputes.** The Commission shall determine the acceptable charge for medicine provided by a pharmacy that is disputed based on all relevant evidence in accordance with the procedures set out in Section 035 of this rule. (7-1-13)

## IDAPA 17 - INDUSTRIAL COMMISSION

### 17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1301

#### 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 72-508, 72-301, 72-304 and 72-302, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule establishes an annual deductible policy reporting period of March 3rd to coincide with the premium tax due date; and requires the mandatory data elements in the proof of coverage reporting. This rule change also removes the Appendices B and C reporting forms from the rule but directs insurance carriers to the Commission's address or website to obtain report forms.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact to the General Fund or to the Commission's fund as a result of these proposed changes.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission in the drafting of these rules.

**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 Jane McClaran, (208) 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 18, 2013.

DATED this 27th day of August, 2013.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

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

Idaho Industrial Commission office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., except holidays designated by the state of Idaho. The mailing address for filing documents is Idaho Industrial Commission, PO BOX 83720, Boise, ID 83720-0041. The Commission office is located at 700 S. Clearwater Lane, Boise, ID 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the Public Records Act. ( )

**0047. -- 009. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. (RESERVED)**

**012. RULES GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.**

**01. Deposit With State Treasurer.** To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. (4-7-11)

**02. Application.** Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: (4-7-11)

**a.** A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; (4-7-11)

**b.** The latest audited financial statement of said carrier; (4-7-11)

**c.** The name and address of the agent for service of process in Idaho; (4-7-11)

**d.** The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; (4-7-11)

**e.** A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. (4-7-11)

**f.** A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein. (4-7-11)

**SURETY BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law. Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

This bond is issued for an indefinite term to begin on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and will continue in full force and effect until terminated in either of the following two (2) manners: This bond may be cancelled by the Surety by filing sixty (60) days' written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (4-7-11)

**g.** A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. (4-7-11)

**h.** A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; (4-7-11)

**i.** A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; (4-7-11)

**j.** A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and (4-7-11)

**k.** A statement that said carrier will make such reports to the Commission as it may require in reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. (4-7-11)

**0123. RULES GOVERNING INSURANCE CARRIERS.**

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: (4-7-11)

**01. Maintain Statutory Security Deposits with the State Treasurer. (4-7-11)**

**a.** Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. (4-7-11)

**b.** In addition to the security required in Subsection 0123.01.a., of this rule, each insurance carrier

shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 01~~2~~<sup>2</sup>.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. (4-7-11)(    )

**c.** Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. (4-7-11)

**02. Appoint Agent for Service of Process.** Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. (4-7-11)

**03. Maintain Resident Idaho Office.** Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. (4-7-11)

**a.** Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. (4-7-11)

**b.** Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. (4-7-11)

**04. Supply Forms.** Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the ~~public information section~~ Employer Compliance Bureau of the Industrial Commission, ~~700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, telephone (208)334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-7-11)(    )

**05. Comply with Industrial Commission Reporting Requirements.** Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. (4-7-11)

**06. Report Proof of Coverage.** (4-7-11)

**a.** Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, ~~700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-7-11)(    )

**b.** As an alternative to Subsection 01~~23~~<sup>23</sup>.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. (4-7-11)(    )

**c.** The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout, data element requirements, and transaction standards is available upon request from the Employer Compliance Bureau, of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). Each

insurance carrier shall report data for all mandatory elements in the current IAIABC proof of coverage record layout and transaction standards on each policy reported. (4-7-11)( )

**d.** The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. (4-7-11)

**07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days.** Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. (4-7-11)

**08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute.** Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. (4-7-11)

**09. Report Election of Coverage on Form IC52 or Similar Format.** Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. (4-7-11)

**10. Report Deductible Policy.** On or before March 3rd of each year, every insurance carrier shall submit a report of all deductible policies that were issued and in effect during the previous calendar year. That report shall be submitted in a form substantially similar to the current "Deductible Policy Report" available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at www.iic.idaho.gov. The report shall include the following information: insured name, policy number, effective and expiration dates, deductible amount, the premium charged for the policy before credit for the deductible and the final premium after credit for the deductible. ( )

**101. Report Outstanding Awards.** Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. (4-7-11)

**a.** The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. (4-7-11)

**b.** The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. (4-7-11)

**c.** The report shall be submitted on or in a format that is substantially the same as the current Form IC36A, "Report of Outstanding Awards – Insurance Carriers" which follows this chapter as Appendix B available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at www.iic.idaho.gov. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. (4-7-11)( )

**d.** The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. (4-7-11)

**e.** The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. (4-7-11)

**112. Comply with Law and Rules.** Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. (4-7-11)



~~0134~~. -- 050. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**271. RULES GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.**

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. (4-7-11)

**01. Filing.** The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. (4-7-11)

**02. Form.** The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," ~~contained in Appendix C at the end of this chapter~~ available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-7-11)( )

**03. Report Required When No Indemnity Paid.** If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. (4-7-11)

**04. Penalty for Late Filing.** A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. (4-7-11)

**a.** A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. (4-7-11)

**b.** A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (4-7-11)

**c.** A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. (4-7-11)

**05. Estimating Indemnity Payments for Entities That Fail to Report Timely.** If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). (4-7-11)

**06. Adjustment for Overpayments or Underpayments.** Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. (4-7-11)

272. -- 999. (RESERVED)

**APPENDIX A**

**IC52 ELECTION OF COVERAGE**

<b>Check the appropriate box</b>	
<input type="checkbox"/> <b>Election</b>	<input type="checkbox"/> <b>Revocation of Election</b>

The undersigned hereby notifies the Industrial Commission of the following:

- Household domestic service
- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling in his household. (Applies only to sole-proprietorships)
- Employment as the owner of a sole proprietorship
- Employment of a working member of a partnership or a limited liability company (Circle either partnership or Limited Liability Company; if the election applies only to certain partners/members, name the covered partners/members.)
- Employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof (If the election applies only to certain corporate officers, name the covered officers)
- Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States
- Pilots of agricultural spraying or dusting planes
- Associate real estate brokers and real estate salesmen paid solely by commission
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

(Name of Insurance Company)

Policy Number \_\_\_\_\_

Insured Name \_\_\_\_\_

Effective Date of Election/Revocation \_\_\_\_\_

\_\_\_\_\_  
(Signature of authorized representative)

\_\_\_\_\_  
(Employer's signature)

***[APPENDIX B is being deleted]***

***[APPENDIX C is being deleted]***

## IDAPA 17 - INDUSTRIAL COMMISSION

### 17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1301

#### 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 72-508, 72-301, and 72-304, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule change allows the Industrial Commission to require a self-insured employer to provide a Guaranty Resolution that confirms the agreement of joint venturers or a parent corporation to guarantee the payment of all Idaho workers' compensation claims of employees of the self-insured employer. The rule also provides no credit for excess insurance coverage provided by a surplus lines carrier. The rule change also allows the Industrial Commission to presume that the most recent proof of coverage information contained in the Industrial Commission's database is correct for purposes of determining coverage by a self-insured employer. The rule also removes reporting forms from the rule and provides that the forms are available from the Commission or on the Commission's website.

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

There is no fiscal impact to the General Fund or to the Commission's fund as a result of these proposed changes. There is a potential positive fiscal impact to the dedicated Industrial Administration fund, but the amount is unknown.

**FISCAL IMPACT:** The following is a specific 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 negative fiscal impact resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission in the drafting of these rules.

**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 Jane McClaran, (208) 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 27th day of August, 2013.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720

Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

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

Idaho Industrial Commission office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., except holidays designated by the state of Idaho. The mailing address for filing documents is Idaho Industrial Commission, PO BOX 83720, Boise, ID 83720-0041. The Commission office is located at 700 S. Clearwater Lane, Boise, ID 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the Public Records Act. ( )

**~~0047.~~ -- ~~0409.~~ (RESERVED)**

**0120. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Compensation.** All benefits payable under the provisions of the Idaho Workers Compensation Law. (3-29-12)

**02. Indemnity Benefits.** All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (4-7-11)

**03. Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

**04. Payroll.** The gross amount paid by an employer for salaries, wages or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (4-7-11)

**~~011.~~ -- ~~012.~~ (RESERVED)**

**013. RULES GOVERNING QUALIFICATIONS OF SELF-INSURED EMPLOYERS.**

In order to be considered for approval by the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: (4-7-11)

**01. Payroll.** Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000); (4-7-11)

**02. Application.** Submit a completed application, available from the Industrial Commission's Fiscal Section Bureau, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Section Bureau, at 700 S. Clearwater Lane, PO Box 83720-0041, Boise, Idaho 83720-0041; telephone (208) 334-6000. (4-7-11)( )

- 03. Documentation.** Submit documentation satisfactory to the Commission demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement; (4-7-11)
- 04. Adjuster.** Designate in writing a licensed Idaho resident adjuster; (4-7-11)
- 05. Previous Claims.** Provide a history of all workers' compensation claims filed with the employer or the employer's workers' compensation carrier, as well as all compensation paid, during the previous five (5) calendar years. (3-29-12)
- 06. Excess Insurance.** Provide an insurance plan that must include excess insurance coverage and copies of all proposed policies of excess workers' compensation insurance coverage. (~~3-29-12~~) ( )
- 07. Actuarial Study.** Provide an actuarial study prepared by a qualified actuary determining adequate rates for the proposed self-funded worker's compensation plan based upon a fifty percent (50%) confidence level. (3-29-12)
- 08. Feasibility Study.** Provide a self-insurance feasibility study that includes an analysis of the advantages and disadvantages of self insurance as compared to current coverage, and the related costs and benefits. (3-29-12)
- 09. Custodial Agreement.** Set up a custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code; (4-7-11)
- 10. Supplemental Information.** Provide supplemental information as requested; (4-7-11)
- 11. Initial Security Deposit.** Prior to final approval, deposit an initial security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth in Subsection 014.02, of this rule, in the amount of one hundred and fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000.00) of the employer's average annual payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history; (4-7-11)
- 12. Initial Guaranty Agreement.** The Commission may allow or, where financial reports or other factors such as the high risk industry of the employer indicate the need, require an employer that is organized as a joint venture or a wholly owned subsidiary to provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho workers' compensation claims of employees of that joint venture or subsidiary employer seeking to become self-insured. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement and, as applicable, the companion Consent of the Board of Directors, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )
- 123. Written Approval.** Obtain written approval from the Industrial Commission. (4-7-11)
- 014. CONTINUING REQUIREMENTS FOR SELF-INSURED EMPLOYERS.**  
Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall comply with the following requirements: (4-7-11)
- 01. Payroll Requirements.** Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000). Any self-insured employer that does not meet the payroll requirement of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their payroll or obtain workers' compensation coverage with an insurance carrier authorized to write workers' compensation insurance in the state of Idaho. (3-29-12)

**02. Security Deposit with Treasurer. (4-7-11)**

**a.** Maintain a primary security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, a self-insurer's bond in substantially the form set forth below, or in such other form approved by the Commission, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000). In addition thereto, the self-insured employer shall deposit additional security in such amount as the Commission determines is necessary to secure the self-insured employer's total unpaid liability for compensation under the Workers' Compensation Law. No approved security shall be accepted for deposit above its par value. Additional deposits of approved security may be required semi-annually if the market value of an approved investment falls below its par value or if the total value of the employer's security deposit falls below the total security required to be maintained on deposit when calculated in accordance with this rule. ~~(3-29-12)~~( )

**b.** Self-insured employers shall receive a credit for the primary security deposit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. (3-29-12)

**c.** Excess insurance coverage approved by the Commission may apply as a credit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. The Commission must be provided with thirty (30) days advance written notice of any change or cancellation of an approved excess insurance policy. No credit will be given for any excess insurance coverage provided by a surplus lines carrier, as described in Chapter 12, Title 41, Idaho Code. ~~(3-29-12)~~( )

**d.** All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. (4-7-11)

**e.** Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. (4-7-11)

**SELF-INSURER'S COMPENSATION BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, hereinafter called the Principal, as Principal, and the \_\_\_\_\_, a surety corporation authorized to transact a surety business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers' Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers' Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of \_\_\_\_\_ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers' Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers' Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers' Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto.

This bond is issued for an indefinite term to begin on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and will continue in full force and effect until terminated in either of the following two manners: This bond may be cancelled by the Surety by filing sixty (60) days written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal [Section Bureau](#) of the Industrial Commission, [700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041](#), Telephone (208) 334-6000, [or on the Commission's website at www.iic.idaho.gov](#). (4-7-11)(\_\_\_\_)

**03. Continue or Provide Guaranty Agreement.** (\_\_\_\_)

**a.** A self-insured employer that is organized as a joint venture or a wholly owned subsidiary shall continue in effect any guaranty agreement that the Commission has previously allowed or required, until termination is permitted by the Commission. (\_\_\_\_)

**b.** Where an adverse change in financial condition or other relevant factors such as claims history or industry risk indicates the need, a self-insured employer that is organized as a joint venture or a wholly owned subsidiary may be allowed to, or shall upon request, provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho workers' compensation claims of

employees of that joint venture or subsidiary self-insured employer. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement, and as applicable, the companion Consent of the Board of Directors, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**034. Maintain a Licensed Resident Adjuster.** Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: (4-7-11)

- a. Investigate and adjust all claims for compensation; (4-7-11)
- b. Pay all compensation benefits due; (4-7-11)
- c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; (4-7-11)
- d. Enter into compensation agreements and lump sum settlements with Claimants; (4-7-11)
- e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

**045. File Reports.** Report to the Industrial Commission semi-annually, or more often as required by the Commission, total unpaid liability on all open claims. (3-29-12)

- a. The semi-annual report of total unpaid liability shall be filed with the Industrial Commission by the end of the months of January and July. (3-29-12)
- b. The report shall provide the aggregate number of open claims, including indemnity with medical and medical only claims, along with the amount of any compensation paid on open claims, as of the end of each June and December. (3-29-12)
- c. The report shall be filed even if there are no open claims. In that event, the employer shall certify the fact that there are no open claims to be reported. (3-29-12)
- d. The report shall be submitted on or in a format that is substantially the same as the current Form IC-211, "Self-Insured Employer Report of Total Unpaid Liability," ~~which follows this chapter as Appendix A~~ available from the Fiscal Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 ½" x 11") in size. ~~(3-29-12)~~( )
- e. The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the employer shall prepare, certify and file a consolidated report of all unpaid liability. (3-29-12)
- f. A self-insured employer shall also make such other reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. (4-7-11)

**056. Submit to Audits by Industrial Commission.** Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Workers' Compensation Law. For the purpose of determining such premium for uninsured contractors of a self-insured employer, the most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining such coverage. (4-7-11)( )

**067. Comply with Law and Rules.** Comply with the statutes of the state of Idaho and the rules of the



Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Workers' Compensation Law. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**271. RULE GOVERNING REPORTING INDEMNITY AND MEDICAL PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.**

Pursuant to Section 72-327, Idaho Code, every authorized self-insurer authorized to self-insure its workers' compensation obligations in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. (4-7-11)

**01. Filing.** The report of indemnity and medical payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report; which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. (3-29-12)

**02. Form.** The report of indemnity and medical payments shall be submitted in writing on, or in a format substantially the same as the current Form IC2-327, "Workers' Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report," ~~contained in Appendix B at the end of this chapter~~ available from the Fiscal Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-29-12)( )

**03. Report Required When No Indemnity Paid.** If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. (4-7-11)

**04. Penalty for Late Filing.** A penalty shall be assessed by the Commission for filing the report of indemnity and medical payments later than March 3rd each year. (3-29-12)

**a.** A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. (4-7-11)

**b.** A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (4-7-11)

**c.** A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. (4-7-11)

**05. Estimating Indemnity Payments for Entities That Fail to Report Timely.** If an entity required to report indemnity and medical payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). (3-29-12)

**06. Adjustment for Overpayments or Underpayments.** Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. (4-7-11)

**272. -- 999. (RESERVED)**

**[APPENDIX A and APPENDIX B are being removed]**

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.23 - RULES PERTAINING TO THE IDAHO INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

DOCKET NO. 18-0123-1301

#### 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 41-211 and 41-3817, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 update the existing rule consistent with changes made to Title 41, Chapter 38, Idaho Code during the 2013 legislative session in House Bill 197 affecting insurance holding company systems. Changes will include, but not be limited to, setting forth the elements of the new filing requirements for a new Form F – Enterprise Risk Report.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 65.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Thomas A. Donovan at (208) 334-4214, [tom.donovan@doi.idaho.gov](mailto:tom.donovan@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 October 23, 2013.

DATED this 30th day of August, 2013.

Thomas A. Donovan  
Department of Insurance  
700 West State Street – 3<sup>rd</sup> Floor  
Boise ID 83720-0043  
Phone: (208)334-4250  
Fax: (208) 334-4398

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0123-1301  
(Only those Sections being amended are shown.)

18.01.23 - RULES PERTAINING TO ~~THE~~ IDAHO ACQUISITIONS OF CONTROL AND INSURANCE  
HOLDING COMPANY SYSTEMS REGULATORY ACT

**000. ~~(RESERVED)~~ LEGAL AUTHORITY**

These rules are promulgated by the Director of the Department of Insurance pursuant to the authority of sections 41-211 and 41-3817, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be referred to as IDAPA 18.01.23, "Rules Pertaining to ~~the~~ Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act." (7-1-99)( )

**02. Scope.** The purposes of these rules are: To set forth rules and procedural requirements which the Director deems necessary to carry out the provisions of the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act, compiled as Sections 41-3801 through 41-3821 Title 41, Chapter 38, Idaho Code, also hereinafter referred to as "the Act." The information called for by these rules is hereby declared to be necessary and appropriate in the public interest and for the protection of policyholders and shareholders of this state. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of Title 41, Chapter 2, and Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-99)( )

~~004. -- 010. (RESERVED)~~

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

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

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

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The department's principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ( )

**04. Web Site Address.** The department's website is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho public records law within Title 9, Chapter 3, Idaho Code. ( )

~~007. -- 009. (RESERVED)~~

**010. DEFINITIONS.**

**01. Executive Officer.** Chief executive officer, chief operating officer, chief financial officer, treasurer.

secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title. ( )

**02. Ultimate Controlling Person.** That person who is not controlled by any other person. ( )

**03. Section 41-3802, Idaho Code.** Unless the context otherwise requires, other terms found in these rules and in Section 41-3802, Idaho Code, are used as defined therein. Other nomenclature or terminology is used as provided for in Title 41, Idaho Code, or industry usage if not defined therein. ( )

## 011. FORMS -- GENERAL REQUIREMENTS.

**01. Forms Intended to Be Guides.** Forms A, B, C, D, ~~and E,~~ and F are intended to be guides in the preparation of statements required by Sections 41-380~~2~~4, 41-380~~8~~9, 41-380~~6~~9 and 41-380~~7~~10, ~~of the Act~~ Idaho Code. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are ~~so~~ prepared in such a manner as to indicate ~~to the reader the~~ clearly the scope and coverage of the items ~~without the necessity of his referring to the text of the items or the instructions thereto~~. All instructions, whether occurring under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made. (7-1-99)( )

**02. Filings of Statement.** Each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Director electronically and at least one hard copy by personal delivery or mail ~~addressed to:~~

~~Director of Insurance  
700 West State Street, 3rd Floor  
Boise, Idaho 83720~~

~~A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the Commissioner of that state has notified the insurer of its request in writing, in which case the insurer has thirty (30) days from receipt of the notice to file such form. The statement shall be manually signed in the manner prescribed on the form. At least one (1) of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed.~~ If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement. (12-24-93)( )

**03. Format.** ~~Statements should be prepared on paper eight and one half by eleven inches (8 1/2" x 11") in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction.~~ Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency. (12-24-93)( )

**04. Hearing.** If an applicant requests a hearing on a consolidated basis under Section 41-3806(3), Idaho Code, in addition to filing the Form A with the Director, the applicant shall file a copy of Form A with the NAIC (National Association of Insurance Commissioners) in electronic form. ( )

## 012. FORMS -- INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS.

**01. Incorporation by Reference.** Information required by any item of Form A, Form B, Form D, ~~or~~ Form E, or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, ~~or~~ Form E, or Form F provided such document or paper is filed as an exhibit to the statement. Excerpts of

documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Director which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing. (7-1-99)( )

**02. Summaries or Outlines.** Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular *facts parts* of any exhibit or document currently on file with the Director which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one (1) of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed. (12-24-93)( )

**013. FORMS -- INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH.**

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Director a separate document: ( )

**01. Identification.** Identifying the information, document or report in question: ( )

**02. Impracticality.** Stating why the filing thereof at the time required is impractical; and ( )

**03. Extension.** Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Director within twenty-eight (28) days after receipt thereof enters an order denying the request. ( )

**0134. FORMS -- ADDITIONAL INFORMATION AND EXHIBITS.**

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, ~~and Form E,~~ there shall be added and Form F, the Director may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, ~~or E, or F~~ shall include on the top of the cover page the phrase: "Change No. [insert number] to" and shall indicate the date of the change and not the date of the original filing. (7-1-99)( )

**014. DEFINITIONS.**

~~**01. Executive Officer.** Any individual charged with active management and control in an executive capacity (including a President, Vice President, Treasurer, Secretary, Controller and any other individual performing functions corresponding to those performed by the foregoing officers) of a person, whether incorporated or unincorporated. (12-24-93)~~

~~**02. Ultimate Controlling Person.** That person who is not controlled by any other person. (12-24-93)~~

~~**03. Terms Defined in Holding Company Act.** Unless the context otherwise requires, other terms found in these rules are used as defined in Section 41-3801 of the Act. Other nomenclature or terminology is according to the Insurance Code, or the industry usage if not defined by the code. (12-24-93)~~

**015. SUBSIDIARIES OF DOMESTIC INSURERS.**

The authority to invest in subsidiaries under Section 41-3803, Idaho Code, is in addition to any authority to invest in subsidiaries which may be contained in any other provision of Title 41, Idaho Code. ( )

**0156. ACQUISITION OF CONTROL -- STATEMENT FILING.**

A person required to file a statement pursuant to Section 41-3802~~4~~, of the Act Idaho Code, shall furnish the required information on Form A, which is hereby made a part of this rule. Such person shall also furnish the required

information on Form E, hereby made a part of this rule and described in Section 019. of this chapter. ~~(7-1-99)~~(\_\_\_\_)

**017. AMENDMENTS TO FORM A.**

The applicant shall promptly advise the Director of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Director's disposition of the application. (\_\_\_\_)

**018. ACQUISITION OF SECTION 41-3804(1)(D) INSURERS.**

**01. Name of the Domestic Insurer.** If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 41-3804(1)(d), Idaho Code, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company." (\_\_\_\_)

**02. References to Insurer.** Where a Section 41-3804(1)(d) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired. (\_\_\_\_)

**0169. PRE-ACQUISITION NOTIFICATION.**

**01. Pre-Acquisition Notification -- Domestic Insurer.** If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Section 41-3802(1)(a), Idaho Code, that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to Section 41-3805B8(3)(a), Idaho Code. ~~(7-1-99)~~(\_\_\_\_)

**02. Pre-Acquisition Notification - Non-Domiciliary Insurer.** If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 41-3805B8, Idaho Code, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition form need be filed if the acquisition is beyond the scope of Section 41-3805B8, Idaho Code, as set forth in Section 41-3805B8(2), Idaho Code. ~~(7-1-99)~~(\_\_\_\_)

**03. Expert Opinion.** In addition to the information required by Form E, the director may wish to require an expert opinion as to the competitive impact of the proposed acquisition. (7-1-99)

**01720. ANNUAL REGISTRATION OF INSURERS -- STATEMENT FILING.**

An insurer required to file a statement pursuant to Section 41-38069, ~~of the Act~~ Idaho Code, shall furnish the required information on Form B, which is hereby made a part of these rules. ~~(12-24-93)~~(\_\_\_\_)

**01821. SUMMARY OF REGISTRATION -- STATEMENT FILING.**

An insurer required to file an annual registration statement pursuant to section 41-38069, ~~of the Act~~ Idaho Code, is also required to furnish information required on Form C, hereby made a part of these rules. ~~An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the Commissioner of that state.~~ ~~(12-24-93)~~(\_\_\_\_)

**01922. AMENDMENTS TO FORM B.**

**01. Amendment to Form B.** An amendment to Form B shall be filed within fifteen (15) days after the end of any month in which there is a material change to the information provided in the annual registration statement. (7-1-99)

**02. Form B Format.** Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. [insert number] to Form B for [insert year]" and shall indicate the date of the change and not the date of the original filings. (7-1-99)

**0203. ALTERNATIVE AND CONSOLIDATED REGISTRATIONS.**

**01. Filing on Behalf of Affiliated Insurers.** Any authorized insurer may file a registration statement

on behalf of any affiliated insurer or insurers which are required to register under Section 41-3806~~9~~, *of the Act Idaho Code*. A registration statement may include information regarding any insurer in the insurance holding system, even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided: (12-24-93)(    )

a. The statement or report contains substantially similar information required to be furnished on Form B; and (12-24-93)

b. The filing insurer is ~~the~~ the principal insurance company in the insurance holding company system. (12-24-93)(    )

**02. Statement That Filing Insurer Is the Principal Insurer.** The question of whether the filing insurer is the principal insurance company in the insurance holding system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a simple statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding system. (12-24-93)

**03. Unauthorized Insurer.** With the prior approval of the Director, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Subsection 020~~3~~.01 ~~a. above of this rule.~~ (7-1-99)(    )

**04. Consolidated Registration Statements.** Any insurer may take advantage ~~of any~~ of the provisions of Section 41-3806~~9~~(8), or 41-3806~~9~~(9), *of the Act Idaho Code*, without obtaining prior approval of the Director. The Director, however, reserves the right to require individual filings if he deems such filings necessary in the interest of clarity, ease of administration ~~of~~ the public good. (12-24-93)(    )

~~021. EXEMPTIONS.~~

~~01. Registration in Domiciliary State. A foreign or alien insurer otherwise subject to Section 41-3806 of the Act shall not be required to register pursuant to said Section of the Act. (12-24-93)~~

~~a. If it is admitted in the domiciliary state of the principal insurer (as that term is defined in Section 024) and if said state is subject to disclosure requirements and standards adopted by statute or regulation which are substantially similar to those contained in Section 41-3806 of the Act, provided, the Director may require a copy of the registration statement or other information filed with the domiciliary state; or (12-24-93)~~

~~b. Until July 1, 1973. (12-24-93)~~

~~02. Alien Insurer. The state of entry of an alien insurer shall be deemed to be its domiciliary state for purposes of Section 017. (7-1-99)~~

~~03. Application by Insurer Not Otherwise Exempt. Any insurer not otherwise exempt or excepted from Section 017 may apply for an exemption from the requirements of Section 41-3806 of the Act by submitting a statement to the Director setting forth its reasons for being exempt. (7-1-99)~~

~~022. DISCLAIMERS AND TERMINATION OF REGISTRATION.~~

**01. Information Required.** A disclaimer of affiliation or a request for termination of registration, claiming that a person does not, or will not, upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information: (12-24-93)

a. The number of authorized, issued and outstanding voting securities of the subject; (12-24-93)

b. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly; (12-24-93)

c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person: (12-24-93)

d. A statement explaining why such person should not be considered to control the subject. (12-24-93)

02. **Request Deemed Granted.** A request for termination of registration shall be deemed to have been granted unless the Director, within thirty (30) days after he receives the request, notifies the registrant otherwise. (12-24-93)

**0235. TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING.**

**01. Form D.** An insurer required to give notice of a proposed transaction pursuant to section 41-380710, of the Act Idaho Code, shall furnish the required information on Form D, hereby made a part of these rules set forth in Subsection 025.02. (12-24-93)( )

**02. Agreements.** Agreements for cost sharing services and management services shall at a minimum and as applicable: ( )

a. Identify the person providing services and the nature of such services; ( )

b. Set forth the methods to allocate costs; ( )

c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual; ( )

d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services specified in the agreement; ( )

e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance; ( )

f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement; ( )

g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer; ( )

h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer; ( )

i. Include standards for termination of the agreement with and without cause; ( )

j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services; ( )

k. Specify that, if the insurer is placed in receivership or seized by the Director under Title 41, Chapter 33, Idaho Code: ( )

i. All of the rights of the insurer under the agreement extend to the Director; and, ( )

ii. All books and records shall immediately be made available to the Director, and shall be turned over to the Director immediately upon the Director's request; ( )

l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 41, Chapter 33, Idaho Code; and ( )



m. Specify that the affiliate shall continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under Title 41, Chapter 33, Idaho Code, and will make them available to the Director, for so long as the affiliate continues to receive timely payment for services rendered. ( )

**026. ENTERPRISE RISK REPORT.**

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 41-3809(12), Idaho Code, shall furnish the required information on Form F, located at the end of this chapter. ( )

**0247. EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.**

**01.** ~~Notice to Director. No insurer subject to registration under the provisions of the Act shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until sixty (60) days after the Director has received notice of the declaration thereof and has not within such period disapproved such payment, or the Director has approved such payment within such sixty (60) day period. Such notice shall include the following information:~~ Request for Approval. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following: (12-24-93)( )

- a. The amount of the proposed dividend; (12-24-93)
- b. The date established for payment of the dividend; (12-24-93)
- c. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value, together with an explanation of the basis for valuation; (12-24-93)
- d. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information: (12-24-93)
  - i. The amounts, ~~and~~ dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year; (12-24-93)( )
  - ii. Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding; (12-24-93)
  - iii. If the insurer is ~~not~~ a life insurer, the net gain income from operations for the twelve (12) month period ending the 31st day of December next preceding; (12-24-93)( )
  - iv. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two preceding twelve (12) month periods; and (12-24-93)( )
  - v. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years. (12-24-93)
- e. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and (12-24-93)( )
- f. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs. (12-24-93)

**02.** **Other Dividends.** Subject to Section 41-380912, of the Act Idaho Code, each registered insurer shall report to the Director all dividends and other distributions to shareholders within fifteen (15) business days

following the declaration thereof, including the same information required by Subsections 0287.01.d.i. through 028.01.d.v. ~~(12-24-93)~~( )

**0258. ADEQUACY OF SURPLUS.**

The factors set forth in Section 41-380811, ~~of the Act~~ Idaho Code, are not intended to be an exhaustive list. In determining the adequacy and reasonableness of the insurer's surplus, no single factor ~~shall be~~ is necessarily controlling. The Director, instead, will consider the net effect of all of these factors, plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Director will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Director will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant. ~~(10-1-93)~~( )

**0269. -- 999. (RESERVED)**

**FORM A  
STATEMENT REGARDING THE  
ACQUISITION OF CONTROL OF  
OR MERGER WITH A DOMESTIC INSURER**

\_\_\_\_\_  
(Name of Domestic Insurer)

BY

\_\_\_\_\_  
(Name of Acquiring Person, Applicant)

Filed with the Insurance Department of Idaho \_\_\_\_\_

*(state of domicile of insurer being acquired)*

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, title, address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Form A*

**ITEM 1. ~~INSURER AND~~ METHOD OF ACQUISITION.**

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

**ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT.**

- a. State the name and address of the applicant seeking to acquire control over the insurer.
- b. If the applicant is not an individual, state the nature of its business operations for the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
- c. Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. ~~No affiliate need be identified if its total assets are equal to less than one half (1/2) of one percent (1%) of the total assets of the ultimate controlling person affiliated with the applicant.~~ Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings ~~looking toward~~ involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

**ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT.**

On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if he is an individual or (2) all persons who are directors, executive officers or owners of ten percent (10%) or more of the voting securities of the applicant if the applicant is not an individual:

- a. Name and business address;
- b. Present principal business activity, occupation or employment, including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
- c. Material occupations, positions, offices or employments during the last five (5) years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.
- d. Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten (10) years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

**ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION.**

- a. Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.
- b. Explain the criteria used in determining the nature and amount of such consideration.
- c. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

**ITEM 5. FUTURE PLANS FOR INSURER.**

Describe any plans or proposals which the applicant may have to declare as an extraordinary dividend, to liquidate ~~such~~ the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

**ITEM 6. VOTING SECURITIES TO BE ACQUIRED.**

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

**ITEM 7. OWNERSHIP OF VOTING SECURITIES.**

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

**ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER.**

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any persons listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom ~~such~~ the contracts, arrangements or understandings have been entered into.

**ITEM 9. RECENT PURCHASES OF VOTING SECURITIES.**

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement. Include in ~~such~~ the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

**ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE.**

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement.

**ITEM 11. AGREEMENTS WITH BROKER-DEALERS.**

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

**ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS.**

a. Financial statements, ~~and~~ exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

b. The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if ~~such~~ the information is available. ~~Such~~ The statements may be prepared on either an individual basis, or, unless the Director otherwise requires, on a consolidated basis if ~~such~~ consolidated statements are prepared in the usual course of business.

b. The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the Director otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

c. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Sections 01~~2~~1 and 01~~4~~3.

**ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT**

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

**ITEM 1~~3~~4. SIGNATURE AND CERTIFICATION.**

Signature and certifications required as follows:

SIGNATURE

Pursuant to the requirements of Section 41-380~~2~~4, of the Act Idaho Code,

(Name of Applicant)

as caused this application to be duly signed on its behalf  
in the City of \_\_\_\_\_ and State of \_\_\_\_\_  
on the \_\_\_\_\_ day \_\_\_\_\_ 20\_\_\_\_.

Pursuant to the requirements of Section 41-380~~2~~4, of the Act Idaho Code,  
(Name of Applicant) has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and  
State of \_\_\_\_\_ on the \_\_\_\_\_ day \_\_\_\_\_ 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of Applicant)

BY:

\_\_\_\_\_  
(Name) (Title)

ATTEST:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_  
(Name of Applicant)

that (s)he is the \_\_\_\_\_ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with ~~such~~ the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)\_\_\_\_\_

(Type or print name beneath)\_\_\_\_\_

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_ (Name of Applicant); that (s)he is the \_\_\_\_\_ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with ~~such~~ the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.  
(Signature)\_\_\_\_\_

(Type or print name beneath)\_\_\_\_\_

**FORM B**

**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of Idaho

By

Name of Registrant

On behalf of the following insurance companies:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_, 20\_\_\_\_.

Name, Title, Address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ITEM 1. IDENTIFY AND CONTROL OF REGISTRANT.

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART.

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. ~~No affiliate need be shown if its total assets are equal to less than one half (1/2) of one percent (1%) of the total assets of the ultimate controlling person within the insurance holding company system.~~ The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of ~~such~~ control. As to each person specified in ~~such~~ the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON.

As to the ultimate controlling person in the insurance holding company system, furnish the following information:

- a. Name.
- b. Home office address.
- c. Principal executive office address.
- d. The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
- e. The principal business of the person.
- f. The name and address of any person who holds or owns ten percent (10%) or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; ~~and~~
- g. If court proceedings ~~looking toward~~ involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION.

~~If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity,~~ furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his ~~or her~~ principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations ~~during the past ten (10) years.~~ If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS, ~~RELATIONSHIPS~~ AND AGREEMENTS.

~~a.~~ Briefly describe the following agreements in force, ~~relationships subsisting~~ and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- ~~(+)~~a. Loans, ~~and~~ other investments, ~~and~~ or purchases, sales or exchanges of securities of the affiliates by

the ~~insurer~~ Registrant or of the ~~insurer~~ Registrant by its affiliates;

- ~~(2)~~b. Purchases, sales or exchanges of assets;
- ~~(3)~~c. Transactions not in the ordinary course of business;
- ~~(4)~~d. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the ~~insurer's~~ Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the ~~insurer's~~ Registrant's business;
- ~~(5)~~e. All management ~~and~~ agreements, service contracts and ~~all~~ cost-sharing arrangements;
- ~~(6)~~f. Reinsurance agreements;
- ~~(7)~~g. Dividends and other distributions to shareholders;
- ~~(8)~~h. Consolidated tax allocation agreements; and
- ~~(9)~~i. Any pledge of the ~~insurer's~~ Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

~~b.~~ No information need be disclosed if such information is not material for purposes of Section 41-3809, Idaho Code. Sales, purchases, exchanges, loans or extensions of credit, ~~or~~ investments or guarantees involving one-half of one percent (1%) or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

~~e.~~ The description shall be in a manner as to permit the proper evaluation thereof by the ~~Commissioner~~ Director, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to ~~such~~ the transaction; and relationship of the affiliated parties to the Registrant.

#### ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS.

Provide Aa brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- ~~(a)~~a. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- ~~(b)~~b. ~~p~~Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

#### ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

#### ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS.

- a. Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- b. If the ultimate controlling person is a corporation, an organization, a limited liability company, or



other legal entity. The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the ~~Commissioner~~ Director otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the ~~Commissioner~~ Director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of ~~such insurer filed with the insurance department of~~ the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of ~~such~~ that state.

Any ultimate controlling person who is an individual may file personal financial statements that have been reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

c. Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or Sections 0121 and 013 of these rules.

**ITEM 9. FORM C REQUIRED.**

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

**ITEM 10. SIGNATURES AND CERTIFICATION.**

Signatures and certification of the form as follows:

SIGNATURE

Pursuant to the requirements of Section 41-38069, of the Act Idaho Code,

the Registrant has caused this registration statement

to be duly signed on its behalf in the City

of \_\_\_\_\_ and the State of \_\_\_\_\_

on the day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of Registrant)

BY \_\_\_\_\_

\_\_\_\_\_  
(Name)

Attest: \_\_\_\_\_

(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached registration statement dated \_\_\_\_\_ 20\_\_\_\_, for and on behalf of \_\_\_\_\_;

\_\_\_\_\_  
(Name of Company)

that (s)he is the \_\_\_\_\_ of such,

\_\_\_\_\_  
(Name of Company)

company and that (s)he has authority to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**FORM C - SUMMARY OF REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of Idaho

By

\_\_\_\_\_  
Name of Registrant

On Behalf of Following Insurance Companies

Name \_\_\_\_\_ Address \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Name, Title, Address and telephone number of  
Individual to Whom Notices and Correspondence  
Concerning This Statement Should Be Addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner Director, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of ten percent (10%) or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual

registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

**SIGNATURE AND CERTIFICATION.**

Signature and certification required as follows:

**SIGNATURE**

Pursuant to the requirements of section 41-380~~69, of the Act~~ Idaho Code, the Registrant has caused this summary of changes to registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

(Name of Registrant)

By \_\_\_\_\_

(Name) (Title)

Attest: \_\_\_\_\_

(Signature of Officer)

(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached summary of changes to registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_ (Name of Applicant); that (s)he is the

(Name of Company)

\_\_\_\_\_  
(Title of Officer) of such company and (Title of Officer) that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

**FORM D - PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of Idaho

By

Name of Registrant

On Behalf of Following Insurance Companies

Name Address

Date: \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Name, Title, Address and telephone number of  
Individual to Whom Notices and Correspondence  
Concerning This Statement Should Be Addressed:

**ITEM 1. IDENTITY OF PARTIES TO TRANSACTION.**

Furnish the following information for each of the parties to the transaction:

- a. Name.

- b. Home office address.
- c. Principal executive office address.
- d. The organizational structure, i.e. corporation, partnership, individual, trust, etc.
- e. A description of the nature of the parties' business operations.
- f. Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.
- g. Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

**ITEM 2. DESCRIPTION OF THE TRANSACTION.**

Furnish the following information for each transaction for which notice is being given:

- a. A statement as to whether notice is being given under section 41-3810(2)(a), (b), (c), (d), ~~or (e)~~ *of the Act* (f) or (g), Idaho Code.
- b. A statement of the nature of the transaction.
- c. A statement of how the transaction meets the 'fair and reasonable' standard of section 41-3810(1)(a), Idaho Code.
- d. The proposed effective date of the transaction.

**ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS.**

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than, (a) in the case of non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders or, (b) in the case of life insurers, three percent (3%) of the insurer's admitted assets, each as of the 31st day of December next preceding.

**ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE.**

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of ~~the~~ funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of the 31st day of December next preceding.

**ITEM 5. REINSURANCE.**

If the transaction is a reinsurance agreement or modification thereto, as described by section 41-38~~07~~<sup>10</sup>(2)(c)(ii), ~~of the Act Idaho Code, or a reinsurance pooling agreement or modification thereto as described by section 41-3810(2)(c)(i), Idaho Code,~~ furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in any of the next three (3) years, in connection with the reinsurance agreement or modification thereto is less than five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

**ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.**

For management and service agreements, furnish:

- a. A brief description of the managerial responsibilities, or services to be performed.
- b. A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- a. A brief description of the purpose of the agreement.
- b. A description of the period of time during which the agreement is to be in effect.
- c. A brief description of each party's expenses or costs covered by the agreement.
- d. A brief description of the accounting basis to be used in calculating each party's costs under the agreement.
- e. A brief statement as to the effect of the agreement upon the insurer's policyholder surplus.
- f. A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, state the rationale for using market instead of cost, including justification

for the company's determination that amounts are fair and reasonable.

g. A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.

**ITEM 7. SIGNATURE AND CERTIFICATION.**

Signature and certification required as follows:

**SIGNATURE**

Pursuant to the requirements of Section 41-380710, *of the Act Idaho Code*,  
has caused this notice to be duly signed on its behalf in  
the City of \_\_\_\_\_ and State of \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

(Name of Applicant)

By \_\_\_\_\_

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly  
executed the attached notice dated \_\_\_\_\_, 20\_\_\_\_,  
for and on behalf of \_\_\_\_\_; that (s)he is the

\_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_  
(Title of Officer)

of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

**FORM E**

**PRE-ACQUISITION NOTIFICATION FORM REGARDING THE POTENTIAL COMPETITIVE  
IMPACT OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY  
INSURER DOING BUSINESS IN THIS STATE OR BY A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Other Person  
Involved in Merger or  
Acquisition

Filed with the Insurance Department of [Idaho](#)

Dated: \_\_\_\_\_, 20 \_\_

Name, title, address and telephone number of person completing this statement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. NAME AND ADDRESS.**

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

**ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES.**

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

**ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION.**

State the nature and purpose of the proposed merger or acquisition.

**ITEM 4. NATURE OF BUSINESS.**

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

**ITEM 5. MARKET AND MARKET SHARE.**

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in Section 41-3808(4), Idaho Code. If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**FORM F**

**ENTERPRISE RISK REPORT**

Filed with the Insurance Department of the State of Idaho

By

\_\_\_\_\_

Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. ENTERPRISE RISK.**

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in Section 41-3802(3), Idaho Code, provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- a. Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system.
- b. Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system.
- c. Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities.
- d. Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system.
- e. Business plan of the insurance holding company system and summarized strategies for the next 12 months.
- f. Identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in the last year.
- g. Identification of insurance holding company system capital resources and material distribution patterns.
- h. Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook).



i. Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon.

j. Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

**ITEM 2: OBLIGATION TO REPORT.**

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

**IDAPA 18 - DEPARTMENT OF INSURANCE**  
**18.01.50 - ADOPTION OF THE INTERNATIONAL FIRE CODE**  
**DOCKET NO. 18-0150-1301**  
**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(s) 41-211 and 41-253, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

To revise language in IDAPA 18.01.50 to adopt the 2012 edition of the International Fire Code. This adoption will include revisions made to previous editions of the International Fire Code. This rule will bring the adopted edition of the International Fire Code current with the edition of the Building Code adopted by the Legislature in 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: 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 67](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The 2012 International Fire Code is being incorporated.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact (Mark Larson, State Fire Marshal, 208-334-4371, [mark.larson@doi.idaho.gov](mailto:mark.larson@doi.idaho.gov)).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

Mark Larson  
State Fire Marshal  
Idaho Department of Insurance  
700 W. State Street - 3rd Floor  
Boise ID 83720-0043  
208-334-4371  
208-334-4398 (fax)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0150-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

**01. 2009~~12~~ International Fire Code.** In accordance with Section 67-5229, Idaho Code, and pursuant to the authority provided by Section 41-253, Idaho Code, the State Fire Marshal hereby adopts the 2009~~12~~ edition of the International Fire Code as published by the International Code Council. Any revisions, additions, deletions and/or appendices to the 2009~~12~~ International Fire Code are included herein. (4-7-11)( )

**02. Availability of Referenced Material.** Copies of the 2009~~12~~ edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. The 2009~~12~~ International Fire Code and supplements thereto may be purchased by writing the International Code Council, Northwest Resource Center, 2122 112th Ave NE, Suite C, Bellevue, WA 98004 or online through the electronic store on the Council's website at <http://www.iccsafe.org/Pages/default.aspx>. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. DEPARTMENT OF FIRE PREVENTION, SECTION 103.2 -- APPOINTMENTS, INTERNATIONAL FIRE CODE.**

Delete the following language in section 103.2 of the International Fire Code: "... and the fire code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority." (3-29-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. PERMIT REQUIRED, SECTION 105.1.1, INTERNATIONAL FIRE CODE.**

~~A permit, if required by the local jurisdiction, shall be obtained from the designated official prior to engaging in activities requiring a permit within the local jurisdiction.~~ Delete "the required permit" from the last sentence of Section 105.1.1 of the International Fire Code and add "a permit if required by the authority having jurisdiction." (4-2-08)( )

**017. VIOLATION PENALTIES, SECTION 109.34, INTERNATIONAL FIRE CODE.**

~~In Section 109.3, Violation Penalties, International Fire Code, delete the sentence that includes "shall be guilty of a," and replace with the word "misdemeanor."~~ In the first sentence of Section 109.4 of the International Fire Code, delete "[SPECIFY OFFENCE], punishable by a fine of not more than [AMOUNT] dollars, or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment" and add the word "misdemeanor". (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. DEFINITION OF CODE OFFICIAL, SECTION 202, INTERNATIONAL FIRE CODE.**

Add "or as appropriate the Idaho State Fire Marshal" to the end of the definition for ~~code official~~ FIRE CODE OFFICIAL in Section 202 of the International Fire Code. (5-3-03)( )

**021. CHAPTER 5 FIRE SERVICE FEATURES.**

Make the following changes within Chapter 5 of the International Fire Code:

( )

- 01. Section 501.** (4-7-11)
- a.** To section 501.3 after the phrase, Construction documents for proposed, add the word “driveways.” (4-7-11)
- b.** To section 501.4 after the phrase, When fire apparatus access roads, add the word “driveways.” (4-7-11)
- 02. Section 502.** To section 502, add the following definition in, DRIVEWAY. A vehicular ingress and egress route that serves no more than five (5) single family dwellings, not including accessory structures. (4-7-11)
- 03. Section 503.** (4-7-11)
- a.** To section 503, add the following definition, “FIRE STATION, A building, or portion of a building that provides, at a minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose must be maintained at above thirty-two (32) degrees Fahrenheit.” (4-7-11)
- b.** To section 503 add the words, “AND DRIVEWAYS” to the section heading. (4-7-11)
- c.** To section 503.1.1 add the following sentence, “Driveways shall be provided and maintained in accordance with Sections 503.7 through 503.11.” ~~(4-7-11)~~ ( )
- d.** To section 503.6 delete the sentence, The installation of security gates across a fire apparatus access road shall be approved by the fire chief. (4-7-11)
- e.** Add the following section, “503.7 Driveways. Driveways shall be provided when any portion of an exterior wall of the first story of a building is located more than 150 feet (45720mm) from a fire apparatus access road. Driveways shall provide a minimum unobstructed width of 12 feet (3658mm) and a minimum unobstructed height of 13 feet 6 inches (4115mm). Driveways in excess of 150 feet (45720mm) in length shall be provided with turnarounds. Driveways in excess of 200 feet (60960mm) in length and 20 feet (6096mm) in width may require turnouts in addition to turnarounds.” (4-7-11)
- f.** Add the following section, “503.7.1 Limits. A driveway shall not serve in excess of five single family dwellings.” (4-7-11)
- g.** Add the following section, “503.7.2 Turnarounds. Driveway turnarounds shall have an inside turning radius of not less than 30 feet (9144mm) and an outside turning radius of not less than 45 feet (13716mm). Driveways that connect with an access road or roads at more than one point may be considered as having a turnaround if all changes of direction meet the radius requirements for driveway turnarounds.” (4-7-11)
- h.** Add the following section, “503.7.3 Turnouts. Where line of sight along a driveway is obstructed by a man-made or natural feature, turnouts shall be located as may be required by the fire code official to provide for safe passage of vehicles. Driveway turnouts shall be of an all-weather road surface at least 10 feet (3048mm) wide and 30 feet (9144mm) long.” (4-7-11)
- i.** Add the following section, “503.7.4 Bridge Load Limits. Vehicle load limits shall be posted at both entrances to bridges on driveways and private roads. Design loads for bridges shall be established by the fire code official.” (4-7-11)
- j.** Add the following section, “503.7.5 Address markers. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and be visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and maintained thereafter. The address shall be visible and legible from the road on which the address is located. Address signs along one-way roads shall be visible from both the intended direction of travel and the opposite direction. Where multiple address’s are required at a single driveway, they shall be mounted on a single post, and additional signs shall

be posted at locations where driveways divide.” (4-7-11)

**k.** Add the following section, “503.7.6 Grade. The gradient for driveways shall not exceed 10 percent unless approved by the fire code official.” (4-7-11)

**l.** Add the following section, “503.7.7 Security Gates. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and emergency operation shall be maintained operational at all times.” (4-7-11)

**m.** Add the following section, “503.7.8 Surface. Driveways shall be designed and maintained to support the imposed loads of local responding fire apparatus and shall be surfaced as to provide all weather driving capabilities.” (4-7-11)

**04.** **Section 507.** To section 507.2 Type of water supply. delete the existing language and add the following, “A water supply shall consist of water delivered by fire apparatus, reservoirs, pressure tanks, elevated tanks, water mains or other sources approved by the fire code official capable of providing the required fire flow. Exception. The water supply required by this code shall only apply to structures served by a municipal fire department or a fire protection district and within ten miles (16093m) of a responding fire station.” (4-7-11)

**022. -- 026. (RESERVED)**

**027.** ~~**AUTOMATIC SPRINKLER SYSTEMS, SECTION 903.2.7 GROUP M, INTERNATIONAL FIRE CODE**~~ **ALTERNATIVE AUTOMATIC FIRE-EXTINGUISHING SYSTEMS, SECTION 904.1.1, INTERNATIONAL FIRE CODE.**

Add the following language to ~~Item 4: “...or mattresses exceeds 5000 square feet (464m2);~~ the beginning of section 904.1.1 of the International Fire Code. “If required by the authority having the jurisdiction.” (3-29-12)( )

**028.** **PORTABLE FIRE EXTINGUISHERS, SECTION 906.2.1, INTERNATIONAL FIRE CODE.**

Add the following language to the beginning of section 9.6.2.1 of the International Fire Code. “If required by the authority having jurisdiction.” ( )

~~**0289.**~~ **036. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**038.** **CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS, SECTION 1101.1, INTERNATIONAL FIRE CODE.**

Add the following language to the end of section 1101.1 of the International Fire Code. “only, if in the opinion of the fire code official, they constitute a distinct hazard to life or property.” ( )

~~**0389.**~~ **040. (RESERVED)**

**041.** **EXPLOSIVES AND FIREWORKS, CHAPTER ~~3356~~, INTERNATIONAL FIRE CODE.**

Delete Sections ~~3356~~01.1.3, ~~3356~~01.2.2, ~~3356~~01.2.3, ~~3356~~01.2.4.1, ~~3356~~01.2.4.2, and ~~3308.1 through 3308.3~~ sections ~~5608.2, 5608.2.1, and 5608.3~~ of the International Fire Code. (4-7-11)( )

**042. -- 045. (RESERVED)**

**046.** **UNDERGROUND TANKS OUT OF SERVICE FOR ONE YEAR, SECTION ~~3457~~04.2.13.1.3 INTERNATIONAL FIRE CODE.**

Add to Section ~~3457~~04.2.13.1.3, International Fire Code, the following paragraph: Upon approval of the Chief underground tanks that comply with the performance standards for new or upgraded underground tanks set forth in Title 40 Section 280.20 or 280.21 of the Code of Federal Regulations may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance and release detection requirements of the federal rule.

(5-3-03)(    )

047. -- 0501. (RESERVED)

~~051. CHAPTER 46, CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS.~~

~~To section 4601.1 delete the period and add, "only if in the opinion of the fire code official, they constitute a distinct hazard to life or property."~~ (4-7-11)

052. REFERENCED STANDARDS, CHAPTER 4580, INTERNATIONAL FIRE CODE.

Beginning on Page ~~418~~ 439, of the NFPA Referenced Standards, make the following changes to the listed editions:

Delete	Add	Delete	Add	Delete	Add
10-2007	10-2010	25-2008		120-2004	120-2010
11-2005	11-2010	42-2005	42-2008	241-2004	241-2009
12A-2004	12A-2009	59A-2006	59A-2009	484-2006	484-2009
13-2007	13-2010	80-2007	80-2010	484-2006	484-2009
13D-2007	13D-2010	92A-2005		495-2006	495-2010
13R-2007	13R-2010	52-2006	52-2010	498-2006	498-2010
14-2007	14-2010	72-2007	72-2010	750-2006	750-2010
17-2002	17-2009	101-2006	101-2009	1123-2006	1123-2010
17A-2002	17A-2009	110-2005	110-2010	701-2004	701-2010
20-2007	20-2010	211-2006	211-2010	703-2006	703-2009
22-2003	22-2008	260-2003	260-2009	111-2005	111-2010
24-2003	24-2010	261-2003	261-2009		

Delete	Add
<u>10-2010</u>	<u>10-2013</u>
<u>13-2010</u>	<u>13-2013</u>
<u>13D-2010</u>	<u>13D-2013</u>
<u>13R-2010</u>	<u>13R-2013</u>
<u>14-2010</u>	<u>14-2013</u>
<u>17-2009</u>	<u>17-2013</u>
<u>17A-2009</u>	<u>17A-2013</u>
<u>20-2010</u>	<u>20-2013</u>
<u>22-2008</u>	<u>22-2013</u>

Delete	Add
<u>111-2010</u>	<u>111-2013</u>
<u>170-2009</u>	<u>170-2012</u>
<u>204-2007</u>	<u>204-2012</u>
<u>211-2010</u>	<u>211-2013</u>
<u>241-2009</u>	<u>241-2013</u>
<u>260-2009</u>	<u>260-2013</u>
<u>261-2009</u>	<u>261-2013</u>
<u>289-2009</u>	<u>289-2013</u>
<u>318-2009</u>	<u>318-2012</u>

<u>Delete</u>	<u>Add</u>	<u>Delete</u>	<u>Add</u>
<u>24-2010</u>	<u>24-2013</u>	<u>385-2007</u>	<u>385-2012</u>
<u>51-2007</u>	<u>51-2013</u>	<u>409-2010</u>	<u>409-2011</u>
<u>51A-2011</u>	<u>51A-2012</u>	<u>495-2010</u>	<u>495-2013</u>
<u>52-2010</u>	<u>52-2013</u>	<u>498-2010</u>	<u>498-2013</u>
<u>55-2010</u>	<u>55-2013</u>	<u>505-2010</u>	<u>505-2013</u>
<u>59A-2009</u>	<u>59A-2013</u>	<u>654-2011</u>	<u>654-2013</u>
<u>61-2008</u>	<u>61-2013</u>	<u>720-2005</u>	<u>720-2012</u>
<u>72-2010</u>	<u>72-2013</u>	<u>1122-2008</u>	<u>1122-2013</u>
<u>80-2010</u>	<u>80-2013</u>	<u>1124-2012</u>	<u>1124-2013</u>
<u>99-2010</u>	<u>99-2012</u>	<u>1127-2008</u>	<u>1127-2013</u>
<u>105-2010</u>	<u>105-2013</u>	<u>2001-2011</u>	<u>2001-2013</u>
<u>110-2010</u>	<u>110-2013</u>		

(4711)( )

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1301 (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 54-912, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Updates to reflect current practice standards, clarify practice standards, reduce an application fee, and general housekeeping changes. Proposed rules include an edition update to a document included in the list of documents incorporated by reference; a reduction of the application fee for a dentist application by credentials; clarification that a dental hygienist is prohibited from taking any type of final impression; clarification of dental assistant prohibited duties and the addition of the use of an air polisher to prohibited duties; an addition to unprofessional conduct rules of failure to release patient records or failure to cooperate with authorities; revisions to advertising rules; reduction in the number of continuing education hours required for renewal of an extended access dental hygiene license endorsement from twelve (12) to four (4) hours; addition of requirement for dentist to maintain certification in basic life support for healthcare providers for renewal of moderate enteral sedation permit, and advanced cardiac life support certification for renewal of moderate parenteral sedation permit; and various housekeeping changes.

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

Fees for licensure are authorized pursuant to Section 54-916, Idaho Code. The Board is proposing a reduction in the fee for a dentist application by credentials from six hundred dollars (\$600) to three hundred dollars (\$300). The Board does not require applicants to present case histories of patients treated by an applicant as is authorized by Section 54-916B(5), Idaho Code.

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

The proposed reduction in the fee for a dentist application by credentials from \$600 to \$300 would negatively impact the Board's dedicated fund by approximately \$4,800 per fiscal year. This figure is based upon the number of applications processed in FY2013.

**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 68](#).

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

The American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, currently incorporated by reference in the Board's rules, is being updated to reflect the 8<sup>th</sup> Edition, 2012.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive director, (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.



DATED this 28<sup>th</sup> day of August, 2013.

Susan Miller, Executive Director  
Board of Dentistry  
350 N. 9<sup>th</sup> St., Ste. M-100  
P. O. Box 83720  
Boise, ID 83720-0021  
Telephone: (208) 334-2369  
Facsimile: (208) 334-3247

---

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 19-0101-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

**01. Professional Standards.** (3-29-12)

**a.** American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, ~~7~~<sup>8</sup>th Edition, 20~~06~~<sup>12</sup>. (~~4-7-11~~)(    )

**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)

**c.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

**e.** Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

**f.** American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

**g.** American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

**h.** American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

**i.** American Association of Dental Boards, the Dental Patient Record, June 12, 2009. (4-7-11)

**02. Availability.** These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. LICENSE AND APPLICATION FEES (RULE 12).**

The license fees and application fees shall be as follows: (3-30-07)

- 01. Application Fees for Dentists:** (7-1-91)
  - a. General:** (3-18-99)
    - i. By examination -- three hundred dollars (\$300). (3-26-08)
    - ii. By credentials -- ~~six~~ **three** hundred dollars (~~\$6300~~). (~~3-18-99~~)( )
  - b. Specialty:** (7-1-91)
    - i. By examination -- three hundred dollars (\$300). (3-26-08)
    - ii. By credentials -- ~~six~~ **three** hundred dollars (~~\$6300~~). (~~3-18-99~~)( )
- 03. Biennial License Fees for Dentists:** (3-30-07)
  - a. Active** -- three hundred seventy-five dollars (\$375). (3-26-08)
  - b. Inactive** -- one hundred sixty dollars (\$160). (3-26-08)
  - c. Specialty** -- three hundred seventy-five dollars (\$375). (3-26-08)
- 04. Biennial License Fees for Hygienists:** (3-30-07)
  - a. Active** -- one hundred seventy-five dollars (\$175). (3-26-08)
  - b. Inactive** -- eighty-five dollars (\$85). (3-26-08)
- 05. Application Fees for General Anesthesia and Moderate Sedation Permits:** (4-7-11)
  - a. Initial Application** -- three hundred dollars (\$300). (4-2-03)
  - b. Renewal Application** -- three hundred dollars (\$300). (4-2-03)
  - c. Reinstatement Application** -- three hundred dollars (\$300). (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. EXAMINATION FOR GENERAL DENTAL LICENSES (RULE 14).**

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations of such duration and character and upon such subjects in dentistry as the Board shall determine to thoroughly test the fitness and ability of the applicant to practice dentistry in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any exam conducted by the Board may include: (7-1-93)

- 01. Written Examination.** Evidence of passing the National Board examination may be required of all candidates applying for a license to practice dentistry. Any other written examination will be specified by the Board. (7-1-93)

**02. Clinical Examination.** All applicants for license to practice general dentistry shall be required to ~~take~~ pass a clinical examination. (7-1-93)(    )

**015. EXAMINATION FOR DENTAL HYGIENE LICENSES (RULE 15).**

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations, which shall be of such duration and character and upon such subjects in dental hygiene as the Board shall determine to thoroughly test the fitness and ability of the applicants to practice dental hygiene in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any examination conducted by the Board may include: (7-1-93)

**01. Written Examination.** Evidence of passing the National Board examination may be required of all candidates applying for a dental hygiene license. Any other written examination will be specified by the Board. (7-1-93)

**02. Clinical Examination.** All applicants for license to practice dental hygiene shall be required to ~~take~~ pass a clinical examination including local anesthesia. (7-1-93)(    )

**016. REQUIREMENTS FOR DENTAL LICENSURE (RULE 16).**

~~The Idaho State Board of Dentistry will approve~~ Applicants for licensure ~~only graduates of dental schools to practice dentistry must furnish proof of graduation from a school of dentistry~~ accredited by the Commission on Dental Accreditation of the American Dental Association at the time of graduation. (3-18-99)(    )

**017. REQUIREMENTS FOR DENTAL HYGIENE LICENSURE (RULE 17).**

Applicants for licensure to practice dental hygiene must furnish proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association at the time of applicant's graduation. (10-1-65)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. DENTAL HYGIENE LICENSURE BY CREDENTIALS (RULE 20).**

Applications for dental hygiene licensure by credentials must be filed with the Board along with the following: (3-18-99)

**01. Graduation.** Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association at the time of applicant's graduation. (7-1-92)

**02. National Board Examination.** Evidence of successful completion of the National Board of Dental Hygiene. Any other written examinations will be specified by the Board. (3-18-99)

**03. Cardiopulmonary Resuscitation.** Evidence of current CPR certification. (7-1-92)

**04. Local Anesthesia.** Applicants who are currently licensed in another jurisdiction to practice local anesthesia must submit evidence of satisfactory completion of a Board-approved examination ~~and attest to the regular practice of local anesthesia.~~ (3-18-99)(    )

**05. Provisional License.** Applicants who meet all the requirements to be licensed by credentials, but who have not completed a Board-approved local anesthesia examination, may be provisionally licensed to practice without local anesthesia for a period of not more than one (1) year. Within that year, the applicant must pass a local anesthesia examination approved by the Board. (3-18-99)

**06. Interview.** At the Board's discretion, applicants may be required to appear for a personal interview conducted by the Board. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

**028. VOLUNTEER DENTAL HYGIENE SERVICES (RULE 28).**

A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances: (3-30-07)

**01. Extended Access Oral Health Care Program.** The dental hygiene services must be performed in an extended access oral health care program under the supervision of a dentist who is employed, ~~or~~ retained by, or is a volunteer for the program; (3-30-07)( )

**02. Dental Hygiene Services Performed.** The dental hygiene services performed shall be limited to oral health screening and patient assessment, preventive and oral health education, preparation and review of health history, ~~fluoride treatment~~, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventive agents including fluoride, the application of pit and fissure sealants with recommendation that the patient will be seen examined by a dentist ~~and preventive dental health instruction~~; (3-30-07)( )

**03. Volunteers.** The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and (3-30-07)

**04. Volunteer Time Limit.** The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. (3-30-07)

**029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

**01. Extended Access Dental Hygiene Endorsement.** Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that all of the following requirements are met: (4-6-05)( )

**a.** The person has been licensed as a dental hygienist during the two (2) year period immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

**b.** For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

**c.** The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care program; and (4-6-05)( )

**d.** Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care program in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. (3-30-07)

**02. Extended Access Dental Hygiene Restorative Endorsement.** Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access dental hygiene restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care program. Permissible restorative functions under this endorsement shall be limited to the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration. Upon application, the Board may grant an extended access dental hygiene

restorative endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (3-30-07)

**a.** The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; or (3-30-07)

**b.** The person holds an equivalent restorative permit in another state as of the date of endorsement application which required successful completion of the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board for its issuance; and (3-30-07)

**c.** The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under in an extended access oral health care program. (3-30-07)

**03. Renewal.** Upon payment of the appropriate license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits. (3-30-07)

**030. DENTAL HYGIENISTS - PRACTICE (RULE 30).**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

**01. General Supervision.** A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

**a.** Oral prophylaxis (~~including~~ removal of ~~supragingival and subgingival calculus~~, stains and plaque biofilm ~~from teeth~~ and if present, supragingival and/or subgingival calculus); (4-11-06)(    )

**b.** Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); (4-11-06)

**c.** Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; (4-11-06)

**d.** Root planing; (4-11-06)

**e.** Non-surgical periodontal therapy; (4-11-06)

**f.** Closed subgingival curettage; (4-11-06)

**g.** Administration of local anesthesia; (4-6-05)

**h.** Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)

**i.** Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)

**j.** ~~Instructing~~ Provide patients education and instruction in ~~techniques of~~ oral hygiene health education and preventive ~~procedures~~ techniques; (4-6-05)(    )

**k.** Placement of antibiotic treated materials pursuant to ~~written order and site specific~~ dentist authorization; and (4-6-05)(    )

- l.** All duties which may be performed by a dental assistant; ~~and~~ (4-11-06)(    )  
~~m.~~ *Such other duties as approved by the Board.* (4-11-06)
- 02. Indirect Supervision.** A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)
- a.** Administration and monitoring of nitrous oxide/oxygen; (4-7-11)
  - b.** All dental hygienist duties specified under general supervision; and (4-6-05)
  - c.** Such other duties as approved by the Board. (4-11-06)
- 03. Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)
- a.** Use of a laser restricted to gingival curettage and bleaching; (4-6-05)
  - b.** All dental hygienist duties specified under general and indirect supervision; and (4-6-05)
  - c.** Such other duties as approved by the Board. (4-11-06)
- 031. DENTAL HYGIENISTS - PROHIBITED PRACTICE (RULE 31).**  
Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, a dental hygienist may not perform certain specified duties. (4-6-05)
- 01. Prohibited Duties.** A dental hygienist is prohibited from performing the duties specified below: (4-6-05)
- a.** Definitive diagnosis and dental treatment planning; (4-6-05)
  - b.** The operative preparation of teeth for the placement of restorative materials; (4-6-05)
  - c.** The placement or carving of restorative materials unless authorized by issuance of an extended access restorative license endorsement; (3-29-12)
  - d.** Administration of any general anesthesia, minimal sedation, or moderate sedation; (4-7-11)
  - e.** Final placement of any fixed or removable appliances; (4-6-05)
  - f.** Final removal of any fixed appliance; (4-6-05)
  - g.** Cutting procedures utilized in the preparation of the coronal or root portion of the tooth; (4-6-05)
  - h.** Cutting procedures involving the supportive structures of the tooth; (4-6-05)
  - i.** Placement of the final root canal filling; (4-6-05)
  - j.** Final impressions of any type, including digital, of any tissue-bearing area, whether hard or soft tissue; (4-6-05)(    )
  - k.** Occlusal equilibration procedures for any prosthetic restoration, whether fixed or removable; ~~and~~ (4-6-05)(    )
  - l.** Final placement of prefabricated or cast restorations or crowns; ~~and~~ (4-6-05)(    )
  - ~~m.~~ *Such other duties as specifically prohibited by the Board.* (4-6-05)

**032. -- 034. (RESERVED)**

**035. DENTAL ASSISTANTS - PRACTICE (RULE 35).**

- 01. Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)
- a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
  - b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
  - c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
  - d.** Expose and process radiographs; (4-6-05)
  - e.** ~~FM~~Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; ~~(4-6-05)~~( )
  - f.** Record diagnostic bite registration; (4-6-05)
  - g.** Record bite registration for fabrication of restorations; (4-6-05)
  - h.** Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
  - i.** Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
  - j.** Placement and removal of arch wire; (4-6-05)
  - k.** Placement and removal of orthodontic separators; (4-6-05)
  - l.** Placement and removal of ligature ties; (4-6-05)
  - m.** Cutting arch wires; (4-6-05)
  - n.** Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
  - o.** Adjust arch wires; (4-6-05)
  - p.** Etching of teeth prior to placement of restorative materials; (4-6-05)
  - q.** Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
  - r.** Placement and removal of rubber dam; (4-6-05)
  - s.** Placement and removal of matrices; (4-6-05)
  - t.** Placement and removal of periodontal pack; (4-6-05)
  - u.** Removal of sutures; (4-6-05)
  - v.** Application of cavity liners and bases; (4-6-05)
  - w.** Placement and removal of gingival retraction cord; and ~~(4-6-05)~~( )

- x. Application of topical fluoride agents; ~~and~~ (4-6-05)( )
- y. ~~Performing such other duties as approved by the Board.~~ (4-6-05)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
- a. Definitive diagnosis and treatment planning. (4-6-05)
- b. The placement or carving of permanent restorative materials ~~in any manner~~ intraorally. (7-1-93)( )
- c. Any irreversible procedure using lasers. (4-6-05)( )
- d. The administration of any general or local injectable anesthetic; ~~infiltration anesthetic or any injectable nerve block procedure.~~ (4-6-05)( )
- e. Any oral prophylaxis; ~~Oral prophylaxis is defined as the~~ (removal of stains and plaque, calculus, biofilm and stains from the exposed if present, supragingival and/or unexposed surfaces of the teeth by sealing and polishing subgingival calculus). (7-1-93)( )
- f. Use of an air polisher. ( )
- fg. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
- gh. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)
- i. Fabrication and placement of temporary crowns; (4-6-05)
- ii. Perform the mechanical polishing of restorations; (7-1-93)
- iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
- iv. Application of pit and fissure sealants; (7-1-93)
- v. Coronal polishing; ~~unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances~~ (removal of plaque biofilm and stains from the teeth ~~with pumice or other such~~ using an abrasive substances agent with a rubber cup or brush). ~~This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist.~~ (7-1-93)( )
- vi. Use of a high-speed handpiece ~~restricted to~~ only for the removal of orthodontic cement or resin. (4-6-05)( )
- 03. Expanded Functions Qualifications.** A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g. upon satisfactory completion of the following requirements: (4-6-05)
- a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the



fundamentals of dental assisting, which may be evidenced by: (4-6-05)

- i. Current certification by the Dental Assisting National Board; or (7-1-93)
  - ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (3-29-12)
  - iii. Successfully challenging the fundamentals course. (7-1-93)
- b.** Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

**04. Curriculum Approval.** Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum in expanded functions. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (3-29-12)

**05. Other Credentials.** Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-29-12)

**036. -- 039. (RESERVED)**

**040. UNPROFESSIONAL CONDUCT (RULE 40).**

A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: ~~(7-1-93)~~( )

**01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

**02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

**03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

**04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

**a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

**b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

**05. Controlled Substances.** Prescribing or administering controlled substances not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

- 06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)
- 07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)
- 08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)
- 09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)
- 10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)
- 11. Use of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)
- 12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)
- a.** Mental illness; (7-1-93)
  - b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)
- 13. Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
- 14. Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
- 15. Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
- 16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
- 17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
- 18. Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (3-29-12)
- 19. Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
- 20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)

21. **Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)

22. **Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)

23. **Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)

24. **Compliance With Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (3-29-12)

25. **Compliance With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (3-29-12)

26. **Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. ( )

27. **Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**046. ADVERTISING (RULE 46).**

Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not false, deceptive, misleading or not readily subject to verification. ~~In addition to any other applicable grounds, a~~ violation of this advertising rule shall constitute and be considered as ~~unethical and~~ unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter. (3-20-04)( )

**01. General Advertising Provisions.** (3-20-04)

a. "Advertisement" shall mean any public communication, made in any form or manner whatsoever, about a licensee's professional services, fees or qualifications for the purpose of soliciting business. ~~"Advertising" or "advertise" shall mean holding out, broadcasting, mailing, publishing, transmitting, announcing, distributing or otherwise disseminating any advertisement, whether directly or indirectly through the efforts of another person or entity. Any sign soliciting business, whether at the location of the dental practice or otherwise, shall be considered as an advertisement.~~ A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions. (3-20-04)( )

b. If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon

receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days. (3-20-04)

c. Any advertisement made under or by means of a fictitious or assumed business name ~~or in the name of a professional service corporation~~ shall be the responsibility of all licensees who are owners, members, partners or proprietors of the business ~~or corporation entity~~. (3-20-04)(    )

**02. Prohibited Advertising.** A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that: (3-20-04)

a. Makes a material misrepresentation of fact or omits a material fact; (3-20-04)

~~b. Makes a representation likely to create an unjustified expectation about the results of a dental procedure;~~ (3-20-04)

~~c. Compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;~~ (3-20-04)

~~d.~~ **d.** Makes a representation that is misleading false as to the credentials, education, or the licensing status of any licensee; (3-20-04)(    )

~~e.~~ **e.** Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required; (3-20-04)

~~f. Refers to benefits of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products.~~ (3-20-04)

**03. Specialty Advertising.** The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of the public. (4-6-05)

a. An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as "Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of" shall be prima facie evidence that the licensee is announcing or holding himself out to the public as a licensed specialist ~~or that the licensee specializes~~ in a recognized specialty area of dental practice. (3-29-12)(    )

b. A licensee who has not been licensed by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent clearly worded disclaimer that the licensee is "licensed as a general dentist" or that the specialty services "will be provided by a general dentist." Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-29-12)(    )

c. A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-04)

**047. -- 049. (RESERVED)**

**050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).**

Effective October 1994, renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements. (4-6-05)

**01. Requirements:** (3-18-99)

**a.** All active dentists must hold a current CPR card. (7-1-93)

**b.** All active dentists shall acquire thirty (30) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-29-12)

**c.** Continuing education must be oral health/health-related for the professional development of a dentist. ~~The thirty (30) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, and viewing of videotape or listening to other media devoted to dental education.~~ (3-29-12)( )

**d.** A dentist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

**e.** Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

**02. Documentation.** In conjunction with license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

**051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).**

Effective April 1994, renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)

**01. Requirements for Renewal of an Active Status Dental Hygiene License:** (4-6-05)

**a.** All active dental hygienists must hold a current CPR card. (6-2-92)

**b.** All active dental hygienists shall acquire twenty-four (24) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-29-12)

**c.** Continuing education must be oral health/health-related education for the professional development of a dental hygienist. ~~The twenty-four (24) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, viewing of videotape or listening to other media devoted to dental hygiene education.~~ (3-29-12)( )

**d.** A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

**e.** Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

**02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement. In**

addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete ~~twelve~~ four (~~12~~) credits of verifiable continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. ~~(3-29-12)~~ ( )

**03. Documentation.** In conjunction with license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)

**052. -- 053. (RESERVED)**

**054. DEFINITIONS (RULE 54).**

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

**01. Methods of Anxiety and Pain Control.** (4-11-06)

**a.** Analgesia shall mean the diminution or elimination of pain. (4-7-11)

**b.** Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-7-11)

**c.** Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. (4-7-11)

**d.** Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (4-7-11)

**e.** Deep sedation shall mean a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-7-11)

**f.** General anesthesia shall mean a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-7-11)

**02. Sedation Terms.** (4-11-06)

**a.** Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course offered by a recognized accrediting organization. (4-11-06)

**b.** Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

**c.** Operator shall mean the supervising dentist or another person who is authorized by these rules or holds a permit to induce and administer the proper level of anesthesia/sedation. (4-11-06)

**d.** Titration shall mean the administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug increment. (4-7-11)

**e.** Maximum recommended **dose** (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. (4-7-11)(    )

**f.** Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). (4-7-11)

**g.** Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. (4-7-11)

**03. Routes of Administration.** (4-11-06)

**a.** Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

**b.** Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. (4-7-11)

**c.** Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraosseous (IO)]. (4-7-11)

**d.** Transdermal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-7-11)

**e.** Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (4-7-11)

**055. MINIMAL SEDATION (RULE 55).**

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer minimal sedation to ~~adult~~ patients of sixteen (16) years of age or older. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit only if a single enteral dosage is administered without the use of nitrous oxide. When the intent is minimal sedation ~~for adults~~, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. (4-7-11)(    )

**01. Patient Safety.** The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 055 of these rules. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. (4-7-11)(    )

**02. Personnel.** At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**057. NITROUS OXIDE/OXYGEN (RULE 57).**

Persons licensed to practice dentistry and dental hygiene and dental assistants certified in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer nitrous oxide/oxygen to patients. Nitrous oxide/oxygen when used in combination with other sedative agents may produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. (4-7-11)

**01. Patient Safety.** In connection with the administration of nitrous oxide/oxygen, a dentist shall: (4-7-11)

- a.** Evaluate the patient to insure that the patient is an appropriate candidate for nitrous/oxygen; and (4-7-11)
- b.** Insure that any patient under nitrous/oxygen shall be continually monitored; and (4-7-11)
- c.** Insure that a second person shall be on the office premises who can immediately respond to any request from the person administering the nitrous/oxygen. (4-7-11)

**02. Required Facilities and Equipment.** Dental offices in which nitrous oxide/oxygen is administered to patients shall, at a minimum and in addition to emergency medications, maintain appropriate facilities and have equipment on site for immediate use as follows: (4-7-11)

**a.** A nitrous oxide delivery system with a fail-safe system that is ~~appropriately checked and calibrated. The equipment must also have either~~ **maintained in working order:** (4-7-11)(    )

- i.** A functioning device that prohibits the delivery of less than thirty percent (30%) oxygen; or (4-7-11)
- ii.** An appropriately calibrated and functioning in-line oxygen analyzer with audible alarm; and (4-7-11)
- b.** An appropriate scavenging system must be available; and (4-7-11)
- c.** A positive-pressure oxygen delivery system suitable for the patient being treated. (4-7-11)

**03. Personnel.** For nitrous oxide/oxygen administration, personnel shall include: (4-7-11)

- a.** An operator; and (4-11-06)
- b.** An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
- c.** Auxiliary personnel must have documented training in Basic Life Support for Healthcare Providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in periodic reviews of office emergency protocol. (4-7-11)

**058. -- 059. (RESERVED)**

**060. MODERATE SEDATION (RULE 60).**

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer



moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

**01. Requirements for a Moderate Enteral Sedation Permit.** To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a moderate enteral sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a moderate enteral sedation permit, a dentist must provide certification of the following: (4-7-11)

**a.** Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and (4-7-11)

**b.** Proof of current certification of Advanced Cardiac Life Support or its equivalent. (4-7-11)

**02. Requirements for a Moderate Parenteral Sedation Permit.** To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall: (4-7-11)

**a.** Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

**b.** Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

**c.** Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

**d.** In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or its equivalent. (4-7-11)

**03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits.** (4-7-11)

**a.** Facility Requirements. The dentist must have a properly equipped facility for the administration of moderate sedation. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-7-11)

- b.** Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
- i.** The operator; and (10-1-87)
  - ii.** An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
  - iii.** Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-7-11)
- c.** Permit Renewal. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (~~4-7-11~~)( )
- i.** For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; or ( )
  - ii.** For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. ( )
- d.** Reinstatement. A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.02 - RULES GOVERNING EMERGENCY RELIEF FOR VETERANS**

**DOCKET NO. 21-0102-1301**

#### **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 65-202 and 65-204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Idaho veterans who may be associated with a Tribe should be afforded the same opportunity to receive information about and take advantage of earned veterans' benefits administered by the U.S. Department of Veterans Affairs. This is most effectively accomplished by receiving information and guidance from recognized veterans service organizations. Tribal Veterans Representatives are recognized as such and currently do not have the same opportunity that county and service organization Veterans Service Officers are currently afforded to attend training provided by the Division with travel reimbursement. This rule change will allow Native American Tribal Veterans Representatives to obtain funding from the Division of Veterans Services for reimbursement of travel expenses for one (1) regional training conference each year in support of the statewide service officer program, in the same manner that other county and service organization veterans service officers are afforded. This proposed rule would include Native American Tribes as an eligible organization which may send veterans service officers and representatives to training sessions administered by the Division and apply for reimbursement of travel expenses for one (1) participant to attend one (1) training conference per year. Reimbursement would not be provided if travel expenses were reimbursed by other sources.

**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:

This rule change will result in an anticipated cost of \$2,500 annually in General Funds. It will also have a positive impact to veterans by affording Tribal Veterans Representatives with increased opportunities for training about how to assist veterans in properly completing their claims and applications for federal veterans' benefits. This will increase the likelihood of the success of such veterans' claims, which will increase the amount of money provided to Idaho in federal veterans' benefits.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes are 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 Tamara Mackenthun, Deputy Administrator, (208) 577-2313.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 21st day of August 2013.

Tamara Mackenthun, Deputy Administrator  
Division of Veterans Services  
351 Collins Rd.  
P. O. Box 83720  
Boise, ID 83720-0092  
Phone: (208) 577-2313  
Fax: (208) 577-2311

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 21-0102-1301**  
**(Only those Sections being amended are shown.)**

**027. VETERANS SERVICE OFFICER SUPPORT.**

Veterans service officers, whether of the counties or the recognized veterans service organizations, must have a current knowledge and understanding of United States Department of Veterans Affairs programs to adequately serve the citizens of the state in the recovery of earned veterans benefits. (3-30-01)

**01. Training.** The Division of Veterans Services will conduct a minimum of one (1) regional training conference each year in support of the statewide service officer program. (5-3-03)

**02. Reimbursement.** Eligible counties, ~~and~~ service organizations, ~~and Native American Tribes~~ sending service officers to scheduled training sessions may apply to the Division of Veterans Services for reimbursement of travel expenses for one (1) participant. Payment will not be provided for expenses reimbursed by other sources and shall be limited to one (1) regional training conference per year. (~~3-30-01~~)(    )

**03. Rate of Reimbursement.** Reimbursement of travel expenses shall be for mileage and meals and at the same rate as established by the State Board of Examiners. (3-30-01)

**04. Requests for Reimbursement.** All requests for reimbursement must be submitted from an official county service officer or from an administrative officer of a congressionally chartered veterans service organization. Requests for reimbursement shall be submitted in a format as prescribed by the Division of Veterans Services. Requests must be submitted within thirty (30) days after the conclusion of a training conference. All reimbursements are subject to the availability of funds. (5-3-03)

**05. Validation.** Request for reimbursement shall be validated by cross-referencing attendance lists from service officer training conferences. (3-30-01)

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.08 - RULES GOVERNING VETERANS RECOGNITION FUND GRANT PROGRAM**

#### **DOCKET NO. 21-0108-1301 (NEW CHAPTER)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rules are needed to provide basic administrative procedures for the award of funds from the Idaho Veterans Recognition Fund established by Idaho Code, Title 65, Chapter 7, Idaho Veterans Recognition Act. This is a new chapter of rules which provides procedures for the application, review and award of grant moneys for programs to support veterans.

**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:

Grant funds will be obtained from investment of moneys appropriated from excess earnings from funds maintained by the Division of Veterans Services. No General Funds will be allocated to this program.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes are 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 Tamara Mackenthun, Deputy Administrator, (208) 577-2313.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 21st day of August 2013.

Tamara Mackenthun, Deputy Administrator  
Division of Veterans Services  
351 Collins Rd.  
P. O. Box 83720, Boise, ID 83720-0092  
Phone: (208) 577-2313 / Fax: (208) 577-2311

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 21-0108-1301**

**IDAPA 21**  
**TITLE 01**  
**CHAPTER 08**

**21.01.08 - RULES GOVERNING VETERANS RECOGNITION FUND GRANT PROGRAM**

**000. LEGAL AUTHORITY.**

Section 65-204, Idaho Code, authorizes the Administrator of the Division of Veterans Services to promulgate rules with respect to all matters of administration under Title 65, Chapter 2, Idaho Code, including the disbursement of funds held under Section 65-704, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 21.01.08, "Rules Governing Veterans Recognition Fund Grant Program." ( )

**02. Scope.** These rules establish a grant application and award process, set forth the programs and projects eligible for grants, and provide for the disbursement of funds. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

The award of funding under the Program is a discretionary action to be performed by the Idaho Governor and Legislature with recommendations from the Idaho Veterans Recognition Committee. There is no provision for administrative appeal under these rules. ( )

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- TELEPHONE AND FACSIMILE NUMBERS -- WEBSITE ADDRESS.**

The principal place of business of the Office of the Idaho Division of Veterans Services is in Boise, Idaho. The office is located at 351 Collins Road, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is 351 Collins Road, Boise, Idaho 83702. The telephone number of the office is (208) 577-2310. The facsimile number of the office is (208) 577-2311. The Division's website address is <http://veterans.idaho.gov/>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

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

**010. DEFINITIONS.**

**01. Administrator.** The Administrator and chief officer of the Division of Veterans Services in the Department of Self Governing Agencies, or his designee. ( )

**02. Applicant.** An individual or organization who has submitted a written request for grant funds. ( )

**03. Committee.** The Idaho Veterans Recognition Committee, established by Section 65-705, Idaho

Code. ( )

**04. Division.** The Division of Veterans Services in the Department of Self Governing Agencies. ( )

**05. Program.** The Veterans Recognition Fund Grant Program established by Title 65, Chapter 7, Idaho Code, and these rules. ( )

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

**100. POLICY AND OBJECTIVE.**

The objective of the Program is to fund programs to support Idaho veterans of the armed forces of the United States. The policy of the Division is to fund programs operated both within and outside state and local government. The Division will refer applicants for grants to support the needs of individuals to the Veterans Services Emergency Relief Program. ( )

**101. ELIGIBLE APPLICANTS.**

Individuals, organizations, and governmental entities, including bureaus of the Division, may submit applications for funding from the Program. ( )

**102. GRANT PURPOSES AND PRIORITIES.**

**01. Eligible Activities and Costs.** Any purpose meeting the objective of supporting veterans of the armed forces of the United States and not excluded in Subsection 102.02 of these rules is eligible to receive a grant under the Program. Eligible activities and costs include: ( )

**a.** Programs to inform veterans and the public of services and programs for veterans, including programs offered by the Division; ( )

**b.** Programs providing career training to veterans, including programs providing educational scholarships; ( )

**c.** Programs providing training to individuals and organizations supporting veterans, including employees of public and private organizations assisting veterans with healthcare, education, and assistance in obtaining public benefits; ( )

**d.** The acquisition of equipment for programs supporting the health, rehabilitation, or recreational activities of veterans; and ( )

**e.** Programs providing social, health, rehabilitation, or recreational activities or care to veterans. ( )

**02. Ineligible Activities and Costs.** Grant funds shall not be used for political, lobbying, religious, or illegal activities. Ineligible lobbying activities do not include: ( )

**a.** Advocacy on behalf of individual Applicants for public benefits; and ( )

**b.** The provision of educational information to public officials concerning the needs of veterans that does not advocate for or support specific legislative proposals. ( )

**03. Funding Priorities.** The Committee will give priority to: ( )

**a.** Applicants with grant proposals that will serve the greatest number of veterans; ( )

**b.** Applicants with grant proposals for which there is no other source of funding; and ( )

**c.** Applicants with grant proposals for start-up funds for programs that will become self-sustaining. ( )

**103. -- 199. (RESERVED)**

**200. APPLICATION, REVIEW, AND AWARD.**

**01. Application.** Applicants shall submit grant proposals in the format required by the Administrator and approved by the Committee. Copies of the application format requirements and the list of supporting information will be made available on the Division website or may be obtained by contacting the Administrator at the address set forth in Section 005 of these rules. ( )

**02. Review of Grant Proposals.** The Administrator or his designee shall review proposals for completeness and compliance with these rules and will make recommendations for awards to the Committee. ( )

**03. Grant Awards.** The Committee will evaluate grant proposals annually during a meeting to be held in conjunction with the April meeting of the Idaho Veterans Affairs Commission. The Committee shall provide its proposed award of funds to the Administrator, who shall include them in the annual Division budget request to the Governor. Funding approved during the budget process shall be paid to grant applicants by the Division after the beginning of the fiscal year for which it was budgeted. ( )

**04. Grant Conditions and Requirements.** The Committee may establish conditions or requirements for the expenditure of grant funds in a written agreement between the Committee, the Division, and the grant recipient. Conditions and requirements may include, but are not necessarily limited to: ( )

- a.** The provision of matching funds from the grant recipient; ( )
- b.** The repayment of all or a portion of the grant funds upon specified events; ( )
- c.** The issuance of grant funds on a cost reimbursement basis; ( )
- d.** The submission of status and final reports; ( )
- e.** A completion date for the project or program; ( )
- f.** Bidding requirements for the expenditure of grant funds; ( )
- g.** Acknowledgement of a Veterans Recognition Fund grant in public information campaigns or press releases; and ( )
- h.** A written accounting of the use of grant funds and copies of all receipts associated with the expenditure of grant funds. ( )

**201. COMPLIANCE WITH LAW AND CONFLICT OF INTEREST.**

All grant recipients shall comply with applicable law in the conduct of programs supported by a Program grant. Public entities and employees receiving or administering grant funds shall comply with all ethics, personnel, bidding, and accounting requirements generally applicable to the entity or individual. Unless specifically provided in the grant, no official or officer of a grant recipient, individual grant recipient, or family member of an official or officer of a grant recipient or family member of an individual grant recipient shall personally profit financially from a Program grant. ( )

**202. TERMINATION OF FUNDING.**

Grant funding may be terminated by the Committee at any time for use of grant funds or conduct in violation of these rules, the terms of the grant, or violation of any applicable law. Upon receipt of a written notice of termination, the grantee will immediately cease all expenditures of grant funds and return all unspent grant funds. The Committee may require a written accounting of the use of grant funds upon the termination of funding and may deny payment for costs claimed by the grant recipient and not substantiated by written documentation. ( )

**203. -- 999. (RESERVED)**



## **IDAPA 22 - BOARD OF MEDICINE**

### **22.01.03 - RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS**

#### **DOCKET NO. 22-0103-1301**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 28, 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(s) 54-1806 and 54-1807A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

To comply rule with Sections 54-1705 and 54-1719, Idaho Code, and the new rules for Prescriber Drug Outlets codified in IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy."

**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:

Temporary rule adoption is appropriate to comply with Sections 54-1705 and 54-1719, Idaho Code, and IDAPA 27.01.01.

**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: None. There will be no impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there are no issues arising from compliance to the changes of Sections 54-1705 and 54-1719, Idaho Code, and IDAPA 27.01.01.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000 or visit the Board's website at: [www.bom.idaho.gov](http://www.bom.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140, Boise, ID  
PO Box 83720  
Boise, ID 83720-0058  
Phone: (208) 327-7000  
Fax: (208) 327-7005

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 22-0103-1301  
(Only those Sections being amended are shown.)**

**042. PRESCRIPTION WRITING.**

**01. Approval and Authorization Required.** A physician assistant may issue written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V only in accordance with approval and authorization granted by the Board and in accordance with the current delegation of services agreement and shall be consistent with the regular prescriptive practice of the supervising or alternate supervising physician. (3-9-09)

**02. Application.** A physician assistant who wishes to apply for prescription writing authority shall submit to the Board an application for such purpose on forms supplied by the Board. In addition to the information contained in the general application for physician assistant approval, the application for prescription writing authority shall include the following information: (3-16-04)

**a.** Documentation of all pharmacology course content completed, the length and whether a passing grade was achieved (at least thirty (30) hours). (7-1-93)

**b.** A statement of the frequency with which the supervising physician will review prescriptions written or issued. (3-16-04)

**c.** A signed affidavit from the supervising physician certifying that, in the opinion of the supervising physician, the physician assistant is qualified to prescribe the drugs for which the physician assistant is seeking approval and authorization. (3-16-04)

**d.** The physician assistant to be authorized to prescribe Schedule II through V drugs shall be registered with the Federal Drug Enforcement Administration and the Idaho Board of Pharmacy. (3-15-02)

**03. Prescription Forms.** Prescription forms used by the physician assistant must be printed with the name, address, and telephone number of the physician assistant and of the supervising physician. A physician assistant shall not write prescriptions or complete or issue prescription blanks previously signed by any physician. (3-16-04)

**04. Record Keeping.** The physician assistant shall maintain accurate records, accounting for all prescriptions issued and medication delivered. (3-16-04)

**05. Pharmaceutical Samples.** The physician assistant who has prescriptive authority may request, receive, sign for and distribute professional samples of drugs and devices in accordance with his current delegation of services agreement and consistent with the regular prescriptive practice of the supervising physician. (3-16-04)

**06. Prescriber Drug Outlet.** The physician assistant who has prescriptive authority may dispense prescriptive drugs or devices directly to patients under the direction of the supervising physician and in accordance

with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy."

(8-28-13)T

**043. DELIVERY OF MEDICATION.**

~~01. **Pre-Dispensed Medication.** The physician assistant may legally provide a patient with more than one (1) dose of a pre-dispensed medication upon obtaining formal prior approval from the Board. The pre-dispensed medications shall be provided for a limited period to be determined on the basis of individual circumstances.~~

~~(4-9-09)~~

~~02. **Consultant Pharmacist.** The physician assistant shall have a consultant pharmacist responsible for providing the physician assistant with pre-dispensed medication in accordance with federal and state statutes for packaging, labeling, and storage.~~

~~(3-19-99)~~

~~03. **Limitation of Items.** The pre-dispensed medication shall be limited to only those categories of drug identified in the delegation of services agreement and consistent with the regular prescriptive practice of the supervising physician, except a physician assistant may provide other necessary emergency medication to the patient as directed by a physician.~~

~~(4-9-09)~~

~~04. **Exception From Limited Period.** Physician assistants in agencies, clinics or both, providing family planning, communicable disease and chronic disease services under government contract or grant may provide pre-dispensed medication for these specific services and shall be exempt from the limited period upon obtaining formal prior approval from the Board.~~

~~(4-9-09)~~

~~044~~3. -- 050. (RESERVED)

## IDAPA 22 - BOARD OF MEDICINE

### 22.01.13 - RULES FOR THE LICENSURE OF DIETITIANS

#### DOCKET NO. 22-0113-1301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 28, 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 Sections 54-3503 and 54-3505, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 supporting reasons and purposes for adopting this temporary rule are to identify the new the name of the accrediting agency for dietetic educational programs and correct the erroneous citation of Section 54-3710, Idaho Code, to the correct citation of section 54-3505, Idaho Code.

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

The temporary adoption of the rule is appropriate to acknowledge the new name of the accrediting agency for dietetic education programs from American Dietetic Association to Academy of Nutrition and Dietetics and correct an erroneous citation. Protection of the public health, safety, or welfare.

**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. There will be no impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there are no issues due to the facts that only the name of the accrediting agency for dietetic educational programs has been changed and an erroneous citation will be corrected.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000 or visit the Board's website at: [www.bom.idaho.gov](http://www.bom.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 22nd day of August, 2013.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140, Boise, ID  
PO Box 83720  
Boise, ID 83720-0058  
Phone: (208) 327-7000  
Fax: (208) 327-7005

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 22-0113-1301  
(Only those Sections being amended are shown.)**

**021. APPLICATION FOR LICENSURE.**

**01. Application.** Each applicant for licensure 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: (12-28-94)

**a.** A certificate of successful completion of a program approved by the American Dietetic Association Academy of Nutrition and Dietetics or its successor and a certificate of successful completion of a dietetic internship or preprofessional program approved or accredited by the American Dietetic Association Academy of Nutrition and Dietetics or its successor; (~~12-28-94~~)(8-28-13)T

**b.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (12-28-94)

**c.** The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization; (12-28-94)

**d.** The disclosure of the denial of registration or licensure by any state or district regulatory body; (12-28-94)

**e.** Not less than two (2) certificates of recommendation from persons having personal knowledge of the applicant's character; (12-28-94)

**f.** Two (2) unmounted photographs of the applicant, no larger than three inches by four inches (3" x 4") (head and shoulders), taken not more than one (1) year prior to the date of the application; (12-28-94)

**g.** A copy of any registration by the Commission on Dietetic Registration, if applicable; (12-28-94)

**h.** A copy of examination results or the application to write the qualifying exam and the date the examination is scheduled; (4-2-03)

**i.** Such other information as deemed necessary for the Board to identify and evaluate the applicant's credentials; and (4-2-03)

**j.** A Provisional License Dietitian/Monitor Affidavit, if applicable. (4-2-03)

**02. Personal Interview.** The Board may, at its discretion, require the applicant to appear for a personal interview. (12-28-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. DENIAL OR REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE.**

**01. Disciplinary Authority.** A new or renewal application may be denied or a license may be suspended or revoked by the Board, and every person licensed pursuant to Title 54, Chapter 35, Idaho Code and these rules is subject to disciplinary actions or probationary conditions pursuant to the procedures and powers established by and set forth in Section 54-~~3719~~3505, Idaho Code, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine."

~~(3-27-13)~~(8-28-13)T

**02. Grounds for Discipline.** In addition to the grounds set forth in Section 54-3510, Idaho Code, applicants may be refused licensure and licensees are subject to discipline upon the following grounds, including but not limited to: (12-28-94)

**a.** Being guilty of unprofessional conduct, including the provision of care which fails to meet the standard of care provided by other qualified licensees within the state of Idaho. (12-28-94)

**b.** Violating any provisions of this act or any of the rules promulgated by the Board under the authority of the act. (12-28-94)

**c.** Being convicted of a crime which may or would have a direct and adverse bearing on the licensee's ability to practice dietetics; (3-27-13)

**d.** Demonstrating a manifest incapacity to carry out the functions of the licensee's ability to practice dietetics or deemed unfit by the Board to practice dietetics; (3-27-13)

**e.** Using any controlled substance or alcohol which may or would have a direct and adverse bearing on the licensee's ability to practice dietetics; (3-27-13)

**f.** Misrepresenting educational or experience attainments; (3-27-13)

**g.** Failing to maintain adequate dietetic records. Adequate dietetic records mean legible records that contain subjective information, an evaluation or report of objective findings, assessment or diagnosis, and the plan of care; (3-27-13)

**h.** Failure to monitor and be responsible for the activities of the provisionally licensed graduate dietitian; (3-27-13)

**i.** Employing, directing or supervising the unlicensed practice of dietetics; (3-27-13)

**j.** Practicing in an area of dietetics for which the licensee is not trained; (3-27-13)

**k.** Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of dietetics; (3-27-13)

**l.** Failing to report to the Board any known act or omission of a licensee, applicant, or any other person, that violates any of the rules promulgated by the Board under the authority of the act; (3-27-13)

**m.** Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action; (3-27-13)

**n.** Failure to obey federal and local laws and rules governing the practice of dietetics; or (3-27-13)

**o.** Failure to be lawfully present in the United States. (3-27-13)

## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-1302

#### 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 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

A change in Nurse Licensure Compact Model Rules necessitates a similar change in a Board rule. The amendment will increase from thirty (30) to ninety (90) days the period a nurse moving to Idaho may practice on the privilege granted by his/her existing license in another Compact state while his/her application for new residency is processed.

**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:

Idaho is a participating state in the Nurse Multistate Licensing Compact. The Compact administrators have agreed to increase a uniform time-period applicable to licensing decisions. This increase will benefit nurses moving to Idaho from another Compact state.

**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 wording of the rulemaking is mandatory in compliance with uniform licensing requirements of the Nurse Multistate Licensing Compact.

**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 Sandra Evans, M.A. Ed., R.N., Executive Director, (208) 334-3110 ext. 2476.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 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

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF  
DOCKET NO. 23-0101-1301  
(Only the Section being amended is shown here.)**

**077. MULTISTATE LICENSURE.**

- 01. Definitions.** In Section 077, the following terms have the meanings indicated. (3-15-02)
- a.** Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)
  - b.** Compact means the Nurse Multistate Licensing Compact. (3-15-02)
  - c.** Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)
  - d.** Home state means the party state that is the nurse's primary state of residence. (3-15-02)
  - e.** Party state means a state that is a signatory on the compact. (3-15-02)
  - f.** Primary state of residence means the state of a person's declared fixed permanent and principal home for legal purposes; domicile. (3-29-10)
  - g.** Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)
- 02. Examination.** No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination): (4-4-13)
- a.** NCLEX-RN for registered nursing; or (4-6-05)
  - b.** NCLEX-PN for practical nursing. (4-6-05)
- 03. Issuance of License in Compact Party State.** (3-15-02)
- a.** A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)
    - i.** Driver's license with a home address; (3-15-02)
    - ii.** Voter registration card displaying a home address; (3-29-10)



- iii. Federal income tax return declaring the primary state of residence; (3-29-10)
- iv. Military Form No. 2058 - state of legal residence certificate; or (3-29-10)
- v. W2 from U.S. Government or any bureau, division, or agency thereof, indicating the declared state of residence. (3-29-10)
- b.** A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (3-29-10)
- c.** A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. (3-29-10)
- d.** When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (3-29-10)
- e.** A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ~~thirty ninety~~ ~~(390)~~ days. ~~(3-15-02)~~(7-1-13)T
- f.** The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the ~~thirty ninety~~ ~~(390)~~ day period in Paragraph 077.03.e. of these rules shall be stayed until resolution of the pending investigation. ~~(4-4-13)~~(7-1-13)T
- g.** The former home state license is not valid upon the issuance of a new home state license. (3-15-02)
- h.** If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)
- 04. Multistate Licensure Privilege Limitations.** (3-15-02)
- a.** Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)
- b.** The requirement referred to in Paragraph 077.04.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-30-07)
- c.** An individual who had a license that was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued. (3-29-10)
- 05. Information System.** (3-15-02)
- a.** Levels of Access. (3-15-02)
- i. Public access to nurse licensure information shall be limited to: (3-15-02)
- (1) The licensee's name; (3-15-02)

- (2) Jurisdictions of licensure; (3-15-02)
- (3) Licensure expiration date; (3-15-02)
- (4) Licensure classification and status; (3-15-02)
- (5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)
- (6) The status of multistate licensure privileges. (3-15-02)
  - ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)
  - iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)
- b. Right to Review.** (3-15-02)
  - i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)
  - ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)
  - iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)
- c. Changes in Disciplinary Data.** (3-15-02)
  - i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)
    - (1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)
    - (2) Dismissal of the complaint; and (3-15-02)
    - (3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)
  - ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)
    - (1) A disciplinary action; (3-15-02)
    - (2) An agreement or order requiring participation in alternative programs; (3-15-02)
    - (3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)
    - (4) Dismissal of a complaint. (3-15-02)
  - iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

# **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

## **24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS**

**DOCKET NO. 24-0201-1301**

### **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 Section 54-521, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rule change will allow licensed barber instructors and licensed barber styling instructors to renew their licenses without completing the required twenty (20) hours of continued education. Continuing education has been difficult for licensed instructors to obtain and the Board of Barber Examiners has determined this requirement is not necessary for public protection. The Board is also removing the grandfather provision as it is no longer applicable.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules are simple in nature and were 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 October 23, 2013.

DATED this 29th 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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0201-1301  
(Only those Sections being amended are shown.)**

**200. APPLICATIONS (RULE 200).**

**01. Complete Application for License.** All applications for license shall be made on forms furnished by the Bureau of Occupational Licenses and received in that office at least thirty (30) days prior to the date of examination. All information requested on the application together with any required supporting documentation and the required fees must be received by the Bureau of Occupational Licenses before any application will be considered complete. (3-13-02)

**02. Photographs Required.** One (1) passport photograph taken within the six (6) months prior to submission of the application, shall be provided. (Section 54-509, Idaho Code). (3-13-02)

~~**03. Licensed Barber Instructor Continued Education.** Every licensed barber instructor must obtain twenty (20) hours of continued education approved by the board within the twelve (12) months preceding license renewal application. No more than eight (8) hours credit may be obtained in seminars, trade shows, etc. (3-13-02)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~251. -- 299. (RESERVED)~~

~~**300. GRANDFATHER RIGHTS (RULE 300).**~~

~~Any person who held a current Idaho barber license on July 1, 2001 shall be issued an Idaho barber stylist license upon written request to the Board and without payment of additional fees until June 30, 2003. (3-13-02)~~

~~301. — 349. (RESERVED)~~

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY**

#### **DOCKET NO. 24-0401-1301 (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 54-821, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Rule 010 is being amended to add a definition for clinical services; Rule 125 is being amended to reduce all fees: Establishments/retail dealers/glamour photography original license from \$30 to \$25; renewal from \$25 to \$20; original license and renewal for personal licenses from \$15 to \$10; original license and renewal for instructors from \$20 to \$15; original school license from \$400 to \$300; renewal from \$75 to \$65, and endorsement from \$85 to \$65; Rule 500 is being amended to clarify the inspection of new schools; Rule 575 is being amended to clarify when a student can provide clinical services; Rule 800 is being amended to clarify that schools and establishments must post the sanitary rules.

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

As authorized by Section 54-818, Idaho Code, rule 125 is being amended to reduce all fees: Establishments/retail dealers/glamour photography original license from \$30 to \$25; renewal from \$25 to \$20; original license and renewal for personal licenses from \$15 to \$10; original license and renewal for instructors from \$20 to \$15; original school license from \$400 to \$300; renewal from \$75 to \$65, and endorsement from \$85 to \$65.

**FISCAL IMPACT:** The following is a specific 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 amount of dedicated fund fees collected annually by the Board of Cosmetology by approximately \$119,905.00. There is no fiscal impact on general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules are simple in nature and were discussed in a noticed, open meeting of the Board of Cosmetology. The Board is also reducing its fees to confer a benefit to the licensees. The inspection of new schools and the posting of the sanitary rules in schools and establishments is being clarified.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 21st day of August, 2013.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
Ph: 208 334-3233; Fax: 208 334-3945

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0401-1301**  
**(Only those Sections being amended are shown.)**

**010. DEFINITIONS (RULE 10).**

- These rules expressly adopt all definitions set forth in Section 54-802, Idaho Code, in addition to the following: (3-30-01)
- 01. Gender.** Any reference to a gender shall mean both masculine and feminine. (7-1-97)
  - 02. Board.** The Idaho Board of Cosmetology as prescribed in Section 54-802, Idaho Code. (7-1-97)
  - 03. Bureau.** The Bureau of Occupational Licenses, as prescribed in Section 54-828 and Section 67-2602, Idaho Code. (3-8-02)
  - 04. Chief.** The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-97)
  - 05. Current License.** An unexpired license in good standing. (7-1-97)
  - 06. Establishment.** A licensed cosmetological establishment. (7-1-97)
  - 07. Record of Instruction.** The final documentation of total hours and operations completed by a student that is maintained by a school or, in the case of an apprentice, the instructor. (3-30-01)
  - 08. Certificate of Graduation.** A signed, notarized statement from a school or, in the case of an apprentice, the instructor, which indicates that the student has fulfilled all requirements of that school or apprenticeship and is eligible for examination. (7-1-97)
  - 09. Rules.** The rules of the Board. (7-1-97)
  - 10. School.** A licensed school of cosmetology. (7-1-97)
  - 11. School of Electrology.** A licensed school of cosmetology approved to teach electrology. (3-30-01)
  - 12. Endorsement Certification.** In accordance with Section 54-812, Idaho Code. (7-1-97)
  - 13. Hospital Grade.** Hospital grade means a disinfecting agent registered by the Environmental Protection Agency as an effective germicidal/bactericidal, fungicidal, and virucidal disinfectant or any other equivalent agent that effectively frees instruments from infectious or otherwise harmful microorganisms. Such agents must be used in accordance with the manufacturer's instructions. (3-19-07)
  - 14. First-Aid Kit.** First-aid kit means a packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze, which may be used for cleaning and protecting blood spills and other minor emergency traumas of the human body. (3-30-01)

**15. Patron.** Patron means any person who receives the services of anyone licensed or otherwise regulated by the provisions of Chapter 8, Title 54, Idaho Code. (3-19-07)

**16. Examination.** The examination approved by the board is the National Interstate Council of State Boards of Cosmetology examination. The examination shall consist of practical examination, theory examination and jurisprudence examination. (4-2-08)

**17. Clinical Services.** Clinical services mean performing hands on acts or techniques within the scope of practice of a profession regulated by the Board. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. FEES (RULE 125).**  
Fees are established in accord with Section 54-818, Idaho Code, as follows: (7-1-97)

- 01. Original Permits, Licenses, and Annual Renewals.** (3-30-01)
- a. Cosmetological establishment, original license - ~~thirty~~ **twenty-five** dollars (~~\$3025~~). (~~3-21-12~~)( )
  - b. Cosmetological establishment, annual renewals - ~~twenty-five~~ **twenty** dollars (~~\$250~~). (~~3-21-12~~)( )
  - c. Retail cosmetics Dealer, original license - ~~thirty~~ **twenty-five** dollars (~~\$3025~~). (~~3-21-12~~)( )
  - d. Retail cosmetics dealer, annual renewals - ~~twenty-five~~ **twenty** dollars (~~\$250~~). (~~3-21-12~~)( )
  - e. Makeover or glamour photography business, original license - ~~thirty~~ **twenty-five** dollars (~~\$3025~~). (~~3-21-12~~)( )
  - f. Makeover or glamour photography business, annual renewals - ~~twenty-five~~ **twenty** dollars (~~\$250~~). (~~3-21-12~~)( )
  - g. Domestic school of cosmetology, original license - ~~four~~ **three** hundred dollars (~~\$4300~~). (~~3-21-12~~)( )
  - h. Domestic school of cosmetology, annual renewals - ~~seventy~~ **sixty-five** dollars (~~\$765~~). (~~3-21-12~~)( )
  - i. Registered cosmetologist, original license/annual renewals - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - j. Nail technician, original license/annual renewals - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - k. Apprentice, original license (no renewal fees required) - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - l. Instructor, original license/annual renewals - ~~twenty~~ **fifteen** dollars (~~\$2015~~). (~~3-21-12~~)( )
  - m. Electrologist, original license/annual renewals - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - n. Esthetician, original license/annual renewals - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - o. Haircutter, original license/annual renewals - ~~fifteen~~ **ten** dollars (~~\$150~~). (~~3-21-12~~)( )
  - p. Endorsement fee - ~~eighty~~ **sixty-five** dollars (~~\$865~~). (~~3-21-12~~)( )

**02. Examination Fees.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator and shall be paid directly to the administrator by the applicant. (4-9-09)

**03. Fees Shall Not Be Prorated or Returnable.** Fees shall not be prorated or returnable. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. RULES OF SCHOOLS OF COSMETOLOGY (RULE 500).**

Section 54-808, Idaho Code, provides for the rules of schools of cosmetology. Supplementing this section, the Board adopts the following rules: (7-1-97)

**01. Application Before Opening and Operating a School.** No school of cosmetology will be opened and/or operated until the Board has issued its approval and a valid license has been received by the school. See Section 54-806, Idaho Code. Application for a school license shall be made on forms furnished by the Board. The fully completed application to operate a school, with the required fee, shall be submitted to the Board. (3-30-01)

**a.** As soon as practicable, upon receipt of said application, the Board or its designated agent, will cause the school to be inspected. ~~Based on this inspection, a recommendation for the issuance or rejection of a license will be made and a decision entered, within a reasonable time not to exceed thirty (30) days, after said application has been received.~~ The inspection report will be submitted to the Board for its consideration in issuing a license. (7-1-97)( )

**b.** All new schools applying for license must have one thousand eight hundred (1,800) square feet of space. Schools approved to teach electrology refer to Rule 550. (7-1-99)

**c.** All new schools must be separated completely from establishments and have no connecting entrances. (3-30-01)

**02. Adequate Space.** Schools provide adequate space for the number of students to be trained in said schools. An additional forty (40) square feet of floor space shall be provided in excess of the minimum one thousand eight hundred (1800) square feet required for each student enrolled over twenty (20) students. (7-1-97)

**03. Annual Review of Curriculum and Catalog.** Schools must provide a curriculum and catalog to the Board. Schools must provide a curriculum and catalog to the Board for review on an annual basis. Curricula must be submitted at the time of license renewal. If there are no changes in the curriculum or catalog during the previous year, the school may submit a letter of explanation to the Board. (7-1-97)

**04. Minimum Hours of Instruction.** Students shall not be permitted to render any clinical service to patrons until students have completed at least five percent (5%) of the required hours of instruction. (3-19-07)

**05. Records Required.** Records required of schools of cosmetology: (7-1-97)

**a.** Schools shall maintain records for each student as established by schools' policy and procedures which will show daily attendance and academic grades of instructional progress. (3-30-01)

**b.** Progress records shall be signed and dated by the student and school official. A copy of the signed and dated monthly record shall be provided to the student. The school shall maintain the records for a period of five (5) years following completion or termination of the student instruction. These records are subject to inspection by the Board at any time. (5-8-09)

**c.** When a student's course of instruction at a school has been completed or terminated, the completed operations, and number of hours of instruction are to be recorded by the school on the Record of Instruction Form.



This form is to be maintained by the school for a period of five (5) years from completion or termination date. (5-8-09)

**d.** Schools shall maintain on the premises proof of student meeting education requirements. Schools must maintain proof of student having satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education. If student is a high school graduate, schools may accept a photostatic copy of the high school diploma or transcript. A letter written on high school stationary, signed by an officer of the high school, may be accepted to verify student's satisfactory completion of the tenth grade and eligibility to commence the eleventh grade. (7-1-97)

**e.** Proof of age must be submitted. Schools must maintain on their premises proof of students compliance with minimum age requirement. Acceptable proof of birth date will be a copy of the student's birth certificate, a passport, military identification, drivers license or other similar form of documentation. (7-1-97)

**f.** Schools shall have a written (published) attendance policy. (5-8-09)

**06. Record of Instruction.** A record of the operations completed by each student shall be maintained and include the following: (3-30-01)

**a.** Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; (3-30-01)

**b.** Scalp Treatments; (3-30-01)

**c.** Permanent Waves (All Methods); (3-30-01)

**d.** Haircutting/shaping which shall include scissor and razor/clipper; (3-30-01)

**e.** Bleaching; (3-30-01)

**f.** Tinting; (3-30-01)

**g.** Semi Permanent/Temporary Color; (3-30-01)

**h.** Frosting/Highlights; (5-8-09)

**i.** Facials which shall include plain, makeup and arches; (3-30-01)

**j.** Manicures which shall include plain and oil; (3-30-01)

**k.** Pedicures; and (3-30-01)

**l.** Artificial Nails. (3-30-01)

**07. Discontinuance of School.** If a school discontinues to operate as a school, records of instruction covering all students attending said school at the time of discontinuance or prior thereto, must be provided to the student(s). (5-8-09)

**08. Out-of-State Applicants.** Applicants who have received instruction in out-of-state schools and who wish to complete instruction in an Idaho school are required to file with the Board prior to applying for examination a copy of the record of instruction from the out of state school(s). For purposes of this section, the record of instruction will be a statement which gives detailed information regarding operations and hours of instruction, and which is to be verified by the licensing agency or school(s) in the state in which the instruction was obtained. (3-30-01)

**09. Outside School Activities.** Schools may allow a student credit for no more than thirty (30) hours per course for outside activities during the course of their instruction. These hours must be approved by the instructor.

(5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**575. RULES FOR COSMETOLOGY SCHOOLS TEACHING HAIRCUTTING (RULE 575).**

Section 54-808, Idaho Code, provides for the teaching of haircutting in cosmetology schools. (3-19-07)

**01. Board Approval.** The Board may approve a school to teach haircutting who makes application on forms provided by the Board and who meets all the requirements set forth in the cosmetology law and these rules. Approval of curriculum must be submitted on a separate application. Approval may be suspended or terminated by the Board for the school's failure to meet any one or more of the minimum requirements set forth in the cosmetology law and rules to teach haircutting. (3-19-07)

**02. Records Required.** (3-19-07)

**a.** Records required of schools teaching haircutting shall be maintained in accordance with the records required for schools of cosmetology. (3-19-07)

**b.** Students may not render any **clinical** services to patrons until the student has completed at least five (5%) of the required hours of instruction. All work done on patrons must be completed by students and supervised by instructors. (~~3-19-07~~)(    )

**03. Record of Training.** A record of operations completed by each student shall be maintained of the following: (3-19-07)

**a.** Haircutting and Hair shaping; (3-19-07)

**b.** Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; (3-19-07)

**c.** Use of cutting implements; (3-19-07)

**d.** Basic shampooing and conditioning. (3-19-07)

**e.** Sanitation (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. INSPECTION AND SANITARY RULES. (RULE 800).**

Each cosmetological establishment and school of cosmetology and barber shop and school of barbering is subject to inspection by the Board or its designated agents in accordance with the following rules (reference Section 54-824, and 54-524, Idaho Code). Maximum possible score is indicated by number. (7-1-97)

**01. Premises.** All shops and schools shall be open to inspection during business hours to authorized agents of the Cosmetology/Barber Boards. Shops and schools must be separated from living areas by substantial walls and/or closable doors. All shops and schools must be maintained in an orderly manner and shall be heated, lighted, and ventilated so as to be safe and comfortable to the operators and patrons. Score - five (5) (7-1-97)

**02. Floors, Walls, and Ceilings.** Floors, walls, ceilings, furniture, and all other fixtures shall be kept clean and in good repair at all times. Score - five (5) (7-1-97)

**03. Instrument Cleaning.** All instruments used by operators shall be thoroughly cleaned after each use and prior to storage and/or sanitation. Score - fifteen (15) (7-1-97)

**04. Instrument Sanitation.** All instruments used by operators shall be sanitized after cleaning and prior to use on each patron, with a sanitizing agent registered by the Environmental Protection Agency as Hospital Grade or better. Every precaution shall be taken to prevent the transfer of disease-causing pathogens from person to person. Score - fifteen (15) (7-1-97)

**05. Towels.** Clean towels shall be used for each patron. A clean paper or cloth neckband shall be used to provide a sanitary barrier which shall be maintained between each patron's neck and all multi-use capes. Paper towels and paper neckstrips shall be disposed of after one (1) use. Score - five (5) (7-1-97)

**06. Storage of Equipment.** All instruments, towels, and linens shall be stored in clean, closed cabinets, drawers, and/or containers after they are cleaned and sanitized. Score - five (5) (7-1-97)

**07. Dispensers.** All solutions and/or compounds shall be clearly labeled, maintained, and dispensed in a sanitary manner. All single-use applicators shall be disposed of after one (1) use. Paraffins, waxes and all other solutions and/or compounds shall be maintained free of any foreign contaminants. Score - five (5) (7-1-99)

**08. Uniforms.** All clothing worn by operators shall be clean and washable. Score - five (5) (7-1-97)

**09. Water Supply.** Water supplies shall be from an approved source. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Every operator and/or student shall wash their hands prior to providing service to any patron. Score - ten (10) (7-1-97)

**10. Toilet Facilities.** Clean, adequate and convenient toilet facilities, located and accessible from within the building where the shop or school is located, shall be available for use by operators and patrons. A basin with hot and cold running water, approved drainage systems, soap and single-use towels shall be provided within said facilities. Score - ten (10) (7-1-97)

**11. Safety.** Each shop and school shall have a clearly identifiable first-aid kit readily accessible on the premises. No animals are allowed in shops or schools except service dogs trained to do work or perform tasks for persons with disabilities. The definition of service animals and disabilities shall be as set forth in U.S. Department of Justice Regulations at 28 C.F. R. Section 36.104 effective March 15, 2011. Score - five (5) (3-27-13)

**12. Licenses and Certificates.** All shops and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current shop and/or school license, valid operator license(s) or permit(s), a copy of these [sanitary](#) rules, and a valid classification card shall be conspicuously displayed in the work area of each shop and/or school for the information of operators, Board agents, and the public in general. Score - fifteen (15) (~~7-1-97~~)(    )

**13. Classification of Shops and Schools.** Following an inspection, each shop and school will receive classification as follows: 100% - 90% = "A"; 89% - 80% = "B"; 79% and below = "C." The "C" classification denotes an unacceptable rating and improvements are required within thirty (30) days for continued operation. (7-1-97)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS**

#### **DOCKET NO. 24-0501-1302 (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 54-2406, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is reducing its fees in an effort to reduce its dedicated fund balance and to convey a benefit to licensees and applicants. The Board is adding language to its exam fee section to equalize the fee for on-line and written exams in order to provide flexibility in processing exams. The education qualification for very small water and very small wastewater system licenses is being amended to allow more training opportunities for the applicants.

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

Rule 200 is being amended to provide that the examination fees shall not be greater than those charged by the examination provider and to reduce the endorsement fee, original license fee, and annual renewal fee from \$35 to \$30.

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

The fee section changes will result in an annual reduction of approximately \$19,280.00 in the board's dedicated fund, based on the current number of licensed operators and the number of applications received last year.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revisions to the fee rule are simple in nature, confer a benefit to the licensees and applicants, and were discussed in open, noticed meetings of the Board. No opposition to this proposed fee reduction is anticipated.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 23rd day of August, 2013.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
Ph: 208 334-3233; Fax: 208 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0501-1302**  
**(Only those Sections being amended are shown.)**

**200. FEES FOR EXAMINATION AND LICENSURE (RULE 200).**

The fees for each license type and classification shall be as follows: (3-24-05)

- 01. Application Fee.** Application fee -- twenty-five dollars (\$25). (3-24-05)
- 02. Examination Fee.** The examination fees shall not be greater than those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. Fees paid by applicants approved for a scheduled examination are not refundable. New examination fees are required for each scheduled additional examination. ~~(3-21-12)~~(\_\_\_\_)
- 03. Endorsement Fee.** Endorsement fee -- thirty ~~five~~ dollars (\$350). ~~(3-29-10)~~(\_\_\_\_)
- 04. Original License Fee.** Original license fee -- thirty ~~five~~ dollars (\$350). ~~(3-29-10)~~(\_\_\_\_)
- 05. Annual Renewal Fee.** Annual renewal fee -- thirty ~~five~~ dollars (\$350). ~~(3-29-10)~~(\_\_\_\_)
- 06. Reinstatement Fees.** Reinstatement fee -- twenty-five dollars (\$25). (3-24-05)
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**315. REQUIREMENTS FOR A VERY SMALL WATER SYSTEM LICENSE (RULE 315).**

To qualify for a Very Small Water System license an operator must meet the following requirements: (3-21-12)

- 01. Education.** Possess a high school diploma or GED and; (3-21-12)
- 02. Experience.** Document eighty-eight (88) hours of acceptable on-site operating experience at a water system; and (3-21-12)
  - a.** Complete an approved six-hour water treatment course or an approved six-hour chlorination course or a combination of said approved courses equaling six (6) hours; and ~~(3-21-12)~~(\_\_\_\_)
  - b.** Complete an approved six-hour water distribution course; and (3-21-12)
- 03. Examination.** Pass the relevant very small water system examination. (3-21-12)

**316. -- 319. (RESERVED)**

**320. REQUIREMENTS FOR A VERY SMALL WASTEWATER SYSTEM LICENSE (RULE 320).**

To qualify for a Very Small Wastewater System license, an operator must meet the following requirements: (3-21-12)

- 01. Education.** Possess a high school diploma or GED; and (3-21-12)
- 02. Experience.** Document fifty (50) hours of acceptable on-site operating experience at a wastewater collection system; and (3-21-12)

**a.** Fifty (50) hours of acceptable relevant on-site operating experience at a wastewater treatment system or lagoon; and (3-21-12)

**b.** Complete an approved six-hour pumps and motors course or an approved six-hour collection course or a combination of said approved courses equaling six (6) hours; and ~~(3-21-12)~~( )

**c.** Complete an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course or an approved six-hour wastewater treatment course or a combination of said approved courses equaling six (6) hours; and ~~(3-21-12)~~( )

**03. Examination.** Pass the relevant lagoon examination. (3-21-12)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.11.01 - RULES OF THE STATE BOARD OF PODIATRY**

#### **DOCKET NO. 24-1101-1301 (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 54-605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is amending its rules to correct terminology to update the code of ethics version that is incorporated by reference, to update the examination rules since the Board no longer gives the examination, and to update the application process. It is also clarifying the fee section. Finally, the continuing education requirement is being amended to increase the continuing education requirement from 12 hours to 15 hours after 1/1/2015, to allow carryover of hours and for a special exemption.

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

Rule 300 is being amended to remove fees associated with the Idaho examination and clarify refunds.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules being amended are simple in nature and were discussed in 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:

The Board has adopted the American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association. They are updating to the version dated March 2013.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 21st day of August, 2013.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
Ph: 208 334-3233; Fax: 208 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1101-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The document titled American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association, dated ~~April~~ March 2008~~13~~ and referenced in Section 500, is herein incorporated by reference and is available ~~from~~ for review at the Board's office and on the Board's web site at http://www.ibol.idaho.gov. (3-29-10)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS AND STANDARDS (RULE 10).**

**01. Act.** The Act means Chapter 143 Idaho session Laws of 1957 codified as Chapter 6, Title 54, Idaho Code, and any amendments thereto. (7-1-93)

**02. Board.** The Board means the State Board of Podiatry, as prescribed in Section 54-604, Idaho Code. (7-1-93)

**03. Licensure.** Licensure means a license to practice podiatry in Idaho. (3-13-02)

**04. Reputable School.** A "reputable school" of podiatry is defined as an approved podiatry school located within the United States or Canada and designated as such by the eCouncil on Podiatric Medical Education and the American Podiatric Medical Association. (3-13-02)(    )

**05. Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-605 and 67-2602, Idaho Code. (3-13-02)

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

**100. GENERAL QUALIFICATIONS OF LICENSURE (RULE 100).**

**01. Residence.** Residence in Idaho shall not be an eligibility requirement for licensure. (3-13-02)

**02. Age.** All applicants shall be at least twenty-one (21) years of age. (3-13-02)

**03. Character.** All applicants shall be of good moral character. (3-13-02)

**04. Citizenship Requirement for Exam.** Citizenship shall not be an eligibility requirement for ~~the Idaho podiatry~~ examination or licensure. All persons making application for licensure are required to be legally eligible to reside and obtain employment in the United States. (3-13-02)(    )

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

**150. PRE-PROFESSIONAL EDUCATION.**

All applicants shall provide ~~official documentation of graduation from an accredited high school, or its equivalent, and provide~~ official documentation of credits granted for at least two (2) full years of general college study in a college or university of recognized standing. (3-13-02)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**



**200. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 200).**

**01. Application.** An application for licensure shall be completed on a form approved by the board and submitted to the bureau ~~ninety (90) days before the date of the Idaho board examination.~~ (3-13-02)(    )

**02. Certified Copy of National Board Results.** A copy of the applicable National Board results which has been certified as true and correct by the examining entity. (7-1-97)

**03. Photograph Requirement.** All applications shall be accompanied by an unmounted passport photograph of the applicant taken not more than one (1) year prior to the date of application. (3-13-02)

**04. Educational Certificate Requirement.** Each applicant shall be required to provide official ~~documentation of graduation from a four (4) year high school, or the equivalent, and official~~ documentation of a collegiate education of not less than two (2) years in an accredited college or university giving instruction in letters and sciences. (3-13-02)(    )

**05. Diploma.** Certified photostatic copy of diploma granted by any college of podiatry and official certified transcripts indicating graduation from the program. (3-13-02)

**06. Residency Certification Requirement.** All applications shall include certification of completion of a residency as defined in Rule 152. (3-13-02)

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

**300. FEES (RULE 300).**

**01. Application Fee.** A fee shall accompany all applications. The fee shall be two hundred dollars (\$200). (7-1-97)

**02. Original License Fee.** The original license fee shall be four hundred dollars (\$400). (4-9-09)

**03. Written Exam Fee.** The fee for examination shall be equal to that charged by the national examining entity, ~~together with an additional twenty-five (\$25) dollar administrative fee~~ and shall be paid directly to the examination provider. (3-13-02)(    )

**04. Annual Renewal Fee.** Fee for annual renewal of licenses, five hundred dollars (\$500). (3-21-12)

~~**05. Re-Exam Fee.** For candidates re-examining for the written and practical examinations or written examination only, the fee for re-examination will be four hundred dollars (\$400). For candidates re-examining for the practical only, the fee shall be two hundred dollars (\$200).~~ (3-13-02)

~~**06.5. Fee Non-Refundable.** All fees are non-refundable, except that if a license is not issued, the license fee will be refunded.~~ (3-13-02)(    )

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

**400. LICENSURE BY EXAMINATION (RULE 400).**

**01. Examination of Applicants.** All applicants must successfully pass all parts of the ~~national board~~ American Podiatric Medical Licensing eExamination ~~given~~ developed and administered by the National Board of Podiatric Medical Examiners. (4-2-08)(    )

**02. Passing Grade.** A passing grade in all subjects examined shall be the grade as established by the ~~National Board of Podiatric Medical Examiners for the~~ examination ~~with a general average of not less than seventy percent (70%)~~ provider. (4-2-08)(    )

**401. LICENSURE BY ENDORSEMENT (RULE 401).**

Under Section 54-613, Idaho Code, applicants for licensure by endorsement may be granted a license upon the approval of the Board. Each applicant for licensure by endorsement must provide documentation for each of the following before licensure will be considered: (3-15-02)

- 01. Complete Application.** A complete application together with the required fee. (4-11-06)
- 02. Certification of License.** Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory. (4-11-06)
- 03. Credentials.** Credentials as required in Subsections 200.02 through 200.05. (3-29-10)
- 04. Examination.** Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. Official certification of examination must be received by the board directly from: (4-11-06)
  - a.** The applicant's state or territory of licensure; or (3-15-02)
  - b.** The national board of podiatric medical examiners. ~~(4-11-06)~~( )
- 05. Residency.** Proof of completion of the residency requirement as set forth in Subsection 200.06 of this rule. However, if the applicant graduated from a college of podiatry prior to 1993, this requirement will be waived. (3-29-10)
- 06. Practical Experience.** Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application. (4-11-06)
- 07. Continuing Education.** Having obtained at least twelve (12) hours of continuing education during the twelve (12) months prior to the date of application. Effective January 1, 2015, having obtained at least fifteen (15) hours of continuing education germane to the practice of podiatry during the twelve (12) months prior to the date of application. ~~(4-11-06)~~( )
- 08. Disciplinary Action.** Has not been the subject of any disciplinary action including pending or unresolved licensure actions within the last five (5) years immediately prior to application and has never had a license to practice podiatry revoked or suspended either voluntarily or involuntarily in any jurisdiction. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~551. -- 599. (RESERVED)~~

~~600. GENERAL PROVISIONS (RULE 600).~~

~~Regular meetings of the board shall be the third Monday of July and at such other times as determined by the board.~~  
(4-5-00)

~~601. — 699. (RESERVED)~~

**700. CONTINUING EDUCATION (RULE 700).**

**01. Post Graduate Education Requirement for License Renewal.** Each podiatrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of twelve (12) full hours of post-graduate podiatry education courses. Effective January 1, 2015, each podiatrist licensed by the state of Idaho shall attend in each twelve-month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of fifteen (15) full hours of post-graduate podiatry education courses. No more than ~~six~~ ten (10) hours of continuing education may be ~~home study~~ obtained on-line. Courses must

be germane to the practice of podiatry; and ~~(4-2-08)~~( )

a. Approved by the Council on Podiatric Medical Education; or (4-2-08)

b. Otherwise approved by the Board. (4-2-08)

**02. Submission of License Renewal Application Form.** Each licensed Idaho podiatrist will be furnished a license renewal application form by the Bureau of Occupational Licenses on which each podiatrist shall be required to certify by signed affidavit that compliance with the continuing education requirements has been met and shall submit the renewal application together with the required fees to the Bureau. (3-15-02)

**03. Verification of Attendance.** It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the ~~applicant~~ licensee. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent. The Board will conduct random audits to monitor compliance. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action. ~~(3-15-02)~~( )

**04. Carryover of Continuing Education Hours.** Continuing education courses not claimed for credit in the current renewal year may be credited for the next renewal year. A maximum of fifteen (15) hours may be carried forward from the immediately preceding year. ( )

**05. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or for other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ( )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD**

**DOCKET NO. 24-1801-1301**

#### **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(s) 54-4106, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 is amending its rules to comply with recent Appraiser Qualification Board (AQB) changes in federal law and regulation regarding state licensed or certified appraisers. These new changes must be effective by January 1, 2015. The Board is also adopting a rule to address appraisers' duties when testifying in a court proceeding.

**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 Board is amending its rules to comply with changes in federal law and regulation as mandated by the federal Appraiser Qualification Board (AQB). These rule changes have been discussed in multiple noticed open meetings since the spring of 2012.

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

The Board has adopted the Uniform Standards of Professional Practice (USPAP) and are updating to the 2014-2015 edition as published January 1, 2014.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 21<sup>st</sup> day of August, 2013.

Tana Cory, Bureau Chief  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
Phone: 208 334-3233  
Fax: 208 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1801-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)," 201~~24~~-201~~35~~ Edition published by the Appraisal Foundation and effective January 1, 201~~24~~ as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation, Distribution Center, P. O. Box 381, Annapolis Junction, MD 20701-0381. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS (RULE 10).**

The definitions numbered one through sixteen (1-16), appearing at Section 54-4104, Idaho Code are incorporated herein by reference as if set forth in full. (3-29-10)

**01.** Accredited. Accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. ( )

**042.** **Advisory Committee.** A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser. (7-1-93)

**023.** **Appraisal Foundation.** The Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois. (7-1-97)

**034.** **Appraiser Qualifications Board.** Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. (7-1-97)

**045.** **Appraisal Standards Board.** The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. (7-1-97)

**056.** **Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-4106(2)(a) and 67-2601, Idaho Code. (3-13-02)

**067.** **Chief.** The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-93)

**078.** **Classroom Hour.** Fifty (50) minutes out of each sixty (60) minute hour in a setting which may include a classroom, conference/seminar, on-line or a virtual classroom. (4-4-13)

**089.** **Field Real Estate Appraisal Experience.** Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgment, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. (4-6-05)

**0910.** **FIRREA.** Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. (7-1-93)( )

~~10. **Nationally Recognized Appraisal Organization.** An appraisal organization which is a sponsor of The Appraisal Foundation. (4-2-08)~~

**11. Real Estate.** In addition to the previous definition in Section 54-4104(11), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any. (3-29-10)

**12. Real Property.** In addition to the previous definition in Section 54-4104(11), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. (3-29-10)

**13. Residential Unit.** Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom. (3-29-10)

**14. Specialized Appraisal Services.** Services which include situations in which an appraiser is employed or retained to provide appraisal services that do not fall within the defined term "appraisal assignments." Specialized appraisal services relate to the employer's or client's individual needs or investment objectives and commonly include specialized marketing and financing studies as well as analysis, opinions, and conclusions rendered in connection with activities such as real estate brokerage, mortgage banking, and real estate counseling, including real estate tax counseling. (7-1-97)

**15. Uniform Standards of Professional Appraisal Practice or USPAP.** Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time. (3-13-02)

**16. USPAP Course.** For the purposes of licensure and license renewal, any reference to the approved USPAP course shall mean the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. REQUIREMENTS FOR LICENSURE (RULE 250).**

All applicants for licensure in any real estate appraiser classification must comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300, 350, and 400 below. (4-11-06)

**01. Education.** ~~If an individual has completed the education requirements on or before December 31, 2007, the individual must submit a complete application to the board before January 1, 2011. If an individual has not completed their educational requirement on or before December 31, 2007, or submits an application on January 1, 2011 or later, the individual must complete the educational requirements which became effective January 1, 2008 and any subsequent requirements adopted prior to the individual's application date. Classroom H~~hours will be credited only for courses with content that follows the Required Core Curriculum as outlined by the Appraisal Qualification Board. ~~(4-2-08)~~( )

**a.** Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination pertinent to the educational offering. In addition, distance education courses intended for use as qualifying education must include a written, closed-book final examination - proctored by an official approved by the college or university or by the sponsoring organization. The term "written" as used herein refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable. The testing must be in compliance with the examination requirements of this section. ~~(4-11-06)~~( )

**b.** Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

**i.** Colleges or Universities. (7-1-97)

- ii. Community or Junior Colleges. (7-1-97)
- iii. Courses approved by the Appraisal Qualifications Board. (4-2-08)
- iv. State or Federal Agencies or Commissions. (7-1-97)
- v. Other providers approved by the Board. (7-1-97)
- c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)
- d. Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. (4-11-06)
- e. ~~Prior to January 1, 2008, various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of those topics listed in Subsection 250.01.e. that are required for the license classification for which application is being made. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. Credit toward education requirements may be obtained through completion of a degree in Real Estate from:~~ ( )
  - i. ~~An accredited degree-granting college or university that has been approved by the Association to Advance Collegiate Schools of Business; or~~ ( )
  - ii. ~~A regional or national accreditation agency that is recognized by the U.S. Secretary of Education and whose curriculum has been reviewed and approved by the Appraiser Qualifications Board.~~ (3-29-10)( )
- i. ~~Basic appraisal principles.~~ (4-11-06)
- ii. ~~Basic appraisal procedures.~~ (4-11-06)
- iii. ~~The fifteen (15) hour national USPAP course.~~ (4-11-06)
- iv. ~~Market analysis and highest and best use.~~ (4-11-06)
- v. ~~Appraiser site valuation and cost approach.~~ (4-11-06)
- vi. ~~Sales comparison approach.~~ (4-11-06)
- vii. ~~Sales income approach.~~ (4-11-06)
- viii. ~~Report writing and case studies.~~ (4-11-06)
- ix. ~~Statistics, modeling and finance.~~ (4-11-06)
- x. ~~Advanced applications and case studies.~~ (4-11-06)
- xi. ~~Appraisal subject matter electives.~~ (4-11-06)
- f. ~~Advanced courses will be those courses for which an introductory or basic course is required as a prerequisite. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one (1) of the following:~~ (4-11-06)( )
  - i. ~~An accredited, degree-granting domestic college or university;~~ ( )

- ii. The American Association of Collegiate Registrars and Admissions Officers (AACRAO); ( )
  - iii. A foreign degree credential evaluation services company that is a member of the National Association of Credential Evaluation Services (NACES); or ( )
  - iv. A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline. ( )
- 02. Experience.** (7-1-97)
- a. The work product claimed for experience credit must be in conformity with USPAP. (3-21-12)
  - b. All appraisal experience must be obtained as a registered trainee or as a licensed appraiser. (4-11-06)
  - c. Only experience gained during the five (5) years immediately preceding application will be considered for evaluation. (4-11-06)
  - d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (4-11-06)
  - e. Each applicant applying for licensure must verify completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (4-11-06)
    - i. The Board requires submission of a log that details hours claimed for experience credit. The log must include the following: (3-29-10)
      - (1) Type of property; (3-29-10)
      - (2) Address of the property; (3-29-10)
      - (3) Report date; (3-29-10)
      - (4) Description of work performed; (3-29-10)
      - (5) Number of work hours; (3-29-10)
      - (6) Complexity; (3-29-10)
      - (7) Approaches to value; (3-29-10)
      - (8) Appraised value; (3-29-10)
      - (9) Scope of supervising appraiser's review; and (3-29-10)
      - (10) Supervision. (3-29-10)
    - ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)
    - iii. The Board may request submission of written reports or file memoranda that substantiate an applicant's claim for experience credit. (4-11-06)
  - f. Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to



those used by appraisers and effectively use the process as defined in Subsection 010.089, Field Real Estate Appraisal Experience in order to receive experience credit. ~~(3-29-10)~~( )

**03. Examination.** Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

**251. -- 274. (RESERVED)**

**275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).**

**01. Qualification.** Each applicant for registration as an appraiser trainee must meet the following requirements: (4-11-06)

**a. Education.** ~~Beginning July 1, 2006,~~ Within the five-year period preceding application, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: ~~(4-11-06)~~( )

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and (4-11-06)

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and (4-11-06)

iii. National USPAP Course - not less than fifteen (15) hours. (4-11-06)

**b. Experience.** All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. The supervising appraiser shall: (4-11-06)

i. ~~Hold~~ Have held a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser for at least three (3) years prior to providing supervision; and ~~(4-11-06)~~( )

ii. Submit evidence of completion of an approved four-hour continuing education course regarding the role of a supervising appraiser. (3-29-10)

iii. Not have been disciplined by the Board or any other state or jurisdiction within the previous four (4) years that effects the supervisory appraiser's legal eligibility to engage in appraisal practice; and ~~(3-21-12)~~( )

iv. Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and (4-11-06)

v. Be responsible for the training and direct supervision of the appraiser trainee; and (4-11-06)

vi. Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and (4-11-06)

vii. Review and sign all appraiser trainee appraisal report(s); and ~~(4-11-06)~~( )

viii. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. (4-11-06)

**c. Examination.** Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. (4-11-06)

d. Beginning January 1, 2015, prior to registration as an appraiser trainee, each trainee applicant must complete a trainee appraiser course that complies with the content requirements established by the Appraisal Qualifications Board. This course is in addition to the education requirements set forth in Section 275. ( )

**02. Scope and Practice.** An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. (4-11-06)

**a.** Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. (4-11-06)

**b.** An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: (4-11-06)

i. Type of property. (4-11-06)

ii. Date of report. (4-11-06)

iii. Address of subject property. (4-11-06)

iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. (4-11-06)

v. Number of actual work hours. (~~4-11-06~~)( )

vi. Signature and license number of the supervising appraiser. (4-11-06)

**c.** An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. (4-11-06)

**03. Continuing Education.** Prior to the second renewal and for each continuing education cycle thereafter as provided in Section 275 of this rule, an appraiser trainee shall be required to obtain: (3-21-12)

**a.** The equivalent of thirty (30) classroom hours of instruction in approved courses or seminars during the twenty-four (24) month period preceding the renewal. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. (3-21-12)

**b.** All continuing education shall be in compliance with Subsections 401.01 through 401.05. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. (~~3-29-10~~)( )

**c.** Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. (~~4-11-06~~)( )

**d.** The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. (4-11-06)

**276. -- 299. (RESERVED)**

**300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).**

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement. (4-11-06)

**01. Education.** ~~Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than seventy-five (75) classroom hours of study related to those topics outlined under Subsection 250.01.e, the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics will be credited to the classroom hour requirement. Beginning on January 1, 2008, a~~ As a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: ~~(3-29-10)~~ ( )

- a. Document registration as an Appraiser Trainee; and (4-11-06)
- b. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)
  - i. Residential Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and (4-11-06)
  - ii. Residential Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and (4-11-06)
  - iii. Residential Sales Comparison and Income Approaches - not less than thirty (30) hours specifically including Valuation Principles and Procedures - Sales Comparison Approach; Valuation Principles and Procedures - Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and (4-11-06)
  - iv. Residential Report Writing and Case Studies - not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. (4-11-06)

**c.** Beginning January 1, 2015, hold an Associate's Degree or higher from an accredited college or university or document the successful completion of thirty (30) semester hours of college-level education. An applicant may receive semester hour credit for credits earned through the College-Level Examination Program (CLEP) provided that the accredited college or university accepts the CLEP and issues a transcript for the exam. ( )

- 02. Experience.** Prerequisite to sit for the examination: (7-1-97)
  - a. Document two thousand (2,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)
  - b. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

**03. Examination.** Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

301. -- 349. (RESERVED)

**350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).**

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being certified every licensee must annually meet the continuing education requirement. (4-11-06)

**01. Education.** ~~Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred twenty (120) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related to those topics outlined under Subsection 250.01.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP and Code of Ethics; will be credited to the classroom hour requirement. Beginning on January 1, 2008,~~ **As a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall:** (3-30-07)( )

**a.** Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law; and (4-2-08)

**b.** Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (4-11-06)

**c.** Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

**i.** Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)

**ii.** Advanced Residential Applications and Case Studies - not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (4-11-06)

**iii.** Appraisal Subject Matter Electives - not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (4-11-06)

**d.** On or after January 1, 2015, hold a Bachelor's Degree or higher from an accredited degree-granting college or university; and ( )

**e.** Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real Estate Appraiser; and ( )

**f.** Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

**i.** Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ( )

**ii.** Advanced Residential Applications and Case Studies - not less than fifteen (15) hours, specifically

including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and ( )

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours, and may include hours over the minimum shown in Subsection 350.01.c of these rules. ( )

**02. Experience.** Experience is a prerequisite to sit for the licensure examination: (4-11-06)

**a.** Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

**b.** Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

**c.** Examination. Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (3-21-12)

**351. -- 399. (RESERVED)**

**400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).**

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement. (4-2-08)

**01. Education.** ~~Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho State Certified General Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection 250.01.e. Beginning on January 1, 2008, a~~ **As** a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: (3-30-07)( )

**a.** Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ag economics, business management, or real estate; and (4-2-08)

**b.** Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)

**i.** Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; (3-29-10)

**ii.** General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; (3-29-10)

**iii.** General Appraiser Sales Comparison Approach: not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; (3-29-10)

- iv. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; (3-29-10)
- v. General Appraiser Income Approach: not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; (3-29-10)
- vi. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)
- vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.b.; or (3-29-10)
- c. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)
  - i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)
  - ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)
  - iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-29-10)
  - iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)
  - v. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)
  - vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)
  - vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.c.; or (3-29-10)
- d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)
  - i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)
  - ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-29-10)
  - iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)

iv. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)

v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. (3-29-10)

e. On or after January 1, 2015, hold a Bachelor's Degree or higher from an accredited degree-granting college or university; and ( )

f. Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance; ( )

ii. General Appraiser Market Analysis and Highest and Best Use - not less than thirty (30) hours; ( )

iii. General Appraiser Sales Comparison Approach - not less than thirty (30) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; ( )

iv. General Appraiser Site Valuation and Cost Approach - not less than thirty (30) hours; ( )

v. General Appraiser Income Approach - not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; ( )

vi. General Appraiser Report Writing and Case Studies - not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ( )

vii. Appraisal Subject Matter Electives - not less than thirty (30) hours, and may include hours over the minimum shown in Subsection 400.01.b. of these rules; or ( )

g. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ( )

ii. General Appraiser Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and ( )

iii. General Appraiser Sales Comparison Approach - not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ( )

iv. General Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and ( )

v. General Appraiser Income Approach - not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )

vi. General Appraiser Report Writing and Case Studies - not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ( )

vii. Appraisal Subject Matter Electives - not less than thirty (30) hours, and may include hours over the minimum shown in Subsection 400.01.c.; or ( )

h. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. General Appraiser Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and ( )

ii. General Appraiser Sales Comparison Approach - not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ( )

iii. General Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and ( )

iv. General Appraiser Income Approach - not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )

v. General Appraiser Report Writing and Case Studies - not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ( )

**02. Experience.** Experience is a prerequisite to sit for the licensure examination: (4-11-06)

**a.** Document three thousand (3,000) hours of appraisal experience in no less than thirty (30) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

**b.** One thousand five hundred (1,500) hours of the experience must be nonresidential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 250.02.d. (4-11-06)

**c.** Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (3-21-12)

**401. CONTINUING EDUCATION (RULE 401).**

All certified/licensed appraisers must comply with the following continuing education requirements: (7-1-97)

**01. Purpose of Continuing Education.** The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising. (7-1-97)

**02. Hours Required.** The equivalent of thirty (30) classroom hours of instruction in courses or seminars during the twenty-four (24) months prior to renewal is required. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will



receive continuing education credit for one (1) of the courses. (3-21-12)

**a.** A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment. The educational setting may include a classroom, conference/seminar, on-line or a virtual classroom. (4-4-13)

**b.** If the educational offering is taken on-line or in a virtual classroom, the course must include successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter. ( )

**bc.** Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. (7-1-97)

**ed.** Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the Appraisal Qualification Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require the continuing education provider to submit the educational course approval application and application fee as set forth in these rules along with the documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years. (4-4-13)

**de.** Once every twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. (3-21-12)

**03. Credit for Appraisal Educational Processes and Programs.** Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. (4-2-08)

**04. Credit for Attending the Licensure Board Meetings.** Continuing education credit may be granted for a maximum of two (2) hours each continuing education cycle for time spent attending one (1) Board meeting. Members of the board shall not be entitled to continuing education credit for board service. (3-21-12)

**05. Requirement When a Certificate/License Is Cancelled.** For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be documented, including a seven (7) hour USPAP update course, prior to reinstatement. The course must cover the most recent USPAP edition. (3-21-12)

**06. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The appraiser must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-29-10)

**402. -- 449. (RESERVED)**

**450. RECIPROCITY (RULE 450).**  
Applicant must comply with Section 54-4115, Idaho Code. (7-1-93)

**01. File Application.** File applications on forms provided by the Board. (7-1-93)

**02. Submit Statement Verifying Certification/Licensure.** Submit current notarized statement verifying certification/licensure in good standing in another state. (7-1-93)

~~**03. Reciprocal License Issued.** No reciprocal license will be issued where the applicant was originally licensed in a state other than that upon which the reciprocity application is based. (7-1-97)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**526. -- 543.** (RESERVED)

**540. APPRAISALS IN LITIGATION (RULE 540).**

Licensed or certified appraiser's providing opinions of value in litigation shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation. ( )

**541. -- 549.** (RESERVED)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY**

#### **DOCKET NO. 24-2601-1301 (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 Sections 54-5504 and 54-5509, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 Idaho Board of Midwifery operates on dedicated funds from fees paid by its licensees and applicants. The Board's expenses have been exceeding its revenues. The fee increases will help balance the Board's annual budget while maintaining the services necessary to protect the health and safety of the public. At the end of Fiscal Year 2013, the Board's balance was (\$79,908).

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

This change would increase the initial application fee from \$50 to \$200; the initial license fee from \$550 to \$800; and the annual renewal fee from \$550 to \$850.

**FISCAL IMPACT:** The following is a specific 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 will result in an annual increase of approximately \$10,000 in the board's dedicated fund, based on the current number of licensees and an estimate of one new application.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revisions to the fee rule are simple in nature and were discussed during noticed, open meetings of the Board.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 23rd day of August, 2013.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
PO Box 83720  
Boise, ID 83720-0063  
208 334-3233 phone 208 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-2601-1301**  
**(Only those Sections being amended are shown.)**

**175. FEES (RULE 175).**

**01. Initial Application Processing Fee.** A ~~forty~~ **two hundred** dollars (~~\$40~~**200**) application processing fee must accompany initial licensure applications. ~~(3-29-10)~~(    )

**02. License Fee.** The initial license fee is ~~five~~ **eight** hundred ~~forty~~ dollars (~~\$550~~**800**). This initial, one-time fee will be refunded if the Board does not issue the license for which application has been made. ~~(3-29-10)~~(    )

**03. Annual Renewal Fee.** The annual license renewal fee is ~~five~~ **eight** hundred fifty dollars (~~\$5~~**850**). The annual license renewal fee will be refunded if the license is not renewed by the Board. ~~(3-29-10)~~(    )

**04. Reinstatement Fee.** The fee to reinstate a license that has been cancelled for failure to renew is fifty dollars (\$50). (3-29-10)

**05. Refund of Fees.** Unless otherwise provided for in this Rule, all fees are non-refundable. (3-29-10)

## IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

### 25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

#### DOCKET NO. 25-0101-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Idaho law states that an outfitter is “any individual, firm, partnership, corporation or other organization or any combination thereof, who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions.” Section 36-2102, Idaho Code. This includes private landowners.

In 1992, the Idaho Supreme Court (*State v. Koller*, 112 Idaho 409) held that the outfitting and guides act regulates commercial outfitting whether it’s occurring on public or private lands and that the State of Idaho has jurisdiction. As the result, private land owners have been licensed as outfitters themselves, have designated agents (including existing outfitters) as employees to provide facilities and services and have leased lands to others for outfitting purposes.

These proposed rules recognize a land owner's right to control use of their lands. They are intended clarify and enhance a private land owners ability to allow public access to their private lands and in doing so, they also are intended to clarify outfitted use and license requirements when outfitted facilities and services are provided by the landowner or by someone authorized by the land owner to do so.

The proposed rule also is intended clarify existing rules to address a concern over the loss of access due to the proliferation of organizations/clubs operating commercially due to ambiguity in existing rules. In doing so, organizations/clubs offering outfitted facilities and services including acquiring access to private or public land for hunting, fishing, or hazardous excursions and for commercial gain will be governed by the same limits/restrictions set forth in these rules and governing licensed commercial outfitters.

**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:

No fiscal impact will occur as a result of changes that are being made.

**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 October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 614 through 616](#).

**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: Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this August 20, 2013.

Jake Howard  
Executive Director  
Outfitters and Guides Licensing Board  
1365 North Orchard, Suite 172  
Boise, ID 83706  
(208) 327-7380  
FAX (208) 327-7382

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 25-0101-1201**  
**(Only those Sections being amended are shown.)**

**011. PRIVATE MEMBERSHIP GROUPS, ORGANIZATIONS, AND OUTFITTING ON PRIVATE LAND.**

*An outfitter license shall not be issued to any individual, group, corporation, or club which limits its services to a membership or does not offer services to the general public. A group, corporation, or club formed in a manner so as to solicit participation from the general public and to provide services on a guided and/or paid basis beyond a sharing of expenses shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code).* (3-1-86)

**01. Groups, Organizations, Clubs, and Individual Persons Sharing Costs.** ( )

**a.** Any individual person or any group, club, corporation, or entity who in any manner solicits participation from the general public and who provides or facilitates access to the public on private or public lands or waters for boating, hunting, fishing or other hazardous excursions and/or who provides outfitted facilities, or services to the public on a paid or compensated basis or for other consideration, except those who may be otherwise exempt under Section 36-2103, Idaho Code, or as otherwise provided in Subsection 011.02.a of this rule shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code) and the Board's rules. ( )

**b.** Individual persons who share facilities, and expenses while participating in outdoor recreational activities, and who do not solicit participation from the public and who are not compensated or provided other consideration are not required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code). ( )

**c.** An outfitter license shall not be issued to an individual, club, group, corporation, or other entity who does not offer outfitted or guided services to the general public. ( )

**02. Private Landowner Responsibilities -- Outfitting on Private Land.** ( )

**a.** Private landowners, who advertise and only charge fees for access to their land or waters, shall not be required to be licensed as an outfitter. ( )

b. Private landowners (“Landowner”), who advertise outfitted or guided services or solicit participation from the general public for such services, or who provide outfitted facilities or services for compensation or consideration, shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code) and shall be licensed to provide outfitted facilities or services on their own land or waters and/or elsewhere. ( )

i. A landowner providing a Landowner Appreciation (LAP) Tag to any individual or individuals is not considered an outfitted service. ( )

ii. Private landowners licensed as outfitters may designate agents (including existing outfitters) who shall be employees to provide facilities and services. ( )

iii. Private landowners may lease lands or waters they own to licensed outfitters for outfitting purposes. ( )

c. Licensed outfitters shall maintain on file with the Board a properly completed OG-10 form for each private land on which they hope to operate prior to use of that private land and during the time the private land is licensed to them as an operating area. The OG-10 form must specify the area to be used by the outfitter, the activities to be provided, and the date of use allowed by the private land owner. Private lands and activities to be licensed to an outfitter will be added or modified to an existing outfitter license by the outfitter following the major amendment process and must be approved by the Board prior to advertising or use. ( )

i. Outfitter arrangements for use of any private land shall not exceed a period of five (5) years. Reauthorization shall be done by the outfitter providing the Board a properly completed OG-10 form submitted following the minor amendment process. ( )

ii. Outfitters licensed for the use of private land or water must notify the Board immediately upon the termination of use or changes to the terms of use of any private land licensed as an operating area prior to promotion or use. Changes to the terms of use other than adding areas or activities must be done by the outfitter following the minor amendment process. Termination of an outfitter use arraignment must be done in writing or by submitting an OG-10 form. Either the land owner or the outfitter may terminate an outfitter’s use. ( )

## IDAPA 26 - PARKS AND RECREATION

### 26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

#### DOCKET NO. 26-0120-1301 (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(s) 67-4210, 67-4223, and 67-4249, Idaho Code.

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

<b>October 21, 2013 (Monday); 6 P.M. – 8 P.M.</b>	<b>October 23, 2013 (Wednesday); 6 P.M. – 8 P.M.</b>	<b>October 24, 2013 (Thursday); 6 P.M. – 8 P.M.</b>
5657 Warm Springs Ave Boise, Idaho	2885 Kathleen Ave, Suite 1 Coeur d'Alene, Idaho	4279 Commerce Circle, Suite B Idaho Falls, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

The Idaho Department of Parks and Recreation proposes changes to IDAPA 26, Title 1, Chapter 20, Section 250.01 to increase the IDAPA approved Fee Caps by \$10 per night for all Idaho state park campsites and by \$50 per night for Idaho state park Camper Cabins and Yurts.

In order to allow time for user notification and system implementation it is further requested that if approved these rule changes go into effect on Tuesday, July 1, 2014.

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

The rule changes requested are to increase the IDAPA approved Fee Caps by \$10 per night for all Idaho state park campsites and by \$50 per night for Idaho state park Camper Cabins and Yurts, as demonstrated in the following table:

<b>Campsite Type</b>	<b>Current IDAPA Approved Fee</b>	<b>Proposed IDAPA Fee</b>
Primitive Campsite	\$13.00	\$23.00
Standard Campsite	\$16.00	\$26.00
Serviced Campsite/W	\$20.00	\$30.00
Serviced Campsite/E	\$20.00	\$30.00
Serviced Campsite/W, E	\$24.00	\$34.00
Serviced Campsite/W, E, SWR	\$26.00	\$36.00
Companion Campsite	Site type x 2	Site type x 2
Camper Cabins and Yurts	\$150.00	\$200.00



The adjustments are necessary in order for Parks and Recreation to apply the following fee changes:  
Increase the fee charged for all serviced campsite types by \$2 per night for all camping customers  
Increase the fee charged for all campsites by an additional \$3 per night for all non-resident camping customers.  
Increase the fee charged for all camper cabins and yurts by an additional \$5 per night for all non-resident camping customers.  
Increase the fee charged for all other overnight facilities (Deluxe Cabins, Cottages, Houses, Group Yurts, Lodges, and Lodge Rooms) and group campsites by an additional 10% per night for all non-resident camping customers.

**FISCAL IMPACT:** The following is a specific 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:

As a direct result of the fees requested, we are unable to provide a reasonable forecast for future usage numbers for this fiscal impact statement. We cannot predict how many of our customers will be able to continue to consider camping in Idaho's state parks an affordable option. As such, the fiscal impact assumes no decrease in occupancy and has been calculated against averaged site usage using the past three years' occupancy. Revenue potential is \$347,149. The potential revenue generated is split as follows:

\$156,839 - calculated for a \$2 per night increase to the rate charged for all serviced campsite types for all resident and non-resident camping customers.

\$190,310 - calculated for fee increases for non-resident camping customers for all overnight stays on all individual and group campsites and facilities.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted as the changes being requested were first submitted as Temporary Rules. Upon notification that the Temporary Rules were denied, the agency immediately scheduled public hearings.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tammy L. Kolsky, 208-514-2427.

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 Monday, October 28, 2013.

DATED this September 3, 2014.

Tammy L. Kolsky  
Program Manager  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue, Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Telephone: 208-514-2427; FAX 208-334-3741

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 26-0120-1301**  
**(Only those Sections being amended are shown.)**

250. FEE SCHEDULE: CAMPSITES.

01. Campsites:

<b>CAMPSITE FEE TABLE</b>	
<b>Maximum Fee Allowed</b>	
<b>Primitive Campsite</b> No amenities at site, camping area not defined	\$ <del>4</del> 23/day
<b>Standard Campsite</b> Any defined campsite, either tent pad or RV pad/area (may include: table and/or grill)	\$ <del>4</del> 26/day
<b>Serviced Campsite/ W</b> Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table and/or grill)	\$ <del>2</del> 30/day
<b>Serviced Campsite/ E</b> Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$ <del>2</del> 30/day
<b>Serviced Campsite/ W, E</b> Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$ <del>2</del> 34/day
<b>Serviced Campsite/ W, E, SWR</b> Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$ <del>2</del> 36/day
<b>Companion Campsite</b> May be any campsite type, regardless of amenities, that has greater equipment/people capacity (may include table and/or grill) Fee determined by actual site type.	Site type multiplied by two (2)
<b>Amenity Fee for Central Water</b> Applies to "Standard" campsites in campgrounds with a central water supply. The Amenity Fee is charged in addition to the Standard Campsite fee.	\$2/night
<b>Amenity Fee for Flush-Toilets/Showers</b> Applies to "Standard" campsites in campgrounds with Flush-Toilets/Showers. The Amenity Fee is charged in addition to the Standard Campsite fee.	\$2/night
<b>Use of Campground Showers by Non-campers</b>	\$3/person
<b>Overnight Use Fee per motor vehicle or trailer per night</b> Applies to non-campers leaving a motor vehicle or trailer on park property overnight.	\$10/night
<b>Limited Income Discount</b> - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
<b>Resident Disabled Idaho Veterans</b> - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
<b>Senior Citizen Discount</b> - Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under-utilized locations and times, a senior citizen discount.	Maximum 50% of RV camping fee

CAMPSITE FEE TABLE Maximum Fee Allowed	
Camping Cabins and Yurts	\$ <del>150</del> 200/night
Each additional person above the sleeping capacity of camping cabin or yurt	\$12/night

~~(3-27-13)~~( )

**02. Reservation Service Fees, Individual Campsite or Facility.** A non-refundable non-transferable (from one party to another) service charge of ten dollars (\$10) may be assessed for each individual campsite or facility reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required. (3-30-06)

**IDAPA 26 - PARKS AND RECREATION**

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES**

**DOCKET NO. 26-0120-1302 (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(s) 67-4210, 67-4223, and 67-4249, Idaho Code.

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

<b>October 21, 2013 (Monday); 6 P.M. – 8 P.M.</b>	<b>October 23, 2013 (Wednesday); 6 P.M. – 8 P.M.</b>	<b>October 24, 2013 (Thursday); 6 P.M. – 8 P.M.</b>
5657 Warm Springs Ave Boise, Idaho	2885 Kathleen Ave, Suite 1 Coeur d’Alene, Idaho	4279 Commerce Circle, Suite B Idaho Falls, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

The Idaho Department of Parks and Recreation proposes changes to IDAPA 26, Title 1, Chapter 20, Section 258.05 which increase the established IDAPA fee caps for the Winter Access Program passes offered by Harriman and Ponderosa State Parks. Additionally, this rule change will add two new pass types to better meet the pass needs of the program’s customers.

In order to allow time for user notification and system implementation, it is further requested that, if approved, these rule changes go into effect on Tuesday, July 1, 2014.

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

This rule change will increase the IDAPA fee caps for the Winter Access Program’s existing passes as follows:

Daily Per Person Pass	\$6	(currently \$4)
Family Season Pass	\$100	(currently 35)

Additionally, this rule change will establish two new Winter Access Program pass types and set IDAPA fee caps for them to be as follows:

Individual Season Pass	\$50
Couples Season Pass	\$75

**FISCAL IMPACT:** The following is a specific 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:

Fiscal impact is based upon historical usage trends computed against new rates. Total projected positive fiscal impact is \$29,636.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted as the changes being requested were first submitted as Temporary Rules. Upon notification that the Temporary Rules were denied, the agency immediately scheduled public hearings.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tammy L. Kolsky, 208-514-2427.

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 Monday, October 28, 2013.

DATED this September 3, 2014.

Tammy L. Kolsky  
Program Manager  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue, Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Telephone: 208-514-2427; FAX 208-334-3741

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 26-0120-1302**  
**(Only those Sections being amended are shown.)**

**258. FEE SCHEDULE: SPECIAL FEES.**

**01. Modification of Fees.** Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions. (7-1-93)

**02. Sales Tax.** Applicable sales tax may be added to all sales excluding the day use fee. (3-30-06)

**03. Special Charges.** The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (4-4-13)

**04. Length of Stay.** Fifteen (15) days in any consecutive thirty (30) day period. (3-30-06)

~~**05. Winter Access Program Fee.** A fee of four dollars (\$4) per person per day and thirty five dollars (\$35) per family per season will be required at Board approved premium winter access locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed trails, extensive signing, trail mapping and ski patrol services. (4-4-13)~~

**259. FEE SCHEDULE: WINTER ACCESS PROGRAM FEES.**

<b><u>WINTER ACCESS PROGRAM FEE TABLE</u></b>	
<b><u>Maximum Fee Allowed</u></b>	
<b><u>Winter Access Daily per Person Pass – per person per season</u></b>	<b><u>\$6</u></b>
<b><u>Winter Access Daily Family Pass – per family per season</u></b>	<b><u>\$100</u></b>

<b><u>WINTER ACCESS PROGRAM FEE TABLE</u></b>	
<b><u>Maximum Fee Allowed</u></b>	
<u>Winter Access Individual Season Pass -- per person per season</u>	<u>\$50</u>
<u>Winter Access Couples Season Pass -- per couple per season</u>	<u>\$75</u>

**01. Winter Access Program Fee – Daily Pass.** A fee of six dollars (\$6) per person per day and one hundred dollars (\$100) per family per season will be required at Board-approved premium winter access locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed trails, extensive signing, trail mapping, and ski patrol services. ( )

**02. Winter Access Program Fee – Season Pass.** A fee of fifty dollars (\$50) per Individual Season Pass per person per winter access season and a fee of seventy-five dollars (\$75) per Couples Season Pass per couple per winter access season will be required at Board-approved premium winter access locations. These programs may include maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed trails, extensive signing, train mapping, and ski patrol services. ( )

~~259~~60. -- 274. (RESERVED)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1207

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rules would create harmony with 2013's House Bill No. 017 and other sections of Idaho Code, reduce the amount of and place more structure around Board approved continuing pharmacy education (CPE) thus requiring more CPE that is accredited with the Accreditation Counsel for Pharmacy Education or Continuing Medical Education, which are the two national agencies recognized by the federal Department of Education for such activities, mandate one (1) hour of CPE for all pharmacists engaged in the practice of sterile compounding, clarify that four (4) ounces is the maximum allowable quantity of a CV scheduled controlled substance that can be dispensed by a pharmacist without prescription, allow drugs to be stored and removed from a secured area adjacent to a pharmacy pursuant to many restrictions, and clarify that pharmacy structural security rules pertain to all pharmacies.

**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:

Minimal positive impact in the form of saved personnel time approving continuing pharmacy education.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notices of Intent to Promulgate Rules - Negotiated Rulemaking were published in the December 5, 2012 Idaho Administrative Bulletin, **Vol. 12-12**, page 62; January 2, 2013 Idaho Administrative Bulletin, **Vol. 13-1**, page 182; February 6, 2013 Idaho Administrative Bulletin, **Vol. 13-2**, page 28; March 6, 2013 Idaho Administrative Bulletin, **Vol. 13-3**, page 13; May 1, 2013 Idaho Administrative Bulletin, **Vol. 13-5**, page 83; July 3, 2013 Idaho Administrative Bulletin, **Vol. 13-7**, page 79; and August 7, 2013 Idaho Administrative Bulletin, **Vol. 13-8**, page 293.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30<sup>th</sup> day of August, 2013.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303

P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1207**  
**(Only those Sections being amended are shown.)**

**029. PHARMACIST LICENSE OR REGISTRATION.**

**01. Practice in Idaho.** All pharmacists practicing pharmacy in the state of Idaho must be licensed according to the Board's laws. (7-1-13)

**02. Practice Into Idaho.** Unless statutorily exempted, all pharmacists practicing pharmacy into the state of Idaho must be licensed or registered as follows: (7-1-13)

**a.** The following pharmacists must be licensed to provide centralized pharmacy services into Idaho: (7-1-13)

**i.** Pharmacists engaged in the independent practice of pharmacy across state lines as defined by the Pharmacist Independent Practice Rule. (7-1-13)

**ii.** Pharmacists practicing from a central drug outlet that is not a pharmacy. (7-1-13)

**iii.** Pharmacists practicing from a remote office location. ( )

**b.** The following pharmacists not licensed in Idaho must be registered to practice pharmacy into Idaho. (7-1-13)

**i.** The PIC or director of a nonresident central drug outlet or mail service pharmacy. (7-1-13)

**ii.** Pharmacists practicing from a pharmacy or its COE. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. PHARMACIST REGISTRATION TO PRACTICE PHARMACY INTO IDAHO.**

To be registered to practice pharmacy into Idaho an applicant must submit an application in the manner and form prescribed by the Board including, but not limited to: (7-1-13)

**01. Individual License Information.** Current pharmacist licensure information in all other states, including each state of licensure and each license number; (7-1-13)

**02. Facility License Information.** The license or registration number of the facility ~~from~~ for which the applicant will be practicing. ~~(7-1-13)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. CPE: PROGRAM CRITERIA.**

**01. Board Approval of CPE Programs.** The Board recognizes CPE program accreditation by ACPE and CME. CPE programs not accredited by either ACPE or CME must be approved by the Board. ~~Application for approval will require provision of the following information~~ A sponsoring organization, presenter or continuing education coordinator may apply to the Board for accreditation of a CPE program. An application must be submitted twenty-one (21) days in advance of the program and must include: ~~(3-21-12)~~( )



- a. The name of ~~provider or sponsor~~ the sponsoring organization, if applicable; (3-21-12)( )
- b. The ~~type~~ title of ~~the~~ program offered; (3-21-12)( )
- c. The learning objectives and Aa description of the subject matter; (3-21-12)( )
- d. The ~~number of clock hours offered~~ method and materials for assessing the learning objectives; (3-21-12)( )
- e. The method of evaluating satisfactory completion of ~~the~~ program; (3-21-12)( )
- f. The dates, time schedule, number of clock hours and location of ~~the~~ program; and (3-21-12)( )
- g. The names and ~~qualifications~~ curriculum vitae or resume of instructors or other persons responsible for the delivery and content of the program; and (3-21-12)( )
- h. A copy of the materials to be offered to the participants and the program to be presented (electronic or hard copy), if applicable. ( )

**02. Postgraduate Education.** A CPE program must consist of postgraduate education in one or more of the following general areas: (3-21-12)

- a. The socioeconomic and legal aspects of health care; (3-21-12)
- b. The properties and actions of drugs and dosage forms; or (3-21-12)
- c. The etiology, characteristics, and therapeutics of a disease state. (3-21-12)

**03. Evidence of Satisfactory Completion.** A CPE program must provide evidence of satisfactory completion by participants. (3-21-12)

**04. Qualified Instruction.** The program presenter must be qualified in the subject matter by education or experience. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**052. CPE: REQUIREMENTS.**

Each pharmacist applicant for license renewal must annually complete fifteen (15) CPE hours. (4-4-13)

**01. ACPE or CME.** At a minimum, ~~eight~~ twelve (~~8~~12) of the CPE hours obtained must be all or a combination of ACPE or CME accredited programs. ACPE accredited activities must have a participant designation of "P" (for pharmacist) as the suffix of the ACPE universal program number. (4-4-13)( )

**02. Pharmacy Law.** One (1) of the CPE hours obtained must ~~be ACPE accredited or Board approved jurisprudence (pharmacy law) programs~~ address federal, state or local law effecting the practice of pharmacy. (4-4-13)( )

**03. Board Approved.** A maximum of ~~six~~ three (~~6~~3) of the CPE hours obtained may be Board-approved programs not accredited through ACPE or CME. (4-4-13)( )

**04. Live Attendance.** Three (3) of the CPE hours obtained must be by attendance at live or synchronous online CPE programs. (4-4-13)

**05. Immunizer Qualification.** To maintain qualification to administer immunizations, a minimum of one (1) of the ACPE-approved CPE hours must be related to vaccines, immunizations, or their administration. (4-4-13)

**06. Sterile Compounding Requirement.** To engage in the practice of sterile compounding a minimum of one (1) of the CPE hours must be ACPE accredited and related to the practice of sterile compounding. ( )

**067. Carryover of Certain Unused Units.** CPE hours accrued during June of a licensing period may be carried over into the next licensing period to the extent that a pharmacist's total CPE hours for the current licensing period exceed the total CPEs hours required by these rules. (4-4-13)

**078. New Pharmacist Exemption.** Recent pharmacist graduates applying for the first license renewal are not required to complete or certify the annual CPE requirements. (3-21-12)

**0539. CPE: Requirements for Dual Licenses.** ( )

**01a. Idaho-Licensee.** An Idaho-licensed pharmacist residing in another state must meet Idaho CPE requirements to be granted an Idaho license renewal. (3-21-12)( )

**02b. Approval.** CPE programs attended by an Idaho-licensed pharmacist for purposes of satisfying licensing requirements of another state must be accredited by either ACPE or CME or must be approved by the Board to also be recognized for purposes of renewal of the pharmacist's Idaho license. (3-21-12)( )

**0543. -- 059. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. PRESCRIPTION DRUG ORDER: MINIMUM REQUIREMENTS.**

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for a drug order, must include at least the following: (3-21-12)

- 01. Patient's Name.** The patient's name and: (3-21-12)
  - a.** If for a controlled substance, the patient's full name and address; and (3-21-12)
  - b.** If for an animal, the species. (3-21-12)
- 02. Date.** The date issued. (3-21-12)
- 03. Drug Information.** The drug name, strength, quantity, and if for a controlled substance, the dosage form. (3-21-12)
- 04. Directions.** The directions for use. (3-21-12)
- 05. Prescriber Information.** The name and, if for a controlled substance, the address and DEA registration number of the prescriber. (3-21-12)
- 06. Signature.** If paper, the pre-printed, stamped, or hand-printed name and written signature of the prescriber, or if statutorily allowed, the prescriber's agent's signature, and if electronic, the prescriber's electronic signature. (3-21-12)( )

**112. DRUG ORDER: MINIMUM REQUIREMENTS.**

A drug order must comply with applicable requirements of federal law and must include at least the following: (3-21-12)

01. **Patient's Name.** The patient's name. (3-21-12)
02. **Date.** The date issued. (3-21-12)
03. **Drug Information.** The drug name, strength, and route of administration. (3-21-12)
04. **Directions.** The directions for use. (3-21-12)
05. **Prescriber Information.** The name of the prescriber. (3-21-12)
06. **Signature.** If written, the signature of the prescriber or if statutorily allowed, the prescriber's agent. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. CONTROLLED SUBSTANCES: NON-PRESCRIPTION DISPENSING.**

A Schedule V non-prescription controlled substance may be dispensed to a retail purchaser as permitted or restricted by these rules. (3-21-12)

**01. Dispensing by a Technician Prohibited.** Technicians are prohibited from dispensing a non-prescription controlled substance even if under the direct supervision of a pharmacist, but may transact the sale and deliver the product after the pharmacist has fulfilled his professional and legal responsibilities. (3-21-12)

**02. Restricted Quantity.** No more than four (4) ounces of liquid containing a maximum of two hundred (200) milligrams of codeine per one hundred (100) milliliters or per one hundred (100) grams may be distributed at retail to the same purchaser in any forty-eight (48) hour period. ~~(3-21-12)~~( )

**03. Purchaser's Age.** A purchaser of a non-prescription controlled substance must be at least eighteen (18) years of age. (3-21-12)

**04. Identification Required for Purchase.** The pharmacist must obtain positive identification as required by these rules that, if appropriate, includes proof of age of the purchaser of a non-prescription Schedule V controlled substance. (3-21-12)

**05. Bound Record Book and Patient Signature Required.** A bound record book must be used to document sales of non-prescription Schedule V controlled substances and must record the following: (3-21-12)

- a. The name and address of the purchaser; (3-21-12)
- b. The name and quantity of the controlled substance purchased; (3-21-12)
- c. The date of the purchase; (3-21-12)
- d. The name or initials of the pharmacist who dispensed the substance to the purchaser; and (3-21-12)
- e. The signature of the purchaser. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**604. PHARMACY PRODUCT STORAGE AND REMOVAL.**

Prescription drugs, devices, and other products restricted to sale or dispensing by, or under the supervision of, a

pharmacist must be stored in the pharmacy and must not be sold, delivered, or otherwise removed from a pharmacy unless a pharmacist is present, except: ( )

**01. Emergency Drug Access and Pharmacist Absence.** ~~As~~ allowed by these rules for emergency access to an institutional pharmacy: ( )

**02. Institutional Facility Alternative Storage.** In an institutional facility these restricted products may also be stored in an alternative designated area that is appropriately equipped to ensure compliance with drug product storage requirements, to provide adequate security and protection from diversion, and that otherwise complies with applicable requirements of these rules: (3-21-12)( )

**03. Storage for Delivery.** Filled prescriptions may be picked up for delivery from a pharmacy when the pharmacy is closed for business if: ( )

**a.** The prescriptions are placed in a secured delivery area equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft and diversions; ( )

**b.** The secured delivery area has walls that extend to the roof, solid core or metal doors, and all doors and other access points must be equipped with locking devices and be constructed in a manner that the hinge hardware is accessible only from inside the secured delivery area; ( )

**c.** The secured delivery area appropriately safeguards product integrity in accordance with USP-NF requirements; ( )

**d.** The secured delivery area is attached or located adjacent to the pharmacy that filled the prescriptions; ( )

**e.** The PIC, or a pharmacist designated by the PIC, and the approved transport agent solely have access to the secure delivery area. Two (2) factor credentialing is required for entry, which must include two (2) of the following; ( )

**i.** Something you know (a knowledge factor); ( )

**ii.** Something you have (a hard token stored separately from the computer being accessed); and ( )

**iii.** Something you are (biometric information); ( )

**f.** The pharmacy has a means of recording the time of entry and the identity of all persons who access the secured delivery area; ( )

**g.** The pharmacy maintains immediately retrievable records of all persons who have accessed the secured delivery area and each prescription stored and removed for delivery; ( )

**h.** The pharmacy maintains written policies and procedures for the secured delivery storage and removal of prescriptions; and ( )

**i.** The PIC of a pharmacy that ships drugs by common carrier shall require the common carrier to conduct criminal background checks on its employees who have access to the secured delivery area; and ( )

**04. Qualified Returns to the Secured Delivery Area.** A pharmacist or a pharmacy, by means of its agent, may accept the return of the following drugs or devices to the secured delivery area: ( )

**a.** Emergency kits; ( )

**b.** Prescriptions that were unsuccessfully delivered by the pharmacy, a pharmacist, or its agent; and ( )

**c.** Those deemed qualified for return pursuant to Section 262 (Restricted Return of Drugs or Devices) of these rules. ( )

**605. PHARMACY SECURITY.**

**01. Basic Security Standards.** A pharmacy must be constructed and equipped with adequate security, and at least while closed, utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. Pharmacies without an alarm or other monitoring system as of the effective date of this rule must comply with this rule upon completion of a structural remodel. (3-21-12)

**02. Non-Institutional Pharmacy Security During Pharmacist Absence.** A non-institutional pharmacy must be closed for business and secured during all times a pharmacist is not present except: (4-4-13)

**a.** If a technician or student pharmacist is on to duty, to allow brief pharmacist absences within the business establishment; or (4-4-13)

**b.** To perform professional services in the peripheral areas immediately outside of the pharmacy. (4-4-13)

**03. Structural Security Requirements.** If a pharmacy is located within an establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All pharmacies must meet the following security requirements: (~~3-21-12~~)( )

**a.** Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. (3-21-12)

**b.** Solid core or metal doors are required for new or remodeled pharmacies after the effective date of this rule. (4-4-13)

**c.** Doors and other access points must be constructed in a manner that the hinge hardware is accessible only from inside of the pharmacy and must be equipped with locking devices. (3-21-12)

**d.** If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. (3-21-12)

**04. Restricted Access to the Pharmacy.** No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist or except as permitted by these rules for an institutional pharmacy. (3-21-12)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1301

#### 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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 New England Compounding Center tragedy, whereby 52 Americans have died so far from tainted injectible compounded product, has highlighted the need for tighter compounding regulation. This rulemaking establishes standards for the compounding of drugs, including general compounding standards that regulate ingredients, prohibited acts, equipment, compromised drugs, and hazardous drugs, scope of practice that regulates compounding of commercially available drugs, anticipatory compounding, compounding and distributing for office use, compounding for research, and reconstitution exceptions, and drug compounding controls that regulates policies and procedures, compounding accuracy, certain records, and labeling. These rule changes also expand sterile product preparation rules, including defining products that require sterilization, compounding responsibilities, environmental controls, equipment, sterile hazardous drugs, documentation requirements, and policy and procedures.

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

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

The Board envisions requesting about ten thousand dollars (\$10,000) to send the Board's inspectors to sterile compounding training.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under Docket No. 27-0101-1207. The Notices of Intent to Promulgate Rules - Negotiated Rulemaking were published in the December 5, 2012 Idaho Administrative Bulletin, [Vol. 12-12](#), page 62; January 2, 2013 Idaho Administrative Bulletin, [Vol. 13-1](#), page 182; February 6, 2013 Idaho Administrative Bulletin, [Vol. 13-2](#), page 28; March 6, 2013 Idaho Administrative Bulletin, [Vol. 13-3](#), page 13; May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5](#), page 83; July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7](#), page 79; and August 7, 2013 Idaho Administrative Bulletin, [Vol. 13-8](#), page 293.

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

The New England Compounding Center tragedy, whereby 52 Americans have died so far from tainted injectible compounded product, has highlighted the need for tighter compounding regulation. The FDA's Compliance Policy Guidance for FDA Staff and Industry, Sec. 460.200, Pharmacy Compounding, Appendix A (Reissued May 29, 2002) has been incorporated by reference into these rules to prohibit the compounding of drugs for human use that were withdrawn or removed from the market for safety reasons.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

~~No documents have~~ FDA's Compliance Policy Guidance for FDA Staff and Industry, Sec. 460.200, Pharmacy Compounding, Appendix A (Reissued May 29, 2002) has been incorporated by reference into these rules. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS AND ABBREVIATIONS (A -- I).**

- 01. Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (3-21-12)
- 02. ACPE.** Accreditation Council for Pharmacy Education. (3-21-12)
- 03. Acute Care Hospital.** A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. (3-21-12)
- 04. ADS -- Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (3-21-12)
- 05. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)
- 06. Central Drug Outlet.** A resident or nonresident pharmacy, drug outlet or business entity employing or contracting pharmacists to perform centralized pharmacy services. (7-1-13)
- 07. Central Pharmacist.** A pharmacist performing centralized pharmacy services. (7-1-13)
- 08. Central Pharmacy.** A pharmacy performing centralized pharmacy services. (7-1-13)
- 09. Centralized Pharmacy Services.** The processing by a central drug outlet or central pharmacist of a

request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions, or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations. (7-1-13)

**10. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (3-21-12)

**11. Charitable Clinic or Center -- Authorized Personnel.** A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. (3-21-12)

**12. Chart Order.** A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. (3-21-12)

**13. CME.** Continuing medical education. (3-21-12)

**14. COE -- Central Order Entry.** A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. (3-21-12)

**15. Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (3-21-12)

**16. Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. (3-21-12)

**17. Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (3-21-12)

**18. Correctional Facility.** Any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order. (4-4-13)

**19. CPE.** Continuing pharmacy education. (3-21-12)

**20. DEA.** United States Drug Enforcement Administration. (3-21-12)

**21. Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)

**22. DME.** Durable medical equipment. (3-21-12)

**23. Drug Order.** A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. (3-21-12)

**24. Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)

**25. Drug Product Substitution.** Dispensing a drug product other than prescribed. (4-4-13)

**26. DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)

**27. Emergency Drugs.** Drugs required to meet the immediate therapeutic needs of one (1) or more



patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (3-21-12)

**28. Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)

**29. FDA.** United States Food and Drug Administration. (3-21-12)

**30. Flavoring Agent.** An additive used in food or drugs when the additive is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect. (3-21-12)

**31. Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (3-21-12)

**32. FPGEC.** Foreign Pharmacy Graduate Examination Committee. (4-4-13)

**33. Hazardous Drug.** Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one of the following criteria: ( )

**a. Carcinogenicity:** ( )

**b. Teratogenicity or developmental toxicity:** ( )

**c. Reproductive toxicity in humans:** ( )

**d. Organ toxicity at low doses in humans or animals:** ( )

**e. Genotoxicity; or** ( )

**f. New drugs that mimic existing hazardous drugs in structure or toxicity.** ( )

**34. High Risk Sterile Product Preparation.** A sterile drug product that is compounded from nonsterile components, containers, or equipment and requires terminal sterilization. ( )

**35. HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)

**36. Hospital System.** A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include one (1) or more COE pharmacies under common ownership. (3-21-12)

**37. Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (3-21-12)

**38. Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information, collected from an individual and that: (3-21-12)

**a.** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (3-21-12)

**b.** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (3-21-12)

- i. Identifies the individual; or (3-21-12)
  - ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (3-21-12)
- ~~379.~~ **Institutional Pharmacy.** A pharmacy located in an institutional facility. (3-21-12)

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

**01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)

**02. Mail Service Pharmacy.** A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

**03. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)

**04. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

- a. Medication therapy review; (3-21-12)
- b. Personal medication record; (3-21-12)
- c. Medication-related action plan; (3-21-12)
- d. Intervention or referral, or both; (3-21-12)
- e. Documentation and follow-up. (3-21-12)

**05. NABP.** National Association of Boards of Pharmacy. (3-21-12)

**06. NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)

**07. NDC.** National Drug Code. (3-21-12)

**08. Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)

**09. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)

**10. Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)

- a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood

- samples; (3-21-12)
- b.** Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c.** Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
  - d.** Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
  - e.** Documenting the care delivered; (3-21-12)
  - f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i.** Preparing or providing information as part of a personal health record; (3-21-12)
  - j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
  - k.** Providing consultative drug-related intervention and referral services; (3-21-12)
  - l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)
  - m.** Other services as allowed by law. (3-21-12)
- 11. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 12. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 13. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 14. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in: (3-21-12)
    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)

- iii. Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 15. PIC.** Pharmacist-in-charge. (3-21-12)
- 16. PMP.** Prescription Monitoring Program. (3-21-12)
- 17. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order or prior to distributing a sterile product as allowed by these rules. (~~3-21-12~~)( )
- 18. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 19. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)
- 20. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)
- 21. Reconstitution.** The process of adding a dilute to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. ( )
- ~~22.~~ **Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)
- ~~23.~~ **Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)
- ~~24.~~ **Remote Office Location.** A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)
- ~~25.~~ **Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)
- ~~26.~~ **Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)
- ~~27.~~ **R.N.** Registered nurse. (3-21-12)
- 28. USP 795.** The current edition of the United States Pharmacopeia-National Formulary, Chapter 795. ( )
- 29. USP 797.** The current edition of the United States Pharmacopeia-National Formulary, Chapter 797. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**231. -- 2308. (RESERVED)**

**239. COMPOUNDING DRUG PRODUCTS.**

**01. Application.** These rules apply to any person, including any business entity, authorized to engage in the practice of non-sterile compounding, sterile compounding and sterile prepackaging of drug products in or into Idaho. ( )

**a.** USP. Strict application of or adherence to the guidelines of USP 795 and USP 797 is not mandated; however, it is expected that all persons and business entities will strive to practice in accordance with those guidelines that apply to their practice settings and in all situations comply with the spirit of USP 797 and USP 795. ( )

**b.** Manufacturing. Any compounding that is not permitted herein is considered manufacturing. ( )

**02. General Compounding Standards.** ( )

**a.** Certificate of Analysis. A COA issued by a firm located in the United States must be obtained for all active ingredients procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied. If a COA is not available from the vendor, the pharmacist must procure one from a laboratory located in the United States. COAs are not required if the active ingredient utilized is designated USP-NF. If the product is not designated as USP-NF, then the following minimum information is required on the COA: ( )

**i.** Product name; ( )

**ii.** Lot number; ( )

**iii.** Expiration date; and ( )

**iv.** Assay. ( )

**b.** Prohibited Compounding. Compounding any drug for human use that the FDA, in its Compliance Policy Guidance for FDA Staff and Industry, Sec. 460.200 Pharmacy Compounding, Appendix A (Reissued May 29, 2002), has identified as prohibited for compounding or withdrawn or removed from the market for safety reasons is prohibited. ( )

**c.** Equipment. Equipment and utensils must be of suitable design and composition and cleaned, sanitized, or sterilized as appropriate prior to use. ( )

**d.** Disposing Compromised Drugs. When the correct identity, purity, strength, and sterility of ingredients and components cannot be confirmed (in cases of, for example, unlabeled syringes, opened ampules, punctured stoppers of vials and bags, containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be disposed of immediately. ( )

**e.** Hazardous Drugs. Drug outlets must ensure the storage area has sufficient general exhaust ventilation to dilute and remove any airborne contaminants and use a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. A ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment is prohibited, unless the hazardous drugs in use will not volatilize while they are being handled. Additionally, a drug outlet that prepares hazardous drugs must: ( )

**i.** Clearly identify prepared doses of hazardous drugs, label them with proper precautions, and dispense them in a manner to minimize risk of hazardous spills; ( )

**ii.** Comply with applicable local, state, and federal laws in the disposal of hazardous waste; and ( )

**iii.** Include procedures for handling hazardous spills in the policies and procedures manual. ( )

iv. Supplies necessary for handling hazardous spills and disposal of wastes must be available and maintained in the area at all times. ( )

**03. Scope of Practice.** A pharmacist may compound a drug product in the usual course of professional practice for an individual patient pursuant to an established prescriber/patient/pharmacist relationship and a valid prescription drug order. ( )

**a. Commercially Available Products.** Compounding a drug product that is commercially available is prohibited, provided however, that a pharmacist may compound a drug product that is essentially a copy of an available FDA-approved drug product if: ( )

i. Pursuant to a valid pharmacist/patient/prescriber relationship and valid prescription drug order, it is medically warranted to provide an alternate ingredient, dosage form, or strength of significance; or ( )

ii. Commercial product is not reasonably available in the market in time to meet the patient's needs. ( )

**b. Anticipatory Compounding.** A pharmacist may compound very limited quantities of a drug product prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders generated solely within an established pharmacist/patient/prescriber relationship. ( )

**c. Office Use.** A pharmacist may distribute non-patient specific drug products in the absence of a valid prescription drug order to licensed practitioners to administer (and not for resale) to their patients in the course of their professional practice. The quantity shall be limited to five percent (5%) of the total number of compounded or sterile prepackaged drug products dispensed and distributed on an annual basis by the pharmacy, except that this limit shall not apply to nuclear pharmacies. ( )

**d. Research.** A drug may be compounded for the purpose of, or incident to, research, teaching, or chemical analysis and not for resale or dispensing. ( )

**e. Reconstitution.** Compounding does not include reconstituting of a nonsterile drug or a sterile drug for immediate administration. ( )

**04. Drug Compounding Controls.** ( )

**a. Policies and Procedures.** In consideration of the applicable provisions of USP 795 concerning pharmacy compounding of non-sterile preparations, USP 797 concerning sterile preparations, Chapter 1075 of the USP-NF concerning good compounding practices, and Chapter 1160 of the USP-NF concerning pharmaceutical calculations, policies and procedures for the compounding or sterile prepackaging of drug products must be written to ensure the safety, identity, strength, quality, and purity of the finished product, and must include any of the following that are applicable to the scope of practice: ( )

i. Appropriate packaging and storage requirements; ( )

ii. Accuracy and precision of calculations, measurements, and weighing; ( )

iii. Identifying ingredient identity, quality, and purity; ( )

iv. Labeling accuracy and completeness; ( )

v. Beyond use date assignment; ( )

vi. Inspecting for deficiencies, including routine quality and accuracy testing, and maintaining inspection and testing records; ( )

- vii. Maintaining environmental quality control; ( )
- viii. Packaging, storage, handling, and transport; ( )
- ix. Environmental sampling testing; ( )
- x. Safe limits and ranges for strength and of ingredients, pH, bacterial endotoxins, and particulate matter; and ( )

b. Accuracy. Components, including but not limited to, bulk drug substances, used in the compounding or sterile prepackaging of drug products must be accurately weighed, measured, or subdivided, as appropriate. The amount of each active ingredient contained within a compounded drug product must not vary from the labeled potency by more than the drug product's acceptable potency range listed in the USP-NF monograph for that product. If USP-NF does not publish a range for a particular drug product, the active ingredients must not contain less than ninety percent (90%) and not more than one hundred ten percent (110%) of the potency stated on the label. If any drug potency analysis is conducted, records must be maintained in a readily retrievable manner. ( )

c. Non-Patient Specific Records. A production record of drug products compounded or sterile prepackaged for office use and prepared in anticipation of receiving prescription drug orders that are not for immediate administration, solely as permitted herein, must be prepared and kept for each drug product prepared, including: ( )

- i. Production date; ( )
- ii. Beyond use date; ( )
- iii. List and quantity of each ingredient; ( )
- iv. Internal control or serial number; and ( )
- v. Initials or unique identifier of all persons involved in the process or the pharmacist responsible for the accuracy of these processes. ( )

d. Labeling. The label affixed to the container of a compounded or sterile prepackaged drug product that is: ( )

- i. Dispensed must comply with the standard prescription drug labeling requirements. ( )
- ii. Distributed in the absence of a patient specific prescription drug order, solely as permitted herein, must contain the following information: ( )
  - (1) The name of each drug included; ( )
  - (2) The strength or concentration of each drug included; ( )
  - (3) If applicable, the name and concentration of the base or diluents; ( )
  - (4) If applicable, the dosage form or route of administration; ( )
  - (5) The total quantity of the drug product; ( )
  - (6) The expiration or beyond use date; ( )
  - (7) The initials or unique identifier of the pharmacists responsible for the accuracy of the drug product; ( )

(8) The statement “not for resale:” and ( )

(9) Handling, storage or drug specific instructions, cautionary information, and warnings as required or deemed appropriate for proper use and patient safety. ( )

**240. STERILE PRODUCT PREPARATION.**

**01. Application.** In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging. ( )

**02. Dosage Forms Requiring Sterility.** The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms: ( )

**a.** Aqueous bronchial and nasal inhalations, except sprays intended to treat bronchial mucosa only: ( )

**b.** Baths and soaks for live organs and tissues: ( )

**c.** Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); ( )

**d.** Irrigations for wounds and body cavities; ( )

**e.** Ophthalmic drops and ointments; and ( )

**f.** Tissue implants. ( )

**03. Compounder Responsibilities.** Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; ( )

**a.** Unless following manufacturer’s guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows: ( )

**i.** Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; ( )

**ii.** Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; ( )

**iii.** Opened single-dose ampules shall not be stored for any time period; and ( )

**iv.** Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; ( )

**b.** Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; ( )

**c.** Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. ( )

**04. Environmental Controls.** Except when prepared for immediate administration, the environment



for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (3-21-12)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every ~~twelve~~ six (126) months or if relocated. ~~(3-21-12)~~(    )

b. ~~Pre~~Filters must be inspected and replaced in accordance with the manufacturer's recommendations. ~~(3-21-12)~~(    )

**025. Sterile Product Preparation Equipment.** A drug outlet in which sterile products are prepared must be equipped with at least the following: (3-21-12)

a. Protective apparel including non-vinyl gloves, gowns, and masks unless the PIC or director can provide aseptic isolator manufacturer's written documentation that any component of garbing is not required; ~~(3-21-12)~~(    )

b. A sink with hot and cold water in close proximity to the hood; (3-21-12)

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; (3-21-12)

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet; ~~(3-21-12)~~(    )

~~e. A separate vertical flow biohazard safety hood, if hazardous materials are prepared; and (3-21-12)~~

~~f. Supplies necessary for handling both hazardous and biohazardous spills and disposal of wastes must be available and maintained in the area at all times. (3-21-12)~~

**036. Cytotoxic Sterile Hazardous Drugs Preparation Equipment.** ~~A drug outlet in which cytotoxic sterile hazardous drugs are prepared must also:~~ ~~(3-21-12)~~

~~a. Be equipped with and prepared the drugs in a vented dedicated class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; (3-21-12)~~(    )

~~b. Require appropriate containment techniques; (3-21-12)~~

~~c. Clearly identify prepared doses of cytotoxic drugs, label them with proper precautions, and dispense them in a manner to minimize risk of cytotoxic spills; (3-21-12)~~

~~d. Comply with applicable local, state, and federal laws in the disposal of cytotoxic waste; and (3-21-12)~~

~~e. Include procedures for handling cytotoxic spills in the policies and procedures manual. (3-21-12)~~

**047. Documentation Requirements.** The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (3-21-12)

a. Justification of expiration beyond use dates ~~chosen~~ assigned, pursuant to direct testing or extrapolation from reliable literature sources; ~~(3-21-12)~~(    )

b. ~~Employee~~ Training records, ensuring that personnel are adequately skilled, educated, and instructed; ~~(3-21-12)~~(    )

c. ~~Technique~~ Audits, and appropriate for the risk of contamination for the particular sterile product including; ~~(3-21-12)~~(    )

- i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; ( )
  - ii. Initial hand hygiene and garbing competency; ( )
  - iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; ( )
  - iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including; ( )
    - (1) Total particle counts; ( )
    - (2) Viable air sampling; ( )
    - (3) Gloved fingertip sampling; ( )
    - (4) Surface sampling; ( )
  - v. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing; ( )
  - d. Temperature, logged daily; ( )
  - e. Beyond use date and accuracy testing, when appropriate; and ( )
  - df. Measuring, mixing, sterilizing and purification ~~E~~equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. (3-21-12)( )
- 058. Policies and Procedures.** Policies and procedures appropriate to the practice setting must be adopted by a drug outlet ~~compounding~~ preparing sterile pharmaceutical products and must- (3-21-12)
- ~~a. Be designed and sufficiently detailed to protect the health and safety of persons preparing or receiving sterile products; and~~ (3-21-12)
  - ~~b. Include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, product storage, stability standards, and infection control. including;~~ (3-21-12)( )
  - a. Antiseptic hand cleansing; ( )
  - b. Disinfection of non-sterile compounding surfaces; ( )
  - c. Appropriately selecting and donning protective garb; ( )
  - d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients; ( )
  - e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence; ( )
  - f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and ( )
  - g. Inspecting for quality standards before dispensing or distributing. ( )

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY**

**DOCKET NO. 27-0101-1302**

#### **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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 updates the list of acceptable forms of identification required to receive controlled substance prescriptions, to include those issued in compliance with the Western Hemisphere Travel Initiative (WHTI). The rulemaking extends the acceptable forms of positive identification to obtain controlled substance prescriptions to include Enhanced Drivers Licenses (EDLs), Nexus Cards, and PASS Cards.

**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 rule 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 Mark Johnston, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1302  
(Only those Sections being amended are shown.)**

**200. CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION REQUIRED.**

A potential recipient of a controlled substance must first be positively identified or the controlled substance must not be dispensed. (3-21-12)

**01. Positive Identification Presumed.** Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if: (3-21-12)

a. The controlled substance will be paid for, in whole or in part, by an insurer; or (3-21-12)

b. The patient is being treated at an institutional facility or is housed in a correctional facility. (4-4-13)

c. The filled prescription is delivered to the patient's residence either by mail, common carrier, or an employee of the pharmacy. (4-4-13)

**02. Personal Identification.** Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a pharmacy or prescriber drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording: (3-21-12)

a. The recipient's name (if other than the patient); (3-21-12)

b. A notation indicating that the recipient was known to the staff member; and (3-21-12)

c. The identity of the staff member making the personal identification. (3-21-12)

**03. Acceptable Identification.** The identification presented must include an unaltered photograph and signature and acceptable forms include: ( )

a. ~~A~~ valid U.S. state or U.S. military driver's license or identification card; ~~and~~ ( )

b. A Western Hemisphere Travel Initiative (WHTI) compliant document (i.e., Enhanced Driver's License (EDL) or Nexus Air Card); ( )

c. ~~A~~ valid passport; ~~and~~ (3-21-12)( )

d. A U.S. passport card (PASS Card). ( )

**04. Identification Documentation.** Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include: (3-21-12)

a. A copy of the identification presented; or (3-21-12)

b. A record that includes: (3-21-12)

i. The recipient's name; (3-21-12)

ii. A notation of the type of identification presented; (3-21-12)

iii. The ~~state, military branch, or other~~ government entity that issued the identification; and (3-21-12)( )

iv. The unique identification number ~~of the driver's license, identification card, or passport.~~ (3-21-12)( )

## IDAPA 28 - DEPARTMENT OF COMMERCE

### 28.02.07 - RULES GOVERNING THE ADMINISTRATION OF THE IGEN GRANT PROGRAM

#### DOCKET NO. 28-0207-1301 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4702 and 67-4729, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 rules establish procedures for the administration of the IGEN (Idaho Global Entrepreneurial Mission) Grant Program.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt a temporary rule which confers a benefit through the establishment and administration of this grant program.

**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 Megan Ronk, Chief Communications & Governmental Affairs Officer, Idaho Department of Commerce at (208) 334-2470.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Megan Ronk  
Communications & Governmental Affairs Officer  
Idaho Department of Commerce

700 W State Street, Boise, ID, 83702  
Phone: 208-334-2470; Fax: 208-334-2631

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**Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.**

**This docket has been previously published as a temporary rule.  
The temporary effective date is April 30, 2013.**

**The original text of the temporary rule was published in the Idaho Administrative Bulletin,  
[Volume 13-4, April 3, 2013, pages 17 through 19.](#)**

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0207-1301**

**IDAPA 28**  
**TITLE 02**  
**CHAPTER 07**

**28.02.07 - RULES GOVERNING THE ADMINISTRATION OF THE IGEM GRANT PROGRAM**

**000. LEGAL AUTHORITY.**

These rules are promulgated under the legal authority of Sections 67-4702 and 67-4729, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter shall be cited as IDAPA 28.02.07, Idaho Department of Commerce, "Rules Governing the Administration of the IGEM Grant Program." ( )

**02. Scope.** These rules establish procedures for the administration of the IGEM Grant Program. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written interpretations of these rules are available from the Idaho Department of Commerce. ( )

**003. ADMINISTRATIVE APPEALS.**

The award of grants under the IGEM Grant Program is a discretionary action to be performed by the Idaho Department of Commerce. There is no provision for administrative appeal under these rules. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into the rules. ( )

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

The headquarters of the Idaho Department of Commerce is in Boise, Idaho. Office hours are from 8 a.m. to 5 p.m. except Saturdays, Sundays and legal holidays. The Department's mailing address for information regarding the IGEM Grant Program is: Idaho Department of Commerce, P.O. Box 83720, Boise ID 83720-0093. The street address is 700 West State Street, Boise, Idaho. The telephone number is (208) 334-2470 and the FAX number is (208) 334-2631. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All rules contained in this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

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

**010. DEFINITIONS.**

As used in this chapter: ( )

**01. Department.** Idaho Department of Commerce. ( )

**02. Eligible Applicant.** Idaho research universities: Boise State University, Idaho State University, and University of Idaho. ( )

**03. IGEM Council.** Idaho Global Entrepreneurial Mission Council as defined in Section 67-4726, Idaho Code. ( )

**04. IGEM Executive Committee.** The IGEM Executive Committee is made up of the IGEM Council chairman, the director of the Idaho Department of Commerce, and the Idaho State Board of Education member of the IGEM Council. ( )

**05. IGEM Grant Program.** A grant program established by the IGEM Council for the purpose of funding projects intended to further the purpose as described in Section 100 of these rules. ( )

**06. University.** As used in these rules, University means Boise State University, Idaho State University, and the University of Idaho. ( )

**011. ABBREVIATIONS.**  
As used in this chapter: ( )

**01. IGEM.** Idaho Global Entrepreneurial Mission. ( )

**02. RFP.** Request for Proposal. ( )

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

**100. PURPOSE.**  
The IGEM Grant Program funds commercialization grants supporting University and industry research partnerships for the purpose of enhancing technology transfer and commercialization of research and technologies developed at the Universities to create high-quality jobs and new industries in the private sector in Idaho. ( )

**101. -- 199. (RESERVED)**

**200. REQUEST FOR PROPOSAL (RFP).**  
The IGEM Council will release a RFP outlining the process and requirements for Eligible Applicants to apply for IGEM Grant Program awards. The RFP shall include requirements for performance measures and reporting. Awarded programs that fail to meet the requirements set forth in the RFP may be terminated. ( )

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

**300. SELECTION PREFERENCE.**  
In selecting IGEM proposals for award, the IGEM Council shall give greater weight to proposals that partner with Idaho based entities. ( )

**301. MATCHING REQUIREMENT.**  
All approved awards must contain a match requirement. The match may be monetary or in-kind as established in the RFP. ( )

**302. -- 399. (RESERVED)**

**400. TERMINATION OF FUNDING.**  
Funding for projects may be terminated by the Department at any time for failure to meet the program requirements set out in the RFP or for the misuse of IGEM funds. Upon receipt of a written notice of termination from the Department, the grantee must immediately stop all expenditures of IGEM funds and return all unspent IGEM funds to the Department. The Department will make a final payment to the grantee based on the work completed, allowable costs incurred, and the documentation provided by the grantee as required by these rules. ( )

**401. -- 499. (RESERVED)**

**500. COMMERCIALIZATION REVENUE.**  
Any commercialization revenue generated through the IGEM University research initiative and by IGEM funded research faculty will be distributed as outlined in Section 67-4731, Idaho Code. ( )

**501. -- 999. (RESERVED)**

# IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

## 31.01.01 - RULES OF PROCEDURE OF THE IDAHO PUBLIC UTILITIES COMMISSION

### DOCKET NO. 31-0101-1301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 61-601, 62-615, and 62-619, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

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

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

The Public Utilities Commission is proposing to update its Rules of Procedure, IDAPA 31.01.01. The reasons for the proposed changes include: improving efficiency and cost-effectiveness by allowing the Commission to update its list of current utilities and railroads subject to the annual regulatory assessments (Rule 18); updating references and citations to other authorities (Rules 19, 43, 52); conforming rules to current practices (Rules 53, 72, 162); increasing public involvement by making RSS feeds more user-friendly (Rule 39); recognizing utilities formed as limited liability companies (Rules 111 and 114); and improving the clarity of two rules regarding customer notices (Rules 121 and 125). The proposed amendments to the rules reflect the Commission's adoption of changes agreed to at the negotiated rulemaking.

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on the state general fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules -- Negotiated Rulemaking was published in the August 7, 2013 Idaho Administrative Bulletin, Vol. 13-8, pages 294-95.

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

Existing Rule 43 (31.01.01.043) incorporates by reference Idaho Bar Commission Rule 227 (Pro Hac Vice Admission). Bar Rule 227 is promulgated by the Idaho State Bar and adopted by Order of the Idaho Supreme Court. Bar Rule 227 may be obtained from the Idaho State Bar, P.O. Box 895, Boise, Idaho 83701 or on-line at [www.isb.idaho.gov](http://www.isb.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 23, 2013.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 28<sup>th</sup> day of August, 2013.



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Idaho Public Utilities Commission  
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472 W Washington  
Boise, Idaho 83702-5918

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-0101-1301**  
**(Only those Sections being amended are shown.)**

**018. PAYMENT OF FEES AND REMITTANCES (RULE 18).**

**01. Payments.** Fees and remittances to the Commission must be paid by money order, bank draft or check payable to "Idaho Public Utilities Commission." Remittances in currency or coin are wholly at the risk of the remitter, and the Commission assumes no responsibility for their loss. (7-1-93)( )

**02. Annual Regulatory Fees.** Utilities and railroads shall pay their annual special regulatory fees as required by Chapter 10, Title 61 and Section 62-611, Idaho Code. Utilities and railroads that fail to pay their special regulatory fees, are no longer conducting business in Idaho, and fail to maintain a designated agent for service with the Commission Secretary (Subsection 016.03) may be administratively removed from the list of utilities and railroads subject to the annual regulatory fee. ( )

**019. INCORPORATED BY REFERENCE -- IDAHO BAR COMMISSION RULE (RULE 19).**

Rule 43 incorporates by reference Idaho Bar Commission Rule 227 (~~Limited Admission~~ Pro Hac Vice Admission). Bar Rule 227 is promulgated by the Idaho State Bar and adopted by order of the Idaho Supreme Court. Bar Rule 227 may be obtained from the Idaho State Bar, PO Box 895, Boise, ID 83701, or online at <http://www.isb.idaho.gov>. Bar Rule 227 is also available for inspection and copying at the Idaho State Law Library or at the offices of the Idaho Public Utilities Commission. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**039. PERSONS -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 39).**

**01. Persons and Person Not Parties.** The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in administrative proceedings. Persons other than the persons named in Rules 32 through 37 are not parties for the purpose of any statute or rule addressing rights or obligations of parties. ( )

**02. Interested Persons.** Interested persons for purposes of the Commission Secretary's service of notice under Rules 113, 123, and 202 are municipalities, counties, and chambers of commerce in the area affected by a proceeding and persons who were parties in any proceeding of a similar kind involving the same utility or ~~regulated carrier~~ railroad in the preceding three (3) years. This rule defines interested persons for purposes of Rules 113, 123, and 202, but not for purposes of Section 61-626, Idaho Code. (4-5-00)( )

**03. Public Involvement.** Persons interested in receiving periodic updates about filings made in certain groups of cases, in individual cases, or the issuance of press releases, orders and notices may subscribe to the

Commission's Rich Site Summary (RSS) feed located on the Commission's home page at: [www.puc.idaho.gov](http://www.puc.idaho.gov). Subscription to general information will be available at the home page at "Keep Me Updated" and case specific subscription will be available at each case summary page. The Commission's home page also contains links to other utility or Commission topics. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**043. REPRESENTATION OF PARTIES (RULE 43).**

Proceedings before the Commission are sometimes administrative in nature or quasi-judicial in nature. General requirements for the representation of parties are outlined below. (4-7-11)( )

**01. Administrative Proceedings.** Administrative proceedings before the Commission include matters such as the filing of tariff schedules, tariff advices, price lists, certificates to provide local exchange service, interconnection agreements, rulemaking, written comments in modified procedure, or written comments provided at a customer hearing. These filings may be made by a natural person pro se, a partner in a partnership, an employee or officer of a corporation, or a licensed attorney. (4-7-11)

**02. Quasi-Judicial Proceedings.** The representation of parties at quasi-judicial proceedings for the purpose of adjudicating the legal rights or duties of a party is restricted as set out below. Quasi-judicial proceedings before the Commission include matters such as formal complaints, petitions, motions, applications for modified procedure or technical/evidentiary hearings. Representation of parties of these types of proceedings shall be as follows: (4-7-11)

- a. A natural person may represent himself or herself or be represented by a licensed attorney. (4-7-11)
- b. A partnership or corporation shall be represented by a licensed attorney. (4-7-11)
- c. A municipal corporation; a state, federal, tribal, or local government agency; an unincorporated association; a non-profit organization, or other entity shall be represented by a licensed attorney. (4-7-11)

**03. Attorney Representation.** Only an active member of the Idaho State Bar may represent a party as an attorney except as provided by Idaho Bar Commission Rule 227 (~~Limited Admission~~ Pro Hac Vice Admission). The Commission adopts by incorporation Bar Rule 227 as modified below. (4-7-11)( )

- a. Limited admission by out-of-state attorneys will not be necessary in conjunction with administrative proceedings. Out-of-state attorneys representing the same party in one (1) or more quasi-judicial proceedings must request limited admission at least one (1) time per calendar year. (4-7-11)
- b. An attorney applying for limited admission to appear before the Commission in a representative capacity shall file a written motion with the Commission Secretary and serve a copy on all parties. The motion shall be substantially in the form set out in Bar Rule 227(~~f~~) with references to the Commission instead of the court. (4-7-11)( )
- c. A copy of the written motion shall be submitted to the Idaho State Bar accompanied by the fee prescribed in Bar Rule 227(~~f~~). (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**052. APPLICATIONS -- DEFINED -- FORM AND CONTENTS (RULE 52).**

All pleadings requesting a right, certificate, permit, or authority from the Commission ~~or the award of intervenor funding~~ are called "applications." Applications must: (4-5-00)( )

- 01. State Facts.** Fully state the facts upon which they are based, (7-1-93)
- 02. Refer to Provisions.** Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based, and (7-1-93)
- 03. Pray for the Action Sought.** Request the action desired. (3-16-04)
- 04. Public Information.** Unless otherwise exempted from disclosure by statute, information in applications is public information not exempt from disclosure under Section 9-340C(9), Idaho Code. (3-16-04)
- 053. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 53).**  
All pleadings requesting: (7-1-93)
- 01. Modification, Amendment or Stay of Existing Orders or Rules.** (7-1-93)
- 02. Clarification or Construction of Orders, Rules or Statute.** (7-1-93)
- 03. Initiation of Proceeding.** The initiation of a proceeding not an application or a proceeding that will lead to the issuance of an order. (7-1-93)
- 04. ~~Rehearing~~ Reconsideration.** (~~7-1-93~~)( )
- 05. Request for Intervenor Funding.** ( )
- 056. Intervention are Called "Petitions."** ~~Petitions must:~~ (~~7-1-93~~)( )
- 07. Form and Content. Petitions must:** ( )
- a.** Fully state the facts upon which they are based, (7-1-93)
- b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based, (7-1-93)
- c.** Pray for the relief desired, and (7-1-93)
- d.** State the name of the person petitioned against (the respondent), if any. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

- 072. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 72).**  
Petitions to intervene must comply with Rules 41, 61, and 62. The petition must set forth the name and address of the petitioner and clearly and concisely state the direct and substantial interest of the petitioner in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. ~~Applications~~ **Petitions** for intervenor funding should be made in a separate document from the petition to intervene. (~~4-5-00~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

- 111. FORM AND CONTENTS -- NEW UTILITY (RULE 111).**  
Applicants for the issuance of a certificate of convenience and necessity for a new utility under Section 61-526, Idaho Code, or Commission order, must submit the data required by this rule (where relevant) with their applications. (4-5-00)
- 01. Name, Address and Form of Business.** (7-1-93)

- a. If the applicant is a sole proprietor: (7-1-93)
- i. The name, business address, and electronic address (if available) of the applicant; and (4-5-00)
- ii. The business name (including “doing business as” (dba)) of the sole proprietorship. (3-16-04)
- b. If the applicant is a partnership: (7-1-93)
- i. A list of the names, business addresses, and electronic addresses (if available) of all the partners; and (4-5-00)
- ii. The business name (including dba) of the partnership. (3-16-04)
- c. If the applicant is a corporation or limited liability company (LLC): ~~(7-1-93)~~( )
- i. A short statement of the character of public service in which it may engage; (7-1-93)
- ii. The name of the corporation entity (including dba) and the state in which it is incorporated or organized; ~~(3-16-04)~~( )
- iii. Its principal business address, its principal business address within Idaho, and electronic address (if available); (4-5-00)
- iv. A certified copy of its articles of incorporation or its certificate of organization if an LLC; and ~~(7-1-93)~~( )
- v. If not incorporated or organized in Idaho, a certificate of authority from the Idaho Secretary of State, a certificate of good standing issued by the Ssecretary of Sstate of Idaho the state in which it is incorporated or organized, and the name and address of its registered agent for service in Idaho. ~~(3-16-04)~~( )

**02. Written Explanation Why Service Is Proposed.** A statement or prepared testimony and exhibits explaining why the proposed utility service is or will be in the public convenience and necessity. (7-1-93)

**03. Proposed Operations.** A full description of the proposed location, route or routes of the utility service, including a description of the manner of construction, and the names of all public utilities, corporations, or persons with whom the proposed new utility is likely to compete. (7-1-93)

**04. Maps.** A map of suitable scale showing the location of the utility service and its relation to other public utilities in the area that offer or provide similar utility service. (7-1-93)

**05. Financing of Construction.** A statement of the manner in which the applicant proposes to finance new utility service construction, the time when the applicant proposes to begin construction and the time when the applicant proposes to begin service. (7-1-93)

**06. Cost of Service.** Estimates of the cost of extending to and the annual cost of serving the territory for which the certificate is sought, of the number of service connections already made or to be made, of the annual revenue from them or expected annual revenue from them, and of anticipated rates and charges. (7-1-93)

**07. Financial Statement.** A financial statement of the applicant. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. APPLICATION FOR NEW COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC) – FORM AND CONTENT (RULE 114).**

The Commission issues Certificates of Public Convenience and Necessity to competitive local exchange carriers (CLECs) seeking to provide local exchange services in Idaho. The Commission uses the certification process to register and review applications to provide local telecommunications services. See Commission Order No. 26665 issued November 7, 1996. Each CLEC application shall include the following information: (5-8-09)

**01. Name, Address and Form of Business.** (5-8-09)

**a.** If the applicant is the sole proprietor, provide the name and business address of the applicant and the business name of the sole proprietorship. (5-8-09)

**b.** If the applicant is a partnership, provide a list of the names and business addresses of all the partners, and the business name of the partnership. (5-8-09)

**c.** If the applicant is a corporation or limited liability company (LLC), along with the entity's name (and dba, if any), provide, if applicable: ~~(5-8-09)~~( )

i. A short statement of the character of public service in which it is engaged; (5-8-09)

ii. The name of the entity (including dba, if any) and the state in which it is incorporated or organized; ~~(5-8-09)~~( )

iii. Its principal business address and its principal address within Idaho; (5-8-09)

iv. A certified copy of its articles of incorporation or its certificate of organization if an LLC; ~~(5-8-09)~~( )

v. The names and addresses of the officers and directors of applicant; (5-8-09)

vi. The names and addresses of subsidiaries owned or controlled by applicant; (5-8-09)

vii. If not incorporated or organized in Idaho, a certificate of authority from the Idaho Secretary of State, a certificate of good standing issued by the ~~applicable~~ secretary of state in the state it is incorporated or organized, and the name and address of its registered agent for service in Idaho; and ~~(5-8-09)~~( )

**02. Services and Territory.** The application shall include: (5-8-09)

**a.** A written description of customer classes and customer services that the applicant proposes to offer to the public. The application shall indicate the date on which the applicant proposes to begin construction or anticipates it will begin to provide service in Idaho. (5-8-09)

**b.** A description sufficient for determining whether service is to be offered in a particular location and the names of incumbent local exchange corporations (ILECs) with whom the proposed utility is likely to compete. The application shall include a description of the intended manner of service, e.g., resold services or facilities-based services; and a general description of the property owned or controlled by applicant. (5-8-09)

**c.** A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If the service area is identical to an incumbent LEC's service area, then applicant may refer to the incumbent's service area. (5-8-09)

**03. Financial Information.** (5-8-09)

**a.** The application shall provide the current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balance for the twelve (12) months ending as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant shall submit financial data sufficient to establish it possesses adequate financial resources to provide the proposed services. (5-8-09)

- b.** The application shall include the latest annual report, if any. (5-8-09)
- 04. Tariffs and Price Lists.** The application shall include proposed initial tariffs or price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariffs and price lists filings shall be in an electronic form as well as paper. The tariffs and price lists in electronic format will be in computer searchable Adobe Acrobat (PDF), or submitted on a CD-ROM or other format as prescribed by the Commission Secretary. (5-8-09)
- 05. Tariff and Customer Contact.** The application shall include the name, address, and telephone number for those persons responsible for tariff and price list questions, as well as customer complaints and inquiries. The application shall state the toll-free telephone number for customer inquiries and complaints. (5-8-09)
- 06. Interconnection Agreements.** The application shall state whether the applicant has initiated interconnection negotiations and, if so, when and with whom. Include copies of any interconnection contracts which have been completed for the provision of telecommunication services. (5-8-09)
- 07. Compliance with Commission Rules.** The application shall contain a written statement that the applicant has reviewed all of the Commission's rules and agrees to comply with them, or include a request for waiver of those rules believed to be inapplicable. (5-8-09)
- 08. Conservation of Telephone Numbers.** The application shall contain a written statement acknowledging that non-paging telecommunications carriers with telephone numbering resources in Idaho shall be subject to numbering conservation measures including mandatory one thousand (1,000) block pooling. See Commission Order No. 30425. All CLECs shall evaluate their numbering resources and donate to the numbering resource pool unused one thousand (1,000) number blocks and one thousand (1,000) number blocks that have fewer than ten percent (10%) of the telephone numbers assigned. Applicable carriers shall also file the necessary utilization reports with NeuStar and semi-annual report their number resource utilization/forecast (NRUF) data at the one thousand (1,000) block level for each rate center within their service territory. The Federal Communications Commission has appointed NeuStar to manage the assignment and conservation of telephone area codes and telephone numbers in North America. (5-8-09)

**115. -- 120. (RESERVED)**

**APPLICATIONS TO CHANGE RATES OR RULES**  
**RULES 121 THROUGH 130**

**121. FORM AND CONTENTS OF APPLICATION TO CHANGE RATES (RULE 121).**

- 01. Utility Applications to Change Rates.** Applications by any public utility subject to Title 61, Idaho Code, to increase, decrease or change any rate, fare, toll, rental or charge or any classification, contract, practice, rule or regulation resulting in any such increase, decrease or change must include the following data: (4-7-11)
- a.** An exhibit showing in full each proposed change in rates, tolls, rentals, charges, rules or regulation by striking over proposed deletions to existing tariffs and underlining proposed additions or amendments to existing tariffs, except applications to increase or decrease all or almost all rates and charges by a uniform percentage or by a uniform amount may be made by filing a tariff listing the proposed change and all unchanged rates and charges or rates and charges not changed by a uniform percentage or a uniform amount, or by use of another designation previously approved by the Commission that clearly calls attention to all proposed changes in numbers or wording. (7-1-93)
- b.** If the application is subject to Rule 122, a complete justification of the proposed increase in the form of testimony and exhibits or a narrative exposition. (7-1-93)
- c.** If the application is subject to Rule 122, a statement showing how and when the application has been or will be brought to the attention of affected customers and a copy of the press release and customer notice required by Rule 125. ~~(4-7-11)~~( )

- d. A statement that the applicant stands ready for immediate consideration of the application. (7-1-93)
- e. If the application is subject to Rule 122, testimony and exhibits showing financial statements, cost of capital and appropriate cost of service studies. (7-1-93)
- f. Workpapers or documentation showing how test year data were adjusted. (7-1-93)
- g. If the applicant provides utility service in states other than Idaho or utility service subject to federal regulation, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho. (7-1-93)

**02. Proposals Based upon Computer Modeling.** In addition, in any application in which a computer model is used to represent or simulate processes from which the revenue requirement is derived or upon which allocations of the revenue requirement to different customer classes are based, complete documentation of all those computer models must be supplied to the Staff, upon request, and be available in the utility's office or other depository. The Staff may request that the computer model itself be provided. A computer model includes the representation or simulation of a process, but does not mean or include the compilation of actual data. The application must state that the documentation of the models already on file in the applicant's office or other depository fully describes the models or that necessary updates or additions to previous documentation that will fully describe the models is on file and will be supplied on request. (4-5-00)

**03. Grounds for Returning or Dismissing Application.** Failure to comply with Rule 121.01 and 121.02 of this rule is grounds to return or dismiss an application under Rule 65. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 125).**

- 01. Customer Notice of a Change in Rates.** (4-7-11)
  - a. If a utility is requesting a rate increase, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the utility's need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class. (4-7-11)
  - b. If the utility is requesting a rate decrease, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the reason for the decrease, the overall dollar amount of the proposed decrease, and the proposed percentage decrease for each major customer class. (4-7-11)
  - c. The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility's application is available for public review at the offices of both the Commission and the utility, and on the Commission's homepage [at www.puc.idaho.gov](http://www.puc.idaho.gov). ~~(4-7-11)~~( )
  - d. The customer notice shall inform customers that written comments regarding the utility's application may be filed with the Commission. It shall also inform customers that they may subscribe to the Commission's RSS feed (Subsection 039.03) to receive periodic updates via e-mail about the case. ( )
- 02. Timing of Notice for Trackers or Annual Cost Adjustments.** Tracker adjustments occasioned by federal action that result in an increase or decrease in rates may be brought to the attention of customers in compliance with this rule after approval by the Commission. Other tracker or annual cost adjustment cases that result in an increase in rates remain subject to the requirements of advance notice contained in this rule. Other tracker or

annual cost adjustment cases that result in a decrease in rates may be brought to the attention of customers in compliance with this rule after being approved by the Commission. (4-7-11)

**03. Timely Distribution of Customer Notices.** The customer notices referred to in Subsection 125.01 may be mailed separately to customers or included in the customer's regular bill as a bill stuffer ~~over the course of a billing cycle or may be contained in additional comment pages to the customer's monthly bill.~~ At the customer's option, the customer notice may be provided electronically. ~~If additional comment pages are used,~~ The information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. Distribution of customer notices shall commence when the utility files its application or as soon as possible thereafter. (5-8-09)( )

**04. Press Release.** In instances covered by Subsection 125.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission's news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. (5-8-09)

**05. Filing of a Press Release and Customer Notice.** A copy of the press release and customer notice shall be filed with the application. (5-8-09)

**06. Purposes and Effects of This Rule.** The purposes of Subsections 125.01 through 125.05 of this rule are to encourage wide dissemination to customers of information concerning proposed rate changes for utility services. It is not a purpose of these subsections to create due process or other procedural rights in customers by expanding, contracting, or otherwise modifying the notice and due process rights of customers under the Public Utilities Law and the Commission's Rules of Procedure, IDAPA 31.01.01. Accordingly, Subsections 125.01 through 125.05 of this rule create no individual procedural rights in any customer for notice that would give rise to a due process or other procedural claim cognizable by the Commission, but failure to comply with Subsections 125.01 through 125.05 of this rule can be grounds for returning an application for incompleteness. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**162. FORM AND CONTENTS OF PETITION FOR INTERVENOR FUNDING (RULE 162).**  
An application petition for intervenor funding must contain the following: (7-1-93)( )

**01. Itemized List of Expenses.** An itemized list of expenses that the intervenor requests to recover broken down into categories such as legal fees, witness fees, or reproduction fees. Legal and witness fees shall, where applicable, indicate hourly rates. (4-5-00)

**02. Statement of Proposed Findings.** A statement of the intervenor's proposed finding or recommendation that the intervenor wishes the Commission to adopt. (7-1-93)

**03. Statement Showing Costs.** A statement showing that the costs that the intervenor proposes to recover are reasonable in amount. (7-1-93)

**04. Explanation of Cost Statement.** A statement explaining why the costs described in Rule 162.01 constitute a significant financial hardship for the intervenor. (4-5-00)

**05. Statement of Difference.** A statement showing how the intervenor's proposed finding or recommendation in the case differs materially from the testimony and exhibits of the Commission Staff. (4-5-00)

**06. Statement of Recommendation.** A statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or consumers, and (7-1-93)

**07. Statement Showing Class of Customer.** A statement showing the class of customer on whose behalf the intervenor appeared. (7-1-93)



## IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

### 31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

DOCKET NO. 31-7103-1301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

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

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

The Commission's Railroad Safety and Accident Reporting Rules 103 and 104 adopt by reference the federal safety regulations pertaining to the transportation of hazardous materials by railroads issued by the federal Pipeline and Hazardous Material Safety Administration (PHMSA). The current Railroad Safety Rule 103 adopts the 2011 edition of the Code of Federal Regulations (CFR) and current Rule 104 adopts the 2010 edition of the CFR. The Commission proposes to adopt the 2013 edition of the CFR for both Rules 103 and 104. Since these two rules were last updated, PHMSA amended 49 C.F.R. Parts 171 and 172 revising procedures to allow electronic shipping papers and adding emergency contact phone numbers to the shipping papers. It also amended Parts 173, 174, 179, and 180 regarding the loading and marking of railroad tank cars carrying hazardous materials. 77 Fed.Reg. 37962-01 (June 25, 2012).

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on the state general fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these proposed rules adopt mandatory federal safety regulations for the safe transportation of hazardous materials by rail. The federal safety regulations are already applicable to railroads and rail shippers.

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

The revisions to be adopted in the 2013 edition of the federal hazardous material safety regulations are explained in detail in the descriptive summary above. Adoption of the 2013 federal safety regulations will provide uniformity between state and federal rail safety provisions. An electronic link to the incorporated material is contained in the Commission's railroad safety rule 31.71.03.008 and at [www.gpoaccess.gov/cfr](http://www.gpoaccess.gov/cfr).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 23, 2013.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 28th day of August, 2013.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-7103-1301**  
**(Only those Sections being amended are shown.)**

**103. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (RULE 103).**

**01. Hazardous Material Defined.** “Hazardous material” means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. (3-30-01)

**02. Adoption of Federal Safety Regulations.** The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 2014<sup>3</sup>). All customers offering hazardous materials for shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. (3-29-12)( )

**03. Recognition of Federal Exemptions.** Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. (3-30-01)

**104. REPORTING OF RAILROAD ACCIDENTS (RULE 104).**

The Commission incorporates by reference 49 C.F.R. Part 225 (October 1, 2014<sup>3</sup>). Pursuant to 49 C.F.R. 225.1, all railroads that are required to file a copy of any accident/incident report with the Federal Railroad Administration shall also file a copy of such report with the Commission Secretary for accidents or incidents occurring in Idaho. Copies of accident or incident reports shall be mailed to: Commission Secretary, Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074 ((208) 334-0338). Copies of such reports may also be provided by facsimile at (208) 334-3762 or by electronic mail, [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov). (4-7-11)( )

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1301

#### 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 Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 033 and 705, 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.

Rule 201 is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

Rule 195 is being promulgated consistent with 2013 House Bill 2 which provides that certain loss recoveries are deductible for Idaho purposes.

Rule 263 is being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

Rule 872 is being amended consistent with 2013 House Bill 22 to revise the reporting and paying periods for Idaho income tax withheld by certain employers.

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

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

Rule 263 may have an increase of \$440,000 annually 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 May 1, 2013, Idaho Administrative Bulletin, volume 13-5, pages 86-90.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 20th day of August, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1301**  
**(Only those Sections being amended are shown.)**

**195. LOSS RECOVERIES (RULE 195).**  
**Section 63-3022R, Idaho Code.** ( )

**01. In General.** A deduction is allowed in taxable years beginning after December 31, 2012 for recoveries of losses deducted from federal taxable income in a prior year that were not allowed or allowable as a deduction in calculating Idaho taxable income to the extent the recovery is included in federal taxable income of the current year. ( )

**02. No Double Deduction.** No deduction is allowed for recovery of an amount not included in federal taxable income of the current year. No deduction is allowed to the extent the loss recovered previously reduced Idaho taxable income. ( )

**03. Example.** A taxpayer claims an itemized deduction of one hundred thousand (\$100,000) on his 2010 federal tax return for a theft loss from a Ponzi-type investment scheme. The deduction results in a federal net operating loss of fifty thousand (\$50,000) for 2010 but no Idaho net operating loss because the itemized deduction is not allowable in calculating an Idaho net operating loss under Section 63-3021, Idaho Code. On his 2013 federal tax return, the taxpayer includes in federal taxable income a recovery of sixty thousand (\$60,000) of the amount previously deducted. Since ten thousand (\$10,000) of the recovered amount reduced 2010 Idaho taxable income and fifty thousand (\$50,000) did not reduce 2010 Idaho taxable income, a fifty thousand (\$50,000) deduction is allowed in calculating 2013 Idaho taxable income. The 2013 Idaho deduction allowed is fifty thousand (\$50,000) since that is the amount that was previously disallowed for Idaho purposes. ( )

**195~~6~~ -- 199. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).** (7-1-99)  
Section 63-3022(c), Idaho Code.

**01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers.** (3-20-97)

**a.** The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

**b.** A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as

modified by Section 63-3021, Idaho Code. (4-5-00)

**02. Adjustments to Net Operating Losses.** (3-20-97)

**a.** The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

**b.** A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

**02. Adjustments to Net Operating Losses.** (3-20-97)

**a.** Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. (3-20-97)

**b.** Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

**03. Adjustments in Carryback and Carryover Years.** (3-20-97)

**a.** Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

**b.** Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

**c.** Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

**04. Net Operating Loss Carrybacks Application.** (~~3-20-97~~)( )

**a.** The net operating loss carryback allowed for the entire carryback period may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-7-11)

**b.** The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. ( )

**b.c.** Except as provided in Paragraphs 201.04.ed. and 201.04.f., ~~the~~ a net operating loss carryback is applied as follows: (~~4-7-11~~)( )

i. ~~For~~ Net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, ~~the net operating loss carryback is~~ are applied to the third preceding taxable year and if not absorbed, the difference is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (~~4-5-00~~)( )

ii. ~~For~~ Net operating losses incurred in taxable years beginning on and after January 1, 2000, ~~the net operating loss carryback is~~ but prior to January 1, 2013, are applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (~~4-5-00~~)( )

iii. Net operating losses incurred in taxable years beginning on and after January 1, 2013, are applied to the twenty (20) succeeding taxable years, in order, until absorbed. ( )

ed. For taxable years beginning prior to January 1, 2013, ~~if~~ the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.bc. do not apply

and the net operating loss carryover is applied as follows:

~~(4-7-11)~~( )

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. ~~(4-5-00)~~( )

~~d.e.~~ For taxable years beginning prior to January 1, 2013, ~~if~~ the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not result in a refund for the closed taxable year. ~~(4-7-11)~~( )

f. For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ( )

**05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013.** ~~(3-30-01)~~( )

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (4-7-11)

- i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)
- iii. The amount of the net operating loss. (3-20-97)

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss does not constitute an election for Idaho purposes. (4-7-11)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.~~b.c.~~ (4-7-11)

**06. Order in Which Losses Are Applied in a Year.** Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

**07. Documentation Required When Claiming a Net Operating Loss Deduction.** A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

**08. Conversion of C Corporation to S Corporation.** An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation subject to Idaho tax on net recognized built-in gains or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain

and excess net passive income.

(4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).**

Section 63-3026A(3), Idaho Code.

(3-20-97)

**01. In General.** The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules.

(3-20-97)

**02. Nonbusiness Income.** Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code.

(3-20-97)

**03. Pass-Through Items.** Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include:

(3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

**04. Guaranteed Payments Treated As Compensation.** ( )

**a.** Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. ( )

**b.** The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. ( )

**045. Distributions.** (2-27-12)

**a.** Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by

the Idaho apportionment factor of the partnership. (2-27-12)

**b.** S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

**c.** The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).** (3-20-97)  
Sections 63-3035 and 63-3036, Idaho Code.

**01. Payment of State Income Tax Withheld.** (4-6-05)

**a.** In General. An employer ~~shall~~ **must** remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. ~~(5-8-09)~~( )

**b.** Split-Monthly Filers. (4-6-05)

**i.** An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, ~~shall will~~ remit the tax withheld based on split-monthly withholding periods. ~~The first \$split-monthly withholding periods begins with on the first day of the month and ends on the 15th day of the same month with payment made not later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the 15th last day of the following same month- with P payments for a split-monthly withholding period shall be made no later than five (5) the fifth days after the end of the withholding period following month.~~ (4-6-05)( )

**ii.** Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

**c.** Farmer-Employers. Generally an employer who is a farmer ~~shall will~~ remit state income tax withheld on or before the last day of January. However, an employer who is a farmer ~~shall will~~ remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. ~~(4-11-06)~~( )

**02. Filing of Annual Reconciliation Returns.** (4-6-05)

**a.** In General. An employer ~~shall must~~ file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return ~~shall will~~:



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

- i. Report payroll paid during the preceding calendar year; and (4-6-05)
- ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

**b.** Due Date of Reconciliation Returns. The annual reconciliation return *shall must* be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. ~~(5-8-09)~~( )

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return *shall must* be completed and filed by the due date. ~~(4-6-05)~~( )

**03. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

**a.** The employer *shall must* file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment *shall must* be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. ~~(4-6-05)~~( )

**b.** The employer *shall must* file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request *shall must* be shown on the payment line of the return. Interest from the due date applies to any additional tax due. ~~(4-6-05)~~( )

**04. Valid Returns.** All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule *shall will* be filed using the proper forms as prescribed by the Tax Commission. The forms *shall will* include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. ~~(3-20-97)~~( )

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0101-1302**

#### **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 Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

**Rule 040** is being amended to clarify the definition of the term “place of abode” with regard to federal foreign income exclusion.

**Rule 045** is being amended consistent with 2013 House Bill 139 to add a statutory reference to the heading and add subsection 06 to address pension income.

**Rule 075** is being amended to add the tax brackets for calendar year 2013 and remove the information for calendar year 2008 so only five years of historical data is retained in the rule.

**Rule 105** is being amended consistent with 2013 House Bill 4 regarding income adjustment addition of credit for taxes paid to other states.

**Rules 120 & 254** are being amended to conform to 2013 House Bill 2 to add the deduction for certain loss recoveries and to conform to 2013 House Bill 4 to add that the deduction for donation of technological equipment is limited to the lesser of cost, fair market value, or Idaho taxable income of the taxpayer.

**Rule 121** is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

**Rule 125** is being amended to change the word “or” in the last sentence of Subsection 01 to “and”.

**Rule 140** is being amended consistent with 2013 House Bill 4 to provide that in order to qualify for the energy efficiency upgrade deduction the residence must be in Idaho and be the primary residence of the taxpayer.

**Rule 180** is being amended consistent with 2013 House Bill 4 to provide that a deduction for technological equipment donations cannot exceed the taxpayer’s cost of the technological equipment donated nor reduce Idaho taxable income to less than zero.

**Rule 194** is being amended to conform with a federal law change for medical expense itemization minimums.

**Rule 251** is being amended to clarify that total income is federal total income.

**Rule 252** is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income to total income is used to allow certain deductions to part-year or nonresidents.

**Rules 270, 280 & 291** are being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

**Rule 710** is being amended consistent with 2011 House Bill 296 to add that the cost of property that the taxpayer elects to deduct as bonus depreciation is not qualified for the Idaho Investment Tax Credit when the bonus depreciation was also allowed in computing depreciation for Idaho.

**Rule 714** is being amended consistent with 2012 House Bill 438 which changed the requirements for claiming investment tax credit carryovers. Qualifying property must remain in Idaho during the recapture period (first 5 years), not during the carryover period (14 succeeding years).

**Rule 771** is being amended to add tax year 2012 and the applicable grocery credit amounts to the table.

**Rule 801** is being amended to clarify that the election under Section 63-3022L is available only for taxable years beginning prior to January 1, 2012.

**Rule 855** is being amended to clarify that the permanent building fund is paid by pass-through entities paying Idaho income tax for individuals on a composite return but not when the entity pays backup withholding for individuals.

**Rule 880** is being amended consistent with 2013 House Bill 4 & 2013 House Bill 184 in regard to credit and refund rules.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 29th day of August, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1302**  
**(Only those Sections being amended are shown.)**

**040. PART-YEAR RESIDENT (RULE 040).**

Section 63-3013A, Idaho Code.

(3-20-97)

**01. In General.** A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)

**a.** An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)

**b.** For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. (7-1-98)

**02. Temporary or Transitory Purpose.** For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

**a.** The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. (3-20-97)

**b.** An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. (3-20-97)

**c.** Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. (3-20-97)

**03. Place of Abode.** An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. This definition does not apply for purposes of the federal foreign income exclusion and only applies for purposes of Sections 63-3013 and 63-3013A, Idaho Code. (7-1-98)( )

**a.** Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. (7-1-98)

**b.** Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. (7-1-98)

**041. -- 044. (RESERVED)**

**045. NONRESIDENT (RULE 045).**

Sections 63-3014, 63-3026A, Idaho Code.

(3-20-97)( )

**01. Traveling Salesmen.** (3-20-97)

**a.** A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. (3-20-97)

**b.** If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. (3-30-01)

**02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code.** Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: (7-1-99)

**a.** An operator, including an independent contractor, of a commercial motor vehicle; (3-20-97)

**b.** A mechanic; (3-20-97)

**c.** A freight handler; and (3-20-97)

**d.** An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. (3-20-97)

**03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code.** Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: (3-20-04)

**a.** Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or (3-20-04)

**b.** Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. (3-20-04)

**04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code.** Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: (7-1-99)

**a.** The employee's state of residence, and (3-20-97)

**b.** The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. (3-20-97)

**05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code.** Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. (7-1-99)

**06. Pension Income Covered by Title 4, Section 114, United States Code.** Pension income, including certain guaranteed payments made to a retired partner of a partnership, per Title 4, Section 114(b)(1)(I), United States Code, is subject to income tax only in the individual's state of residence or domicile. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).**

Section 63-3024, Idaho Code.

(3-20-04)

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

**02. Tax Computation.** (5-3-03)

**a.** The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

**c.** For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

**03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets.** (3-20-04)

~~**a.** For taxable years beginning in 2008:~~

<b>IF IDAHO TAXABLE INCOME IS</b>		<b>IDAHO TAX</b>		
<b>At least</b>	<b>But less than</b>	<b>Is</b>	<b>Plus</b>	
\$1.00	\$1,272.00	\$0	+	1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	+	3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	+	4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	+	5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	+	6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	+	7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	+	7.4% of the amount over \$9,540.00
\$25,441.00 or more		\$1,663.19	+	7.8% of the amount over \$25,441.00

~~Tax and bracket amounts were calculated using consumer price index amounts published on March 12, 2008.~~

(4-7-11)

~~**a.** For taxable years beginning in 2009:~~

<b>IF IDAHO TAXABLE INCOME IS</b>		<b>IDAHO TAX</b>		
<b>At least</b>	<b>But less than</b>	<b>Is</b>	<b>Plus</b>	
\$1	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$3,963	\$5,284	\$122.84	+	5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+	6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+	7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+	7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+	7.8% of the amount over \$26,418

Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.

(4-7-11)

**eb.** For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	+	1.6% of taxable income
\$1,316	\$2,632	\$21.06	+	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+	5.1% of the amount over \$3,948
\$5,264	\$6,580	\$189.52	+	6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+	7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+	7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+	7.8% of the amount over \$26,320

Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.

(4-7-11)

**ec.** For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035

\$26,760 or more	\$1,749.45 + 7.8% of the amount over \$26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.	

(2-27-12)

**ed.** For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,380	\$0 +	1.6% of taxable income
\$1,380	\$2,760	\$22.08 +	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76 +	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34 +	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72 +	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90 +	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85 +	7.4% of the amount over \$10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.			

(4-4-13)

**e.** For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
<u>\$1</u>	<u>\$1,409</u>	<u>\$0 ±</u>	<u>1.6% of taxable income</u>
<u>\$1,409</u>	<u>\$2,818</u>	<u>\$22.54 ±</u>	<u>3.6% of the amount over \$1,409</u>
<u>\$2,818</u>	<u>\$4,227</u>	<u>\$73.26 ±</u>	<u>4.1% of the amount over \$2,818</u>
<u>\$4,227</u>	<u>\$5,636</u>	<u>\$131.03 ±</u>	<u>5.1% of the amount over \$4,227</u>
<u>\$5,636</u>	<u>\$7,045</u>	<u>\$202.89 ±</u>	<u>6.1% of the amount over \$5,636</u>
<u>\$7,045</u>	<u>\$10,568</u>	<u>\$288.84 ±</u>	<u>7.1% of the amount over \$7,045</u>
<u>\$10,568 or more</u>		<u>\$538.94 ±</u>	<u>7.4% of the amount over \$10,568</u>
<u>Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.</u>			

( )

**(BREAK IN CONTINUITY OF SECTIONS)**



**105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).**

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. (2-27-12)

**01. State and Local Income Taxes.** As provided in Section 63-3022(a), Idaho Code, state and local income taxes that are measured by net income and were deducted in computing taxable income must be added. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. ~~(2-27-12)~~( )

**02. Net Operating Loss Deduction.** As provided in Section 63-3022(b), Idaho Code, the amount of the net operating loss deduction included in taxable income must be added. (2-27-12)

**03. Capital Loss or Passive Loss Carryover Deduction.** As provided in Section 63-3022(i), Idaho Code: ~~(3-30-01)~~( )

**a.** A corporation must add a capital loss or passive loss that was deducted in computing taxable income if the loss occurred during a taxable year when the corporation did not transact business in Idaho. However, unless a capital loss is not required to be added back where the corporation was part of a unitary group ~~with~~ and at least one (1) member of the group was taxable by Idaho for ~~that~~ the taxable year in which the loss was incurred. ~~(4-4-13)~~( )

**b.** An individual must add a capital loss or passive loss that was deducted in computing taxable income if the loss was incurred in an activity not taxable by Idaho at the time it was incurred. (4-4-13)

**04. Interest and Dividend Income Exempt From Federal Taxation.** As provided in Section 63-3022M, Idaho Code, certain interest and dividend income that is exempt from federal income tax must be added. For example, interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. (2-27-12)

**a.** Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

**b.** If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, must be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income must be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets must be attached to the return. (2-27-12)

**i.** Expenses prorated to Idaho state and municipal interest income are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**ii.** Expenses prorated to non-Idaho state and municipal interest income are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**05. Interest Expense Attributable to Tax-Exempt Interest Income.** As provided by Section 63-3022M, Idaho Code, a taxpayer must add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (2-27-12)

**06. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed

for Idaho income tax purposes must be added. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).**

Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. (2-27-12)

**01. State and Local Income Tax Refunds.** State and local income tax refunds included in taxable income may be subtracted, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (2-27-12)

**02. Idaho Net Operating Loss.** As provided in Section 63-3022(c), Idaho Code, an Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules may be subtracted. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (2-27-12)

**03. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (2-27-12)

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

**b.** Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

**c.** Certain income from loss recoveries. See Rule 195 of these rules. ( )

**04. Technological Equipment Donation.** As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the lower of cost or fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. (~~2-27-12~~)( )

**05. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (2-27-12)

**06. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**a.** Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (2-27-12)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. (2-27-12)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (2-27-12)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (2-27-12)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (2-27-12)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

**07. Income Restored Under Federal Claim of Right.** As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer is allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction is allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (2-27-12)

**121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).**

Section 63-3022, Idaho Code. (3-20-97)

**01. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts

outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

**02. Military Compensation for Service Performed Outside Idaho.** As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

**03. Standard or Itemized Deduction.** As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

**a.** If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they ~~shall~~ will be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back ~~shall~~ will be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this proration ~~shall~~ will be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number (\$10,000/\$15,000 = .66666 = .6667 = 66.67%). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped (\$10,000/\$30,000 = .33333 = .3333 = 33.33%). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules.

~~(4-2-08)~~( )

**b.** If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

**c.** For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return ~~shall~~ will be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes.

~~(3-30-01)~~( )

**04. Social Security and Railroad Retirement Benefits.** As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

**a.** The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

**b.** The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

**05. Self-Employed Worker's Compensation Insurance Premiums.** As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

**06. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

**07. Energy Efficiency Upgrades.** As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the installation of energy efficiency upgrades in the residence of the taxpayer built or subject to an outstanding building permit on or before 2002. (4-4-13)

**08. Alternative Energy Devices.** As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence of the taxpayer. (4-4-13)

**09. Household and Dependent Care Services.** As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

**10. Household Deduction for Elderly or Developmentally Disabled Dependents.** As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

**11. Reparations to Displaced Japanese Americans.** As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

**12. Capital Gains.** As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified Idaho property. (2-27-12)

**13. Adoption Expenses.** As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

**14. Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

**15. Idaho College Savings Program.** As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

**16. Health Insurance Costs.** A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

**17. Unused Net Operating Losses of Estates and Trusts.** An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. For taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. For taxable years beginning on and after January 1, 2013, the first one hundred thousand (\$100,000) of loss sustained in any taxable year of an estate or trust may be carried back by the estate or trust if an amended return

carrying the loss back is filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. (2-27-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007, OR AFTER DECEMBER 31, 2009 (RULE 125).**

Section 63-3022O, Idaho Code.

(4-2-08)

**01. In General.** Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 ~~or~~ and before 2010.

(2-27-12)( )

**02. Depreciation.**

(4-2-08)

**a.** If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer is entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes.

(2-27-12)

**b.** If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer is not entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years.

(2-27-12)

**c.** The Idaho adjustments are required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer may claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently.

(2-27-12)

**d.** Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year

should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. DEDUCTION FOR ENERGY EFFICIENCY UPGRADES (RULE 140).**

Section 63-3022B, Idaho Code.

(3-20-97)

**01. Qualifying Date.** The energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, 2002. A residence, or addition to a residence, constructed after January 1, 2002, does not qualify. (4-4-13)

**02. Qualifying Residence.** The residence must be the primary residence of the taxpayer and must be located in Idaho. ( )

**03. Energy Efficiency Upgrade Measure Definition.** “Energy efficiency upgrade measure” means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued. The IECC in effect in Idaho refers to the version most recently adopted by the Idaho Building Code Board, including amendments made by the Board. See the Board’s administrative rules at IDAPA 07.03.01, “Rules of Building Safety,” Section 004. (4-4-13)

**04. Siding.** Siding is not considered an energy efficiency upgrade. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).**

Section 63-3022J, Idaho Code.

(3-20-97)

**01. Limitations.** The deduction for donations of technological equipment is limited to the lower of cost, fair market value, or Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. (~~5-3-03~~)( )

**02. Fair Market Value.** Fair market value is determined pursuant to Section 170, Internal Revenue Code. (3-20-97)

**03. Pass-Through of Deduction.** (3-20-97)

**a.** See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. (3-20-97)

**b.** The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**194. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE -- EXAMPLES OF LIMITATIONS (RULE 194).**

Sections 63-3022P and 63-3022Q, Idaho Code.

(5-8-09)

**01. Examples of Limitations When Costs are Otherwise Deducted or Accounted For.** If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the ~~seven and one-half percent (7.5%)~~ **federal** adjusted gross income limitation, the amount that is deducted as an itemized deduction ~~shall~~ **will** first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the ~~seven and one-half percent (7.5%)~~ **federal** adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations ~~shall~~ **must** not be less than zero (0). ~~(5-8-09)~~( )

**02. Example with ~~Seven and One Half Percent (7.5%)~~ **Applicable Percentage** of Federal Adjusted Gross Income Equal to Zero (0).**

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	<del>7.5%</del> <b>Applicable percentage</b> of federal adjusted gross income	\$0
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0

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

**03. Example with ~~Seven and One Half Percent (7.5%)~~ **Applicable Percentage** of Federal Adjusted**



Gross Income Equal to Three Thousand Dollars (\$3,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% <u>Applicable percentage</u> of federal adjusted gross income	\$3,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
HEALTH INSURANCE		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000

(5-8-09)( )

04. Example with ~~Seven and One Half Percent (7.5%)~~ Applicable Percentage of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% <u>Applicable percentage</u> of federal adjusted gross income	\$6,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
HEALTH INSURANCE		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

(5-8-09)( )

**05. Example with ~~Seven and One Half Percent (7.5%)~~ Applicable Percentage of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).**

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. <u>7.5% Applicable percentage</u> of federal adjusted gross income	\$14,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
<b>HEALTH INSURANCE</b>	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
<b>LONG-TERM CARE INSURANCE</b>	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

(5-8-09)( )

**06. Applicable Percentage. For taxable years beginning January 1, 2013, the percentage is seven and one-half percent (7.5%) if the taxpayer or spouse is age sixty-five (65) or older. The percentage for taxpayers under the age of sixty-five (65) is ten percent (10%).** ( )

(BREAK IN CONTINUITY OF SECTIONS)

**251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 251).**

Section 63-3026A, Idaho Code. (3-20-97)

**01. Idaho Total Income.** To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho total income. (3-15-02)

**a.** Idaho total income is that portion of total income subject to Idaho taxation. It is the amount reported as total income on Form 43. (3-15-02)

**b.** For purposes of this rule, federal total income means gross income less certain deductions allowed under the Internal Revenue Code. It is the amount reported on the federal individual income tax return that is identified as total income. ~~(3-15-02)( )~~

**02. Idaho Adjusted Gross Income.** From Idaho total income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. (3-15-02)

**03. Idaho Adjusted Income.** From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. (3-20-97)

**04. Idaho Taxable Income.** From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. (3-20-97)

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).**

Section 63-3026A(6), Idaho Code. (3-20-97)

**01. In General.** Deductions allowed in computing adjusted gross income shall will be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed shall will be computed as provided in this rule. Each computation in this rule shall will include the amounts reported for the taxable year unless otherwise indicated. ~~(3-29-10)( )~~

**02. Deductions Directly Related to Specific Items of Income or Property.** If the deduction directly relates to a specific item of income or property, the allowable deduction shall will be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction shall will be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: ~~(3-29-10)( )~~

**a.** Penalty on early withdrawal of savings. The allowable deduction shall will be computed by dividing the interest income of the time savings deposit subject to the penalty included in Idaho income by the total interest income of the time savings deposit included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes. ~~(3-29-10)( )~~

**b.** Certain business expenses of reservists, performing artists, and fee-basis government officials. (3-29-10)

**c.** Domestic production activities deduction. The allowable deduction shall will be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. ~~(3-29-10)( )~~

c. Domestic production activities deduction. The allowable deduction shall be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. (3-29-10)

d. Jury duty pay remitted to an employer. (3-29-10)

e. Deductible expenses related to income from the rental of personal property engaged in for profit. (3-29-10)

f. Reforestation amortization and expenses. The allowable deduction ~~shall~~ **will** be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable deduction ~~shall~~ **will** be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. ~~(3-29-10)~~( )

g. Repayment of supplemental unemployment benefits. The allowable deduction ~~shall~~ **will** be computed by dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. ~~(3-29-10)~~( )

h. Attorney fees and court costs. The allowable deduction ~~shall~~ **will** be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. ~~(3-29-10)~~( )

**03. Deductions Allowed Based on Qualifying Types of Income.** If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction ~~shall~~ **will** be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. ~~(3-29-10)~~( )

a. Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction ~~shall~~ **will** be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. ~~(3-29-10)~~( )

b. Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction ~~shall~~ **will** be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. ~~(3-29-10)~~( )

**04. Other Deductions.** Deductions that do not relate to specific items of income or to the earning of qualifying income ~~shall~~ **will** be allowed in the proportion that Idaho total income bears to **federal** total income computed without the federal net operating loss deduction. Such deductions include the following: ~~(3-29-10)~~( )

a. Alimony payments. (3-29-10)

b. Moving expenses. (3-29-10)

c. Student loan interest payments. (3-29-10)

d. Tuition and fees deduction. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).**

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. (2-27-12)

**01. Idaho Net Operating Loss.** An Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules, may be subtracted to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (2-27-12)

**02. State and Local Income Tax Refunds.** State and local income tax refunds included in Idaho total income may be subtracted unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (2-27-12)

**03. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in Idaho total income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (2-27-12)

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

**b.** Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

**c.** Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on his tribe's federally recognized Indian reservation is not taxable on income derived within that reservation. See Rule 033 of these rules. (2-27-12)

**d.** Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

**e.** Certain income from loss recoveries. See Rule 195 of these rules. ( )

**04. Military Pay.** Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (2-27-12)

**05. Social Security and Railroad Retirement Benefits.** Social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code may be subtracted to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (2-27-12)

**06. Household and Dependent Care Expenses.** The allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, may be subtracted if incurred to enable

the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, a percentage is calculated by dividing Idaho earned income by total earned income. The qualified expenses are multiplied by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (2-27-12)

**07. Insulation and Alternative Energy Device Expenses.** Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted. (2-27-12)

**08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities.** One thousand dollars (\$1,000) may be subtracted for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (2-27-12)

**09. Adoption Expenses.** The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage. (2-27-12)

**10. Capital Gains Deduction.** The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted. (2-27-12)

**11. Idaho Medical Savings Account.** (7-1-98)

**a.** The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted. (2-27-12)

**b.** Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income. (2-27-12)

**12. Technological Equipment Donation.** As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the **lower of cost or** fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. (~~2-27-12~~)(    )

**13. Worker's Compensation Insurance.** As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

**14. Idaho College Savings Program.** The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted. (2-27-12)

**15. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, a percentage is calculated by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, is multiplied by the percentage. (2-27-12)

**16. Health Insurance Costs.** The allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes may be subtracted. To determine the allowable portion of the amounts paid for medical care insurance, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022P, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. (2-27-12)

**17. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from

taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022Q, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. (2-27-12)

**18. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**a.** Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (2-27-12)

**b.** Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. (2-27-12)

**i.** If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (2-27-12)

**ii.** If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (2-27-12)

**iii.** If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (2-27-12)

**iv.** If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- IDAHO COMPENSATION -- IN GENERAL (RULE 270).**  
Section 63-3026A(3). (4-5-00)

**01. In General.** If a nonresident individual performs personal services, either as an employee, agent, independent contractor, partner, or otherwise, both within and without Idaho, the portion of his total compensation

that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. ~~(2-27-12)~~( )

**02. Definitions.** (3-20-97)

**a.** The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days. (3-20-97)

**b.** The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation. (2-27-12)

**c.** Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off. (3-20-97)

**d.** Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the Internal Revenue Code. (2-27-12)

**03. Work Days.** Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. (3-20-97)

**04. Multiple Employers.** If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he must determine an Idaho compensation percentage separately for each employer or principal. (2-27-12)

**05. Alternative Method.** If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-30-01)

**a.** The taxpayer must fully explain the alternative method in a statement attached to his Idaho individual income tax return. (2-27-12)

**b.** The alternative method may be used in lieu of the method in Subsection 270.01 unless the Tax Commission expressly denies its use. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).** Sections ~~63-3026A(3)~~, 63-3027 and 63-3030(a)(9), Idaho Code. ~~(3-30-07)~~( )

**01. In General.** A partnership that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-5-00)



**02. Exceptions to Apportionment Formula.** If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following: (3-30-07)

- a.** Separate accounting as provided in Rule 585 of these rules; (3-30-07)
- b.** The exclusion of a factor pursuant to Rule 590 of these rules; (3-30-07)
- c.** An additional factor or substitute factor pursuant to Rule 595 of these rules; or (3-30-07)
- d.** The employment of any other method that would fairly represent the extent of business activity in Idaho. (3-30-07)

**03. Information Provided to Partners.** The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: (4-5-00)

- a.** The partner's share of each pass-through item of income and deduction; (4-7-11)
- b.** The partner's share of each Idaho addition and subtraction; (4-7-11)
- c.** The partner's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d.** The partner's share of income allocated to Idaho; (4-7-11)
- e.** The partnership's apportionment factor, and if the partner is not an individual, the partnership's property, payroll and sales factor numerator and denominator amounts, including the amount of capitalized rent expense; and (4-7-11)
- f.** The partner's distributive share of partnership gross income if the partner is an individual, trust, or estate. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2012 (RULE 291).** Sections 63-3022L and 63-3026A, Idaho Code. (4-7-11)

**01. In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individuals or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-4-13)

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

~~**a.** Compensation paid by the pass-through entity to the owner or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (4-4-13)~~

**ba.** Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

**eb.** Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

**03. Deductions.** Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

**a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

**b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

**c.** Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).** Section 63-3029B, Idaho Code. (3-20-97)

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also

meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. (5-8-09)

**02. Limitations.** The investment tax credit allowable in any taxable year ~~shall~~ will be limited by the following: ~~(3-20-97)~~ ( )

**a. Tax liability.** (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

**b. Credit for qualifying new employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

**c. Unitary taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

**d. Nonrefundable credits.** The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**e. Used Property Limitation.** The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (4-4-13)

**03. Carryovers.** (3-20-97)

**a.** Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-01)

**b.** For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

**c.** Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment ~~for property acquired after 2007~~ when the bonus first-year depreciation was also allowed in computing depreciation for Idaho. ~~(5-8-09)~~ ( )

(BREAK IN CONTINUITY OF SECTIONS)

**714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each ~~succeeding taxable~~ year ~~to which a carryover may be taken during the recapture period.~~ (3-20-97)( )

**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (4-2-08)

**a. Percentage-of-Use Method.** If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year ~~shall will~~ be determined by the ratio of departures from locations in Idaho to total departures. (4-4-13)( )

**b. Property Factor Method.** If the property factor numerator option is elected, the qualified investment is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. (4-4-13)

**i.** The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. (4-2-08)

**ii.** "Correctly included in the numerator of the Idaho property factor" means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit ~~shall will~~ be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit ~~shall will~~ be allowed only on the fifty percent (50%) of the basis of the asset. (4-2-08)( )

**03. Order of Limitations.** The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. (4-4-13)

**04. Examples.** (4-4-13)

**a. Idaho Percentage-of-Use Method.** In January 2009, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 2009. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). (4-4-13)

**b.** Idaho Percentage-of-Use Method -- Assets placed in service within ninety (90) days of year end. A calendar year taxpayer elects the percentage-of-use method for a road grader placed in service on March 1, 2011, with a basis of seventy-five thousand dollars (\$75,000). If eighty percent (80%) of the road grader's hours were logged in Idaho measured between March 1 and December 31, 2011, the qualifying investment in the road grader is sixty thousand dollars (\$60,000) computed at eighty percent (80%) of the asset's basis. If the road grader was placed in service by the same calendar year taxpayer on November 1, 2011, the Idaho qualifying property is measured during the first ninety (90) days of use of the asset. If the percentage of hours logged in Idaho between November 1, 2011, and January 31, 2012, is seventy percent (70%), the qualifying investment in the road grader is fifty-two thousand five hundred dollars (\$52,500) computed at seventy percent (70%) of the asset's basis. (4-4-13)

**c.** Idaho Property Factor Method. In January, 2011, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Twenty percent (20%) of its hours were logged in Idaho during the year. In addition to the road grader, the taxpayer also purchased an asphalt layer and a dump truck in January, 2011. Twenty percent (20%) of the dump truck's hours were logged in Idaho during the year. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is thirty percent (30%). The dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The taxpayer would include twenty-five thousand dollars (\$25,000) in the Idaho property factor numerator. The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 2011. (4-4-13)

**d.** Order of Limitations. Assume the taxpayer has two (2) asphalt layers costing two hundred thousand dollars (\$200,000) each that are both mobile and used property. Fifty percent (50%) of the hours of both asphalt layers was logged in Idaho during the year. The taxpayer has a two hundred thousand dollar (\$200,000) qualified investment computed by multiplying fifty percent (50%) by four hundred thousand dollars (\$400,000). The used property limitation of one hundred fifty thousand dollars (\$150,000) is applied to the two hundred thousand dollar (\$200,000) qualified investment and the investment tax credit allowed is computed at three percent (3%) of the one hundred fifty thousand dollars (\$150,000). (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
 Section 63-3024A, Idaho Code. (5-8-09)

**01. Residents.** (5-8-09)

**a.** A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2013</u>	<u>\$100</u>	<u>\$80</u>
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2008	\$50	\$30

(4-4-13)( )

**b.** A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

**02. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

- a.** Received assistance under the federal food stamp program; or (5-8-09)
- b.** Was incarcerated. (5-8-09)

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

**05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

**06. Members of the Uniformed Services.** A member of the uniformed services who is: (4-7-11)

- a.** Domiciled in Idaho is entitled to this credit; (5-8-09)
- b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)
- c.** See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

**07. Spouse or Dependents of Members of the Uniformed Services.** Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

**08. Claiming the Credit.** (5-8-09)

**a.** An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

**b.** An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

**c.** No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

**09. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).**

Section 63-3030, Idaho Code.

(3-30-07)

**01. In General.** Persons who meet the filing requirements under Section 63-3030, Idaho Code, ~~shall~~ will file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law.

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

**02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code.** For taxable years beginning prior to January 1, 2012, ~~if~~ an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual ~~shall~~ will not be required to file an Idaho individual income tax return for that taxable year.

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

**03. Corporations Included in a Unitary Group.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules. (3-30-07)

**04. Taxpayers Protected Under Public Law 86-272.** A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it ~~shall~~ will be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and sales ~~shall~~ will be included in the computation of the group factor denominators and its business income ~~shall~~ will be included in the computation of apportionable income for the unitary group.

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code.

(3-20-97)

**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

**02. Pass-Through Entities.** The permanent building fund tax does not apply to ~~partnerships, estates, trusts or S corporations~~ a pass-through entity if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A ~~partnership, estate, trust or S corporation~~ pass-through entity that has Idaho taxable income or loss ~~shall~~ must pay the permanent building fund tax. For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule. (5-8-09)(\_\_\_\_)

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income

attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax ~~shall~~ **must** pay the permanent building fund tax. ~~(3-20-97)~~( )

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax ~~shall~~ **does** not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. ~~(3-30-07)~~( )

**06. Entities That Pay the Tax for Individuals ~~Making the Election~~ Under Section 63-3022L, Idaho Code.** When an ~~individual officer, director, shareholder, partner, member, or beneficiary makes the election under Section 63-3022L, Idaho Code, to have the corporation, partnership, trust, or estate~~ **pass-through entity** pays ~~his~~ **the** Idaho income tax **on a composite return for an individual shareholder, partner, member, or beneficiary on his share of** income from the entity, the entity ~~shall~~ **must** pay the permanent building fund tax for each ~~qualifying~~ individual ~~making the election~~ **filing as part of the composite return. When a pass-through entity pays backup withholding for individuals, the permanent building fund tax will be paid by each individual when they file their return.** If an individual ~~is making the election for~~ **has tax paid by** more than one (1) entity for a taxable year, each entity ~~shall be~~ **is** required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has ~~made multiple elections~~ **tax paid by multiple entities** for a taxable year. ~~(5-8-09)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**880. CREDITS AND REFUNDS (RULE 880).**

Section 63-3072, Idaho Code. (3-20-97)

**01. Overpayment.** The term overpayment includes: (3-20-97)

**a.** A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)

**b.** An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

**c.** An excessive amount that a pass-through entity withholds pursuant to Section 63-3036B, Idaho Code. ( )

**d.** All amounts erroneously or illegally assessed or collected. (3-20-97)

**e.** The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

**02. Requirements of a Valid Refund Claim.** Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: (4-2-08)

**a.** The basis for the credit or refund claim, and (4-2-08)

**b.** The amount of the overpayment. (4-2-08)

**03. Timely Claim Required for Refund.** (3-20-97)

**a.** The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)



b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (4-2-08)

c. If a claim for credit or refund relates to an overpayment attributable to an Idaho net operating loss carryback incurred in taxable years beginning on and after January 1, 2013, an amended return carrying the loss back must be filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. ( )

**04. Amended Returns Required as Refund Claims.** The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer ~~shall be~~ is declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (4-6-05)( )

**05. Closed Issues.** The Tax Commission ~~shall will~~ deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)( )

**06. Limitations on Refunds of Withholding and Estimated Payments.** As provided by Section 63-3072(c), Idaho Code, the Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. (2-27-12)

**07. Reduction or Denial of Refund Claims.** If the Tax Commission determines that a refund claim is in error, the Tax Commission ~~shall will~~ deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission ~~shall will~~ give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)( )

**08. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)

**09. Combined Reports -- Final Federal Determination and Change of Filing Method.** If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

**10. Duplicate Returns.** If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer ~~shall must~~ submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. (4-6-05)( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - SALES TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105, 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

**Rule 036** The rule as currently written reflects the general rule that most signs remain tangible personal property; however, there are notable exceptions, specifically traffic, highway, and street signs, that become real property after installation. The proposed changes clarify that certain signs, such as traffic, highway, and street signs, become real property after installation while others, such as business signs, do not. It is also noted that temporary traffic signage does not become real property. For those signs that become real property, the rule now explains that the installer of the sign operates as a contractor improving real property and, therefore, owes sale or use tax on its purchase or use of the sign materials.

**Rule 037** House Bill 15 (2013) created a definition for primary and primarily in regards to the use of tangible personal property. Use of aircraft was one of the areas particularly affected by this change. Two simple examples have been added to address the new definition in the context of the use of an aircraft.

**Rule 041** House Bill 187 (2013) exempted the use of beverages when given away as part of a tasting. The proposed changes clarify that for events in which participants pay to participate in a tasting, the charges to participate are still taxable.

**Rule 046** The proposed changes clarify that coatings of all kinds (paint, powder coating, spray on bedliner, chrome plating, etc.) will be treated consistently for sales tax purposes. Unless an exemption applies, the materials portion of a sale of a coating is taxable. The rule also explains the circumstances under which the application labor will be taxable or exempt.

**Rule 079** The proposed changes clarify that sales and use of equipment primarily used to improve and install real property are taxable even if the real property is used in production. This position was upheld by the Idaho Supreme Court in a 1991 court case between the Commission and Potlatch.

**Rule 114** House Bill 12 (2013) updated the obsolete language of the food stamp exemption to bring it in line with the current federal program, SNAP. The proposed changes reflect the statutory changes and remove obsolete references to aspects of the assistance programs that no longer exist (i.e. state provided sales machines).

**Rule 130** This rule clarifies promoter's responsibility in regards to documentation that must be obtained from participants at the event. It also updates the rule to reflect the procedure already in place regarding Forms ST-124 that all participants at the event are required to complete.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, **Volume 13-7, pages 87 and 88.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

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**FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1302**  
**(Only those Sections being amended are shown.)**

**036. SIGNS AND BILLBOARDS (RULE 036).**

**01. Signs and Billboards as Custom Made Articles.** The fabrication, manufacturing, lettering, etc., of advertising or informational signs of whatever description, including, but not limited to, neon signs, display lettering on trucks, display cards, show cards, etc., are considered made-to-order goods or custom made articles and as such are subject to Idaho sales tax based upon the total sales price of the completed sign to the user. The sales price shall include material and labor. (7-1-93)

**02. Rental of Signs.** The rental of signs is subject to sales tax and a sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which in fact a sale, will be treated as a sale and tax collected on the entire sales price at the date upon which the contract is executed. (7-1-93)

**03. Material That Becomes Part of a Sign.** ~~Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. The sale of advertising signs may consist of a mixed transaction including both a sale of tangible personal property and a sale of real property.~~ (3-15-02)( )

**a.** ~~Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. Both the materials and labor required to fabricate the sign are taxable. Therefore, the entire price of the tangible personal property sold will be taxable to the customer.~~ ( )

**b.** Signs may be attached to poles or mountings that are affixed to real property in such a way that they are intended to remain in place and become a real property improvement. The person installing materials into real property is acting as a contractor and is the consumer of the materials installed, such as the concrete or sign poles. The contractor owes a sales or use tax on the purchase of these materials. ( )

**04. Road Signs.** Road signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of road signs include traffic signs such as speed limit signs and stop signs; street signs; recreational area signs; highway signs such as mileage signs and exit signs; and highway exit service information signs. ( )

**a.** In general, road signs become real property upon installation. Consequently, an installer of road signs acts as a contractor improving real property when performing the installation work. Therefore, a road sign installer is the consumer of all materials used in the installation of the road sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials or had the sign materials provided by the sign owner. However, if the sign owner has already paid sales or use tax on its purchase of the sign materials, the installer will not owe any additional use tax. ( )

**b.** Alternatively, if a road sign is intended to serve a temporary purpose, the road sign does not become real property regardless of the nature of its purpose or how the road sign is affixed to real property. ( )

**i.** Example 1: A contractor installs a stop sign on behalf of a public transportation department to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to the public transportation department. The stop sign remains tangible personal property while installed. Therefore, the contractor does not owe use tax. ( )

**ii.** Example 2: A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as "Be Prepared to Stop." The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs is taxable to the contractor. ( )

**045. Custom Painting Directly on Real Property.** A sale of custom painting of displays, graphics or signs directly on walls or windows of a building is not considered to be a retail sale of tangible personal property and is not taxable. The sign painter must pay sales or use tax on purchases of materials used to paint these custom displays, graphics or signs. (7-1-99)

**056. Billboards.** (7-1-99)

**a.** Billboards which are also referred to as twenty-four (24) sheet posters and painted billboards, are not in the same category as signs covered in this rule. The rental of a billboard is not a rental of tangible personal property under the Idaho Sales Tax Act. (7-1-99)

**b.** Billboard Material. Material used in the construction, erection, painting, and maintenance of a billboard is subject to sales or use tax. (7-1-99)

**037. AIRCRAFT AND FLYING SERVICES (RULE 037).** Section 63-3622GG, Idaho Code. (4-4-13)

**01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)

**a.** Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

**b.** Freight. Goods transported by a carrier between two (2) points. Freight does not include goods

which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

**c.** Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

**d.** Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

**e.** Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-4-13)

**f.** Day. For the purpose of this rule any part of a day is a day. (7-1-94)

**g.** Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. (4-4-13)

**h.** Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. (4-4-13)

**i.** Public. The public does not include: (4-4-13)

i. Owners or operators of the aircraft; (4-4-13)

ii. Employees of the aircraft owner or operator; (4-4-13)

iii. Guests of the aircraft owner or operator; (4-4-13)

iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; (4-4-13)

v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or (4-4-13)

vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. (4-4-13)

**02. Sales of Aircraft.** Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

**a.** Primarily used to provide passenger or freight services for hire as a common carrier; (4-4-13)

**i.** Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more

than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time. ( )

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 50 = 110 hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. ( )

- b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)
- c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)
  - i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)
  - ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (4-4-13)

**03. Sales of Aircraft Repair Parts to Nonresidents.** Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. (4-4-13)

**04. Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

**05. Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

**06. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (4-4-13)

**b.** When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

**07. Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

**08. Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

**a.** Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

**b.** When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the

service. (7-1-94)

**09. Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

**10. Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

**a.** Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

**b.** When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

**11. Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs and Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer

will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, and Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

**b.** If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

**c.** Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

**a.** Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

**b.** The formula for computing the taxable amount is:  $TS / (100\% + TR)$  where TS is total sales and TR is the tax rate. (4-2-08)

**08. Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)



**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. ( )

**101. Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**102. Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**046. ~~PLATING AND REPLATING~~ COATINGS ON TANGIBLE PERSONAL PROPERTY (RULE 046).**

**01. ~~Plating and Replating.~~** ~~Plating and replating operations are considered to be providing repair services. If the materials such as chrome, gold, or silver can be separately stated on the billing to the customer, a tax will apply on the sale of the material. If, as in the case of chrome plating of automobile bumpers and accessories, the vat of material is used and reused, the material would be incidental to the overall charges. The replating company will pay tax on the materials at time of purchase. See ISTC Rule 062: Coatings Generally. A coating is a substance covering the surface of tangible personal property usually intended to improve the durability or aesthetic appeal of the tangible personal property to which it is applied. There are a variety of coatings including paint, powder coating, chrome plating, spray-on bedliners, and anodized coatings. Effective July 1, 2014, this rule applies to all types of coatings and it is intended that such coatings receive the same tax treatment. This rule does not apply to coatings applied directly to real property such as paint applied to the walls of a building.~~ (7-1-93)( )

~~02. **Exchange Basis.** This, however, would not apply where a company operates on an exchange basis, giving credit for the bumpers or accessories against the price of the reconditioned piece of equipment. This type of transaction must be handled in the same manner as a trade-in with sales tax charged on the difference. See ISTC Rule 044. **Coatings are Tangible Personal Property.** The materials applied to tangible personal property to produce a coating are tangible personal property both before and after the application process. Therefore, unless an exemption applies, the sale of a coating is a taxable sale. (7-1-93)( )~~

~~03. **Reconditioned Material.** Sales of reconditioned or replaced material or parts will be taxable on the full sales price. **Material Charges.** Unless an exemption applies, the materials portion of a sale of a coating is taxable. If the seller is unable to measure the exact amount of material used, a reasonable method of estimation is acceptable. (7-1-93)~~

~~04. **Nontaxable Labor Charges.** In any of the following circumstances, the labor to apply a coating will be nontaxable labor: ( )~~

~~a. **A previous coating is removed and replaced with a new coating, regardless of any differences in quality between the two (2) coatings. ( )**~~

~~b. **A coating is applied to used tangible personal property on top of an already existing coating. ( )**~~

~~c. **Example 1: A vendor applies a spray-on bedliner to an individual's truck bed. The truck bed surface is already coated with automotive paint. The materials charge is taxable, but the labor is not taxable. ( )**~~

~~05. **Taxable Labor Charges.** In any of the following circumstances, the labor to apply a coating will be taxable labor: ( )~~

~~a. **A coating is applied to new tangible personal property, regardless of whether the tangible personal property already has a coating. ( )**~~

~~b. **A coating is applied to new or used tangible personal property that has never been previously coated. ( )**~~

~~06. **Separate Statement.** For circumstances under which the labor portion of the transaction is exempt, both materials and labor must be separately stated on the customer's billing statement. If there is no separate statement of materials and labor, the entire transaction is subject to sales tax. ( )~~

~~07. **Used Tangible Personal Property.** For purposes of this rule, tangible personal property is used if the tangible personal property has been previously put to the use for which it was intended. If a contractor hires someone to apply a coating to tangible personal property that the contractor intends to incorporate into real property, the tangible personal property has not been put to the use for which it was intended and is considered new tangible personal property. ( )~~

~~a. **Example 1: A contractor hires someone to apply a coating to metal ducting. The contractor intends to incorporate the metal ducts into a ventilation system in a building. Since the ducting has not yet been put to the use for which it was intended, it is not used tangible personal property and all labor and material charges will be taxable. ( )**~~

~~b. **Example 2: A person buys a piece of furniture for use in the home. The person uses the drawers for a year before hiring someone to apply a stain to the drawers. At that point, the drawers are used tangible personal property. If the drawers had a previous coating of any kind, the labor to apply the stain will be nontaxable. If the drawers had no previous coating, the labor to apply the stain will be taxable. ( )**~~

~~c. **Example 3: A company buys equipment from a supplier. Before the equipment is ever put to the use for which it was intended, the company takes the equipment to be coated by a different supplier. Since the equipment has not yet been put to the use for which it was intended, it is new tangible personal property. Regardless of whether the equipment already has a coating, both the materials and labor to apply the new coating are taxable. ( )**~~

( )

**08. Tangible Personal Property Held for Resale.** For new or used tangible personal property held by a seller as part of its inventory, any labor costs incurred to apply a coating to the tangible personal property and charged to the end consumer are taxable services agreed to be rendered as part of the sale of the tangible personal property. The labor charges are exempt only if the sale of the tangible personal property is exempt. However, if the seller pays a third party to apply a coating to tangible personal property in its inventory, the seller may claim a resale exemption on the transaction. ( )

**a. Example 1:** A dealership has a used truck in its inventory. A customer will purchase the truck on the condition that the dealership will apply a spray-on bedliner. The dealership hires another company to apply the spray-on bedliner and pays three hundred dollars (\$300) for the job (split evenly between materials and labor). The dealership fills out a resale exemption certificate for the spray-on bedliner company. No tax should be charged on this transaction. The dealership then charges its customer five hundred dollars (\$500) (split evenly between materials and labor) and separately states these charges from the sales price of the truck. The materials charge is a taxable sale of tangible personal property. The labor charge is a taxable service agreed to be rendered as part of the sale of the truck. The dealership must charge tax on the entire five hundred dollars (\$500). ( )

**09. Exemptions.** Like any sale of tangible personal property, if the customer provides a valid exemption certificate to the seller claiming an exemption that applies to the transaction, the seller has no obligation to collect sales tax on the transaction. The seller must maintain a copy of the exemption certificate on file. See Rule 128 of these rules for additional information. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**079. PRODUCTION EXEMPTION (RULE 079).**

**01. In General.** Section 63-3622D, Idaho Code, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (5-8-09)

**a.** A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property that it will sell and is intended to be ultimately sold at retail. (5-8-09)

**b.** The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: (5-8-09)

**i.** The business of custom farming or operating a farm or ranch for profit. (7-1-93)

**ii.** The business of contract mining or operating a mine for profit. (6-23-94)

**iii.** Businesses devoted to processing tangible personal property for use as fuel for the production of energy. (5-8-09)

**02. Qualifying Businesses.** The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

**a.** For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

**b.** The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible

personal property for ultimate sale at retail. (7-1-93)

**c.** To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. (5-8-09)

**03. Exempt Purchases.** As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

**a.** Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

**b.** Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

**c.** Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

**d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

**e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

**f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

**g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

**h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

**i.** Equipment used primarily to fabricate production equipment. (7-1-93)

**04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)

**05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)

**a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

**b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

**c.** A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)

**d.** Office equipment and supplies. (7-1-93)

**e.** Safety equipment and supplies used somewhere other than a production area, such as an office, or

which are not required by a state or federal agency even if used in a production area. (7-1-93)

**f.** Equipment and supplies used in selling and distribution activities. (7-1-93)

**g.** Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

**h.** Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

**i.** Transportation equipment and supplies. (7-1-93)

**j.** Aircraft of any type and supplies. (7-1-93)

**k.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

**l.** Other incidental items not directly used in production. (7-1-93)

**m.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

**n.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

**o.** Parts to repair recreation-related vehicles. (7-1-93)

**p.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

**06. Real Property.** The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. The production exemption does not apply to equipment and materials primarily used to improve real property. (7-1-93)(      )

**07. Change in Primary Use of Property.** If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

**08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

**a.** Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

b. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. **Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. **Special Rules.** Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. SALES UNDER THE SNAP AND WIC PROGRAMS, RECORDS REQUIRED, ~~FOOD STAMPS, FOR PAYMENTS WITH ELECTRONIC BENEFITS TRANSFERS, CARDS AND WIC CHECKS TENDER~~ (RULE 114).**

~~Sections 63-3622EE and 63-3622FF, Idaho Code.~~ ( )

01. **In General.** Sales of food purchased under the ~~Federal Food Stamp Program, the Federal Food, Conservation and Energy Act of 2008,~~ Federal Supplemental Nutrition Assistance Program (SNAP) or the Federal Special Supplemental Food Program for Women, Infants, and Children; ~~(WIC);~~ are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the purchaser uses ~~food stamps, vouchers,~~ electronic benefits transfer (EBT) cards, WIC tender, or any other exchange medium authorized for these programs by federal law. ~~(4-7-11)~~( )

02. **Records Required.** Retailers who accept ~~food stamps, electronic benefits transfer~~ EBT cards, ~~and or WIC checks tender as payment~~ must maintain accurate records of ~~exempt those~~ sales. Adequate records include sales reports or tender-type reports with collections from each type. ~~(7-1-99)~~( )

~~a. **WIC Checks.** WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-99)~~

~~b. **Food Stamps.** Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-99)~~

~~c. **Electronic Benefits Transfer (EBT) Payments.** Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. (7-1-99)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

130. PROMOTER SPONSORED EVENTS (RULE 130).

Sections 63-3620 & 63-3620C, Idaho Code.

( )

**01. Promoter's Responsibility.** Promoters ~~at~~ of promoter sponsored events, as defined in Section 63-3620C, Idaho Code, shall must obtain a completed copy of ~~a~~ the sales tax declaration section of Form ST-124, Idaho Sales Tax Declaration, from each participant at ~~the~~ an event. The promoter must obtain pre-numbered Forms ST-124 from the State Tax Commission. The promoter shall must forward a copy of the completed Form ST-124 to the State Tax Commission within ten (10) days following the beginning of the event. The promoter shall may also maintain a copy in its file. The State Tax Commission may request from the promoter a master list of participants to be submitted in addition to the completed Forms ST-124. (3-30-01)( )

~~02. Period of Time for Which a Form ST-124 Is Valid. If the Form ST-124 is not used to issue a temporary seller's permit, a Form ST-124 completed by a participant shall be valid until the following June 30, unless the participant information changes. The promoter need only obtain a Form ST-124 from each participant at the first show in which the participant participates after July 1 of any given year. The promoter shall forward to the State Tax Commission the names, address, tax identification number and phone number, if known, of participants who do not complete a new Form ST-124 as described in Subsection 130.03.~~ (3-30-01)

~~03. Participant's Failure to Provide a Form ST-124 to the Promoter. If a participant does not provide the completed Form ST-124 to the promoter, the promoter will provide to the State Tax Commission within ten (10) days following the beginning of the event, a list of participants who have failed to provide a completed Form ST-124.~~ (3-30-01)

~~04. Examples.~~ (3-30-01)

~~a. The promoter sponsors events on July 16, September 22, and December 18, of year one (1), and March 4, and July 30 of year two (2). Participant A attends and makes sales at all events. The promoter will need to obtain a copy of the Form ST-124 from Participant A for the July 16, year one (1) event and the July 30, year two (2) event. For the other events, the promoter will only need to include Participant A in the list of participants who did not complete a Form ST-124 and forward this list to the State Tax Commission.~~ (3-30-01)

~~b. Participant B attends the July 16, event and completes a Form ST-124 stating it will not be selling any items of tangible personal property. Participant B also attends the September 22, event but in this event it will be selling tangible personal property. The promoter will need to obtain a new Form ST-124 and forward it to the State Tax Commission.~~ (3-30-01)

**05.2. Use of the Form ST-124.** The Form ST-124 must be used every time a promoter issues a temporary seller's permit. A promoter must use the Form ST-124 to issue temporary permits even to those participants who have attended events during the preceding year. The promoter will provide the each participant with the Form ST-124, who will uUpon completing the sales tax declaration section of the form, the participant must return it to the promoter. The promoter will retain a copy of the Form ST-124 and provide a copy to the State Tax Commission. In this section, the participant states that the participant either has a valid seller's permit, will use Form ST-124 as a temporary seller's permit for the event, or will not make any taxable sales at that event. If a participant uses Form ST-124 as a temporary seller's permit, the promoter will be considered the issuer of that permit as an agent of the State Tax Commission. The Form ST-124's sales tax declaration shall include the following: (3-30-01)( )

a. The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. (3-30-01)

b. The name, address, and phone number of participant in the event. (3-30-01)

~~c. The participant's federal employer identification number.~~ (5-8-09)

~~d.~~ Either: (3-30-01)

i. The participant's valid seller's permit number; or (3-30-01)( )

- ii. ~~A statement that an Idaho sales tax permit will be obtained before the date of~~ A statement from the participant that the Form ST-124 will be used as a temporary seller's permit for the event; or ~~(3-30-01)~~( )
- iii. A statement from the participant that no taxable retail sales will be made at this event. (3-30-01)
- ~~gd.~~ Other information the State Tax Commission may deem necessary. (3-30-01)

**03.** **Participant's Failure to Provide a Form ST-124 to the Promoter.** For every participant that does not provide the completed sales tax declaration portion of Form ST-124 to the promoter, the promoter must provide to the State Tax Commission a list of those participants within ten (10) days following the beginning of the event. For each participant listed, the promoter shall include the following: the business name, address, phone number, and names of all individuals who own and operate the business. ( )

**064.** **Temporary Seller's Permit Issued by Promoter.** Before a promoter may claim the income tax credit provided for by Section 63-3620C, Idaho Code, the promoter must forward a completed Form ST-124 to the State Tax Commission for each ~~temporary seller's permit the promoter assigns, along with the documentation for the Form ST-124 used as a temporary seller's~~ permit. ~~(3-30-01)~~( )

**075.** **Promoter's Sales Tax Liability.** The promoter shall not be held responsible for collecting sales tax on sales made by participants other than sales made by the promoter himself. (3-30-01)



## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 63-105A, Idaho Code, and Section 63-802, Idaho Code.

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

**Rule 006** The changes to this rule update references to appropriate and current editions of guides and professional technical standards used to determine values of certain property and to measure assessment level and uniformity.

**Rule 020** The current method used to value the recreational vehicle (living quarters) portion of the combined use vehicle allocates 25% or 30%, depending on the number of heating, cooking, and plumbing fixtures found in each vehicle, of the total vehicle's market value to the value of the recreational vehicle. This 10 year old method is outdated and cumbersome and needs to be made easier to apply and to recognize current market value information. Based on current market research the new method illuminates the need to determine the number of fixtures in each vehicle and allocates 50% of the total vehicle's value to arrive at the market value of the recreational vehicle upon which the license fee is determined.

**Rule 205** This rule clarifies 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.

**Rule 302** The provisions in section 63-602KK providing for an affidavit has been deleted by HB 315 (2013). This will make permanent the provisions of Temporary Rule 302. The entire rule is being deleted because it is no longer needed and would cause confusion in the administration of the personal property exemption.

**Rule 406** This rule addresses market valuation for assessment purposes of public rate regulated electric utility operating property. It provides methodologies for valuing public rate regulated electric utility operating property that will provide future stability and predictability for the impacted taxpayers and taxing districts.

**Rule 407** This rule may make the hearing process more summary and simple and possibly move to a less adversarial process by adopting a more presentational process, during the process by which operating property tax valuation appeal hearings are conducted by the Tax Commissioners sitting as the state board of equalization.

**Rule 626** The rule provides guidance to the Tax Commission and companies on how to report exempt personal property for operating property. The rule gives guidance to county assessors and clerks. The rule gives instruction for adjusting the amounts on the personal property tax reduction list so that the amount to be reimbursed to the taxing districts by the State may be adjusted to be as accurate as possible.

**Rule 632** HB 141 (2013) enacted a new section to Idaho Code (63-602OO) providing a property tax exemption for oil or gas related wells. Definitions of oil and gas related wells are needed along with clarifications as to what property is exempted. This rule defines oil and gas wells as the structures and land within the hole and explains which property is eligible and ineligible for the exemption.

**Rule 700** This rule adds a cross reference in the property tax circuit breaker rule (Rule 700) to the Tax Commission's Administrative and Enforcement Rule (IDAPA 35.02.01.702.c. which provides that certain information may be released to state or federal elected officials.

**Rule 803** This rule is needed to clarify that the tax commission will not approve a property tax levy that has been computed based on a property tax budget amount that exceeds the amount stated in the notice of budget hearing. This proposed rule would add to paragraph 35.01.03.802.02 (Budget Certification) a provision stating that the levy approved by the tax commission shall not exceed the levy computed on the amount shown in the notice of budget hearing.

**Rule 902** This rule modification will 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. I.C. 63-602KK (2013) provides that replacement funds be computed once based on the 2013 personal property exemption amount. The previous version of I.C. 63-602KK required that the replacement amount be computed anew for each year. The annual review of replacement funds will not be required in future years. The on-going requirement for the county to send a tax notice (Bill) to citizens with zero tax owing is being deleted.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the September 4, 2013 Idaho Administrative Bulletin, [Volume 13-9](#), page 197.

**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 rules, contact Alan Dornfest at (208) 334-7742.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-1302**  
**(Only those Sections being amended are shown.)**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any

notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** “Standard on Ratio Studies” published in 2010~~3~~, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2012, “Standard on Mass Appraisal of Real Property” published in 2012, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on June 14, 2012. (~~4-4-13~~)( )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2012~~3~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-4-13~~)( )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2012~~3~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-4-13~~)( )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2012 and the first quarter in 2013~~4~~ by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (~~4-4-13~~)( )

**e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

**f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

**g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

**h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

**i.** “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

**007. -- 019. (RESERVED)**

**020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).**  
Section 49-446, Idaho Code. (5-3-03)

**01. Value of Recreational Vehicle For Registration Fees.** Beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule.

<b>DEPRECIATION SCHEDULE FOR RVS</b>				
	<b>Travel/ Camp Trailers</b>	<b>Campers</b>	<b>Van Conversions</b>	<b>Motor Homes</b>
<b>Age</b>	<b>Percent Good</b>	<b>Percent Good</b>	<b>Percent Good</b>	<b>Percent Good</b>
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price of the RV or the applicable value from Subsection 020.02 or 020.03 below by the appropriate "Percent Good" based on the "Age" and type of RV. Decide the "Age" based on the year of purchase as follows: purchased in the current year equals "Age" zero (0), purchased in the previous year equals "Age" one (1), etc. For example, in year 2004, the "Age" for an RV purchased in 2004 is zero (0), the "Age" for an RV purchased in 2003 is one (1), the "Age" for an RV purchased in 2002 is two (2), the "Age" for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. This depreciation schedule is based on the "Recreation Vehicle Guide of the National Automobile Dealers Association" and the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" approved by the State Tax Commission as required under Section 49-446, Idaho Code. The State Tax Commission will maintain the information on which this depreciation schedule is based while it is in use and for a minimum of three (3) years after it has been replaced. If the purchase price for the RV is not known, use the approved edition of the "Recreation Vehicle Guide of the National Automobile Dealers Association" or the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" as referenced in Rule 006 of these rules to determine the market value.

(5-3-03)

**02. Value of Motor Home or Van Conversion For Registration Fees.** The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion's total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

**03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees.** For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is *the price listed on the bill of sale for the living quarters. When the price of the living quarters is not listed separately on the bill of sale, for a vehicle with less than four (4) facilities, the value of the RV is twenty five percent (25%) of the sales price, and for a vehicle with four (4) or more facilities, the value of the RV is thirty ~~thirty~~ fifty percent (35%) of the sales price. A facility is any one (1) of the following:* (5-3-03)(    )

- ~~a. Stove;~~ (5-3-03)
- ~~b. Lavatory/toilet;~~ (5-3-03)
- ~~c. Heater/air conditioner;~~ (5-3-03)
- ~~d. Refrigerator/icebox;~~ (5-3-03)
- ~~e. Sink with water faucet; or~~ (5-3-03)
- ~~f. Electricity/gas supply.~~ (5-3-03)

**04. Assessment Notice Mailed or Assessment Canceled.** If after August 31, the required annual registration fee has not been paid, a taxpayer's valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).**  
 Sections 39-4105, 39-4301, 63-201, 63-302, 63-309, 63-602KK, 63-1703, 63-2801, Idaho Code. (5-8-09)

**01. Real Property.** Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. (5-8-09)

**a. Land.** Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. (5-8-09)

**b. Law and Courts.** Real property also consists of all other property which the law defines, or the courts may interpret, declare, and hold to be real property under the letter, spirit, intent, and meaning of the law. (5-8-09)

**c.** Improvements. Improvements are buildings, structures, fences, and similar property that is built upon land. Improvements are real property regardless of whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed, or attached. (5-8-09)

**02. Personal Property.** Personal property is defined in Section 63-201, Idaho Code, as everything that is the subject of ownership that is not real property. (5-8-09)

**03. Fixtures.** Fixtures are defined in Section 63-201, Idaho Code. (5-8-09)

**a.** Three ~~part~~ **factor** test. If an item of property satisfies all three tests, the item becomes a fixture and therefore real property. ~~(5-8-09)~~( )

**i.** Annexation. Although once moveable chattels, articles become accessory to and a part of improvements to real property by having been physically or constructively incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property; and (5-8-09)

**ii.** Adaptation. The use or purpose of an item is integral to the use of the real property to which it is affixed; and (5-8-09)

**iii.** Intent. Items should be considered personal property unless a person would reasonably be considered to intend to make the articles, during their useful life, permanent additions to the real property. The intent depends on an objective standard and what a reasonable person would consider permanent and not the subjective intention of the owner of the property. (5-8-09)

**b.** Fixtures does not include machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles. (5-8-09)

**04. Property Eligible For The Exemption in Section 63-602KK(2), Idaho Code.** ( )

**a.** Personal property means everything that is the subject of ownership and that is not included within the term real property. Real property means land and all rights and privileges thereto belonging or any way appertaining and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law. Real property also includes improvements. Improvements means all buildings, structures, fences, water ditches constructed for mining, manufacturing or origination purposes, and fixtures, whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached. The three factor test is the predominant determinant when considering whether fixtures are real property. When Subsection 205.03.b. of this rule and the three (3) factor test create a conflict in determining whether an item is eligible, the three (3) factor test shall resolve the conflict. ( )

**b.** Examples. Based upon the definitions of personal and real property in Subsection 250.04.a. of this rule the following items are real property and are not eligible for the exemption in 63-602KK(2), of Idaho Code: ( )

**i.** Cell towers and similar structures; ( )

**ii.** Underground storage tanks; ( )

**iii.** Poles and towers; ( )

**iv.** Signposts; ( )

**v.** Pipelines and conduit; ( )

**vi.** Railroad track; ( )

~~04~~**5.** **Operating Property.** Operating Property is defined in Section 63-201, Idaho Code. For any purpose for which the distinction between personal property and real property is relevant or necessary for operating property, operating property will be characterized as personal or real based upon the criteria stated in this guideline and the rules of the State Tax Commission. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

231. -- ~~30~~**3.** (RESERVED)

~~302. LIST OF TAXABLE PERSONAL PROPERTY (RULE 302).  
Sections 63-302 and 63-602KK, Idaho Code.~~

(5-8-09)

~~01. Application for Exemption Required. Except as provided in Subsection 302.04 of this rule, the list of personal property required by Section 63-302, Idaho Code, shall serve as the taxpayer's application for the exemption provided by Section 63-602KK, Idaho Code. The following information must be provided by the taxpayer:~~

(3-29-10)

~~a. Name of the applicant; and~~

(5-8-09)

~~b. An attestation that no other individual or organization has or will apply for the exemption in the county when those other individual(s) or organization(s) would be ineligible under this rule for the 63-602KK exemption. Under Idaho Code section 63-602KK, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code, as defined in Section 63-3004, Idaho Code.~~

(5-8-09)

~~02. Designation of Personal Property Eligible for Exemption. When required, the list of personal property required by Section 63-302, Idaho Code, shall include all taxable personal property including the personal property that may be found to be exempt under the provisions of Section 63-602KK, Idaho Code.~~

(3-29-10)

~~03. Failure to File the List. Except as provided in Subsection 302.04 of this rule, the taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code. If the list is otherwise required and is not filed by the taxpayer, the assessor may list and assess the items to be taxed based on his best judgment and information available to him. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code.~~

(3-29-10)

~~04. Affidavit in Lieu of Application for Exemption. The "Affidavit in Lieu of Application for Exemption" permitted in Section 63-602KK, Idaho Code, shall be identified as the "personal property affidavit." Except as provided in Subsection 302.05 of this rule, a taxpayer may submit a personal property affidavit in lieu of the list of personal property required by Section 63-302, Idaho Code, and this affidavit will constitute a valid substitute application for the exemption provided in Section 63-602KK, Idaho Code, provided that the taxpayer complies with Subsections 302.04.a. and 302.04.b. of this rule.~~

(3-29-10)

~~a. The list(s) required by Section 63-302, Idaho Code, was (were) submitted the first year during which the exemption applies to personal property for that taxpayer.~~

(3-29-10)

~~b. The personal property affidavit includes an estimate of the current market value of the taxpayer's property upon which application for the exemption in Section 63-602KK, Idaho Code, is being made. This estimate of current market value may be in aggregate for all property otherwise required to be listed under the provisions of Section 63-302, Idaho Code.~~

(3-29-10)

~~c. The aggregate estimate of current market value included on the personal property affidavit shall be used by the assessor to fulfill the requirements of Section 63-301, Idaho Code, to determine the market value for assessment purposes of the taxpayer's personal property.~~

(3-29-10)

~~d. The personal property affidavit shall be permitted provided that the value reported by the taxpayer for property otherwise required to be listed under Section 63-302, Idaho Code, does not exceed one hundred thousand dollars (\$100,000). (3-29-10)~~

~~e. If the current market value of the taxpayer's property required to be listed under Section 63-302, Idaho Code, exceeds one hundred thousand dollars (\$100,000), the taxpayer must list all property otherwise required to be listed under Section 63-302, Idaho Code, not just the property or value exceeding one hundred thousand dollars (\$100,000). (3-29-10)~~

~~f. A taxpayer with multiple parcels for which separate lists have been filed previously and otherwise subject to the filing requirements in Section 63-302, Idaho Code, may file the personal property affidavit provided that the total current market value of all otherwise reportable personal property for all of the parcels owned by that taxpayer in a county does not exceed one hundred thousand dollars (\$100,000). (3-29-10)~~

~~05. **Qualified Investment Exemption Participants Not Eligible to File the Affidavit.** Taxpayers who have elected to designate property to be included in the exemption provide for in Section 63-3029B, Idaho Code, shall not be eligible to file the personal property affidavit otherwise permitted in Subsection 302.04 of this rule. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. (3-29-10)~~

~~303. (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~406. (RESERVED) **RULES PERTAINING TO MARKET VALUE OF OPERATING PROPERTY OF RATE REGULATED ELECTRIC UTILITY COMPANIES (RULE 406).** Section 63-105(2) and Section 63-205(1), Idaho Code. ( )~~

~~**01. Valuation of Operating Property of Rate Regulated Electric Utility Companies.** The market value for assessment purposes of operating property of rate regulated electric utility companies shall be determined by the state tax commission using statute, these rules as referenced in Rule 001 of these rules, any other applicable law, and the following: ( )~~

~~**a.** Depending on the weighting placed on the income approach, as described in Subsection 406.01.d. of this rule, no more than twenty percent (20%) weight will be placed on the cost indicator when utilizing the Historic Cost Less Depreciation (HCLD) method in the system value correlation. ( )~~

~~**b.** In the income approach, income to be capitalized will be normalized, utilizing the Gross Domestic Product Implicit Price Deflator found in Table 1.1.9 from the United States Department of Commerce, Bureau of Economic Analysis (<http://research.stlouisfed.org/fred2/series/GDPDEF/>) last accessed August 12, 2013, by using an average of at least the previous four (4) years' net operating incomes and by adjusting each year's net operating income for unusual non-recurring items. ( )~~

~~**c.** In the income approach, a market discount rate will be determined and will include a flotation cost component supported by nationally recognized sources. ( )~~

~~**d.** A weighting between eighty percent (80%) and one hundred percent (100%) will be placed on the income approach in the system value correlation. ( )~~

~~**e.** Within the market approach, as prescribed in Rule 405 of these rules, a sales comparison approach may be used if reliable data is available and appropriate comparison adjustments can be made. No weight will be placed on a stock and debt approach in the system value correlation. ( )~~



f. For rate regulated electric utility companies, the weightings prescribed in this rule shall supersede any weightings in the system correlation prescribed in Subsection 405.08 of this rule. ( )

02. Accounting For Obsolescence. Subsection 406.01.a. of this rule shall be construed to mean that the use of no more than twenty percent (20%) weight placed on the cost indicator, when utilizing HCLD method to calculate the cost approach, accounts for any and all forms of depreciation, including any and all forms of obsolescence, and the appraiser shall not consider any further obsolescence as provided for in Subsection 405.05 of these rules. ( )

**407. ~~APPEAL OF HEARING TO REVIEW~~ OPERATING PROPERTY ~~ASSESSMENTS~~ ~~APPRAISALS~~ (RULE 407).**

**01. Procedure Governed.** This rule shall govern all practice and procedure before the State Tax Commission sitting as a Board of Equalization in hearings under Section 63-407, Idaho Code. Hearings are not contested cases under the Idaho Administrative Procedures Act. Hearings are open meetings under the Idaho open meetings law and all written materials are subject to Idaho public records law. The taxpayer may request that the board of equalization go into executive session to discuss confidential materials. (7-1-99)( )

**02. Liberal Construction.** These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the State Tax Commission. For good cause the State Tax Commission may permit deviation from these rules and the taxpayer may request a stipulated finding that would result in an appealable decision in lieu of a hearing before the state board of equalization. (7-1-99)( )

**03. Communication.** All notices and petitions required to be filed with the State Tax Commission must be in writing. Each notice must identify the filing party, be signed by the filing party, be dated and give the filing party's mailing address and telephone number. The provisions of Section 63-217, Idaho Code, apply to the filing of documents with the State Tax Commission. (7-1-99)

**04. Service by State Tax Commission.** All notices and orders required to be served by the State Tax Commission may be served by mail. Service shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail. (7-1-99)

**05. Notice to County Assessors.** When the calendar of hearings under Section 63-407, Idaho Code, is final, the State Tax Commission shall send a copy of this calendar to the assessor of each county. (7-1-99)

**06. Parties.** The following are parties to a hearing of the State Tax Commission meeting as Board of Equalization. (7-1-99)

**a.** Petitioner. A person petitioning for a hearing shall be called the petitioner. (7-1-99)

**b.** Staff. The State Tax Commission staff may appear as a party at the hearing and may be represented by one (1) or more Deputy Attorneys General assigned to the State Tax Commission. (7-1-99)

**c.** Legal advisor to the commission. When sitting as a Board of Equalization, the State Tax Commission may obtain legal advice from a Deputy Attorney General who is not representing the State Tax Commission staff. (7-1-99)

**07. Appearances and Practice.** The following apply for appearances and practice in a hearing. (7-1-99)

**a.** Rights of parties. At any hearing, both parties may appear, introduce evidence, ~~examine and cross-examine witnesses,~~ ask questions through the presiding officer, make arguments, and generally participate in the conduct of the proceeding. (7-1-99)( )

**b.** Taking of appearances. The presiding officer conducting the hearing shall require appearances to be stated and shall see that both parties present are identified on the record. (7-1-99)

c. Representation of taxpayers. An individual may represent himself or herself or be represented by an attorney. A partnership may be represented by a partner, authorized employee or by an attorney. A corporation may be represented by an officer, authorized employee or by an attorney. (7-1-99)

**08. Pre-Hearing Conferences.** *The following apply for holding pre hearing conferences.* (7-1-99)( )

a. *Reasons for holding pre hearing conferences.* The State Tax Commission may, upon notice to both parties, hold a pre-hearing conference for the following purposes: (7-1-99)( )

- i. Formulating or simplifying the issues; (7-1-99)
- ii. Obtaining admissions of fact and of documents which will avoid unnecessary proof; (7-1-99)
- iii. Arranging for the exchange of proposed exhibits or prepared expert testimony; (7-1-99)
- iv. Limiting the number of witnesses; (7-1-99)
- v. Setting the hearing procedure, ~~at for the hearing~~ and including allocation of an amount of time for the hearing; and (7-1-99)( )
- vi. Reviewing other matters to expedite the orderly conduct and disposition of the proceedings. (7-1-99)

vii. Allowing any continuance. ( )

b. Action taken. Any action taken at the conference and any agreement made by the parties concerned may be recorded and the State Tax Commission may issue a pre-hearing order which will control the course of subsequent proceedings unless modified. (7-1-99)

c. Compromise and offers to compromise. Evidence of an offer or agreement to compromise the dispute and the conduct and statements made in compromise negotiations are not admissible at the hearing. (7-1-99)

**09. Hearings.** The following apply to the hearings. (7-1-99)

a. Request for hearing. A request for a hearing shall be in ~~the form of a petition~~ writing and filed with the State Tax Commission on or before August 1 of the current year. The ~~petition request~~ shall state the factual and legal basis on which the request is based. (7-1-99)( )

b. Notice of hearing. The State Tax Commission shall notify both parties and all counties of the place, date and time of the hearing. (7-1-99)

c. ~~Motions. Motions may be submitted for the State Tax Commission's decision by written or oral argument or both. The filing of affidavits in support or opposition is permitted. Motions filed by different parties but involving the same point of law may be set for hearing at the same time. The practice for motions shall generally conform to the Idaho Rules of Civil Procedure, with modifications and exceptions as ordered by the State Tax Commission.~~ Submission of documents and other evidence. The taxpayer's operating statement, applicable yield studies, the staff's appraisal and the taxpayer's notice of appeal and request for hearing are deemed a part of the record of the hearing. Other written appraisals, exhibits, statements, arguments and other documents for the Commissioners to consider shall be submitted by both parties at least three (3) days in advance of the hearing. Additional information may be presented by either party at the time of their oral presentations, but such additional information should be limited to subject matter and evidence provided at least three days prior to the hearing. Parties shall submit ten (10) copies. (7-1-99)( )

d. Presiding officer. The Chairman of the State Tax Commission shall appoint an individual who is not a member of the State Tax Commission's staff to conduct the hearing. In the absence of a conflict of interest or other good cause, this person will normally be the Commissioner overseeing the centrally assessed property section

of the State Tax Commission or the designee thereof. A Commissioner shall not vote on any matters where he has oversight. (7-1-99)

**e.** The proceeding. In a non-adversarial proceeding witnesses shall present evidence and arguments directly to the Commissioners. The presentation may include written materials including a transcript of the witnesses' oral statements. Copies of written materials (including copies of visual presentations) shall be provided each Commissioner, the Commission's secretary and the Staff. At the conclusion of a witness' testimony, Commissioners may pose questions. The party with the burden of proof on the matter to be considered shall present first and may make a closing presentation. This closing presentation should be limited to the subject matter and evidence presented during the proceeding. ( )

**ef.** Testimony under oath. All testimony to questions of fact to be considered by the State Tax Commission in hearings, except matters noticed officially or entered by stipulation, shall be under oath. Before ~~taking the witness stand~~ testimony is presented each person shall swear, or affirm, that the testimony he is about to give shall be the truth. Attorneys may present oral and written legal argument on behalf of clients as part of the presentation by the party they represent. (7-1-99)( )

**fg.** Rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made by the State Tax Commission. Unless otherwise provided in these rules ~~The~~ Idaho Rules of Evidence will be generally followed but may be modified at the discretion of the State Tax Commission to aid in ascertaining the facts. When objection is made to the admissibility of evidence, the evidence may be received subject to later ruling by the State Tax Commission. The State Tax Commission, at its discretion either with or without objection may limit or exclude inadmissible, incompetent, cumulative or irrelevant evidence. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. (7-1-99)( )

**gh.** Recessing hearing for conference. In any proceeding the presiding officer may, in at his discretion, call both parties together for a conference prior to the taking of testimony, or may recess the hearing for a conference. The presiding officer shall state on the record the results of the conference. (7-1-99)

**hi.** Transcript. An official electronically recorded transcript of the hearing ~~will~~ may be taken at the discretion of the Commission when requested by a party. A petitioner desiring the taking of stenographic notes by a qualified court reporter may notify the State Tax Commission in writing and shall arrange for the hiring of a reporter and bear the expense of the reporter's fees. If the reporter's transcript is deemed by the State Tax Commission or presiding officer as the official transcript of the hearing, the petitioner shall furnish the State Tax Commission a transcript free of charge. (7-1-99)( )

**ij.** Transcript copies. A request for a copy of ~~the~~ a transcript of proceedings at any hearing must be in writing or on the record. Upon completion of the transcript, the State Tax Commission shall notify the person requesting a copy of the fee for producing the transcript. Upon receipt of the fee, the State Tax Commission will send a copy of the transcript. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).**  
Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code. (3-29-10)( )

**01. ~~Effective Date.~~** ~~This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during fiscal year 2008 by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 2010, have exceeded the receipts for fiscal year 2008 by five percent (5%) or more, then this exemption would take effect on January 1, 2011. Once this exemption takes effect, it will remain in effect continuously.~~ (3-29-10)

**021. Locally Assessed Property - Application Required to Establish Initial Eligibility for Exemption.** (3-29-10)( )

**a.** ~~In order to establish initial eligibility for this exemption,~~ The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. ~~The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code.~~ For purposes of reporting personal property, the value is to be based on market value, not book value. (3-29-10)( )

**b.** Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, that are exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. ( )

**bc.** ~~Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer.~~ In addition, for taxpayers with personal property with a total market value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total market value of all otherwise taxable personal property is less than or equal to one hundred thousand dollars (\$100,000), and must be filed with the county assessor no later than April 15 of the appropriate year. (5-8-09)( )

**03. Procedure During Years Following Year of Initial Eligibility for Exemption.** (3-29-10)

**a.** ~~Unless the exemption has been deemed improper, for all years following the initial establishment of eligibility for the exemption, the taxpayer may continue to file the lists required by Sections 63-302, 63-313, and 63-602Y, Idaho Code, or, if applicable, for property otherwise reportable as required by Section 63-302, Idaho Code, may file the affidavit provided in Section 63-602KK(6), Idaho Code. If the taxpayer chooses to file the affidavit, such filing must conform to the filing date provided in Section 63-302, Idaho Code.~~ (3-29-10)

**b.** ~~If, after receiving the exemption, the taxpayer fails in any subsequent year to timely file the required lists of personal property or, if applicable, the affidavit provided in Section 63-602KK(6), Idaho Code, the taxpayer can re-establish future eligibility for the exemption by means of filing the lists required by Sections 63-302, 63-313 and 63-602Y, Idaho Code.~~ (3-29-10)

**c.** ~~For the duration of the period during which recapture could apply, the affidavit option shall not be available for taxpayers who elect to designate property to be included in the exemption provided for in Section 63-3029B, Idaho Code.~~ (3-29-10)

**042. Locally Assessed Property - Taxpayers' Election of Property Location.** ( )

**a.** Multiple Locations Within A County. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must

be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. ~~If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed.~~ However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. (3-29-10)( )

**b.** Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per county. ( )

**03. Centrally Assessed Property - Application Required.** ( )

**a.** Except for private railcar fleets, the taxpayer must file a list of personal property with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsection 626.03.c. of this rule, for such personal property to be considered for the exemption, the operator's statement must include: ( )

**i.** A description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; ( )

**ii.** Cost and depreciated cost of the personal property; ( )

**iii.** The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. ( )

**b.** For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the requirements to show specific or county locations, found in Subsections 626.03.a.i. and 626.03.a.iii. shall not apply. Instead, the Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county. The remaining taxable and exempt market value is to be further apportioned to each taxing district and urban renewal revenue allocation area. ( )

**c.** For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county. ( )

**d.** When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. ( )

**04. Centrally Assessed Property - Taxpayers' Election of Property Location.** Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection 626.03.b. of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. ( )

**05. Valuation Assessment Notice.** The valuation assessment notice required by Section 63-308, Idaho Code, must show the ~~gross value~~ taxable market value before granting the exemption provided in Section 63-

~~602KK(2), Idaho Code, the exempt market value pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required until every fifth year following when the claimant must reapply.~~ (3-29-10)( )

~~**06- Preliminary and Final Personal Property Tax Reduction Lists.** (5-8-09)~~

~~**a-** Except as provided in Paragraph 626.06.e. of this rule, the preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption: (3-29-10)~~

~~i. The name of the owner, listed in alphabetical order unless the State Tax Commission grants permission for accounts to be listed in an alternate order; (5-8-09)~~

~~ii. The description of the property item(s) subject to exemption or partial exemption; (5-8-09)~~

~~iii. The location(s) of the property item(s) showing the tax code area; and (5-8-09)~~

~~iv. The assessed value of the property item(s) listed as equalized by the county board of equalization. (3-29-10)~~

~~**b-** This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code, or the affidavit permitted by Section 63-602KK, Idaho Code. Transient personal property will not be listed on the preliminary list. (3-29-10)~~

~~**e-** Except as provided in Paragraph 626.06.e. of this rule, the final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.06.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption: (3-29-10)~~

~~i. The tax levy applicable to the personal property; (5-8-09)~~

~~ii. The tax before the exemption; (5-8-09)~~

~~iii. The tax after the exemption; (5-8-09)~~

~~iv. The amount of the exemption; (5-8-09)~~

~~v. The aggregate total of the tax exempted; and (5-8-09)~~

~~vi. The aggregate total of the tax exempted within each taxing district and each revenue allocation area. (5-8-09)~~

~~**d-** This final personal property tax reduction list may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK(3), Idaho Code. The final certified list shall be filed with the Tax Commission not later than the third Monday of November of each year. (3-29-10)~~

~~**e-** If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the~~

~~preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs 626.06.a.ii., and 626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule. (3-29-10)~~

**076. Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.** ( )

**a.** If an entry on the ~~preliminary or final~~ personal property tax reduction list is found to be erroneous, the ~~Tax~~ Commission shall disapprove as much of the claim as necessary and so notify the county clerk. (5-8-09)( )

**b.** If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the fourth Monday in February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation, and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the fourth Monday in February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency, and shall change any payment due to the county in accordance with the correction. ( )

**c.** If a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in the amount to be paid in June of 2014. ( )

**d.** If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission shall adjust the payment to the county, and then the county shall begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. Any amount so recovered shall be remitted to the Commission. ( )

**e.** Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property, or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission. ( )

**07. Limitation on Eligibility for the Exemption.** ( )

**a.** Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. ( )

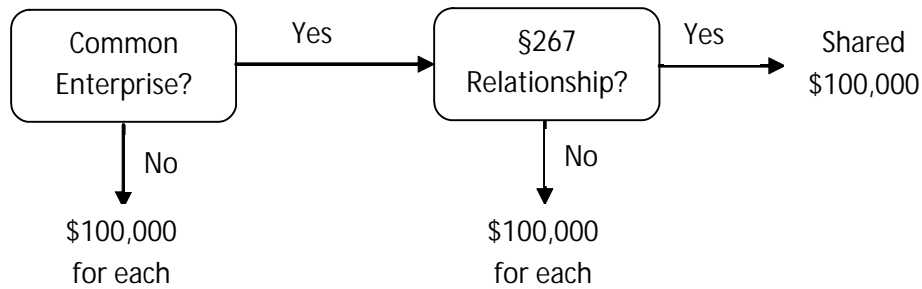
**b.** Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ( )

**c.** Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. ( )

**d.** Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and

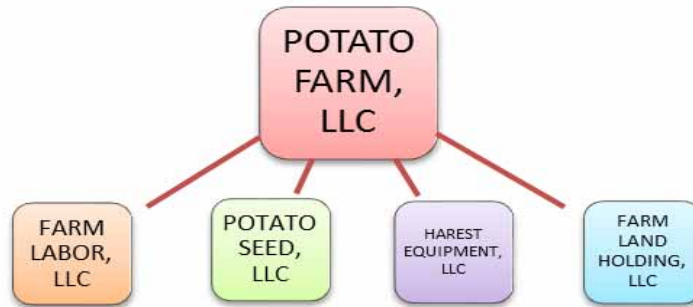
manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. ( )

**08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships.** If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, a taxpayer includes two (2) or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart: ( )



**a.** First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in common enterprise. ( )

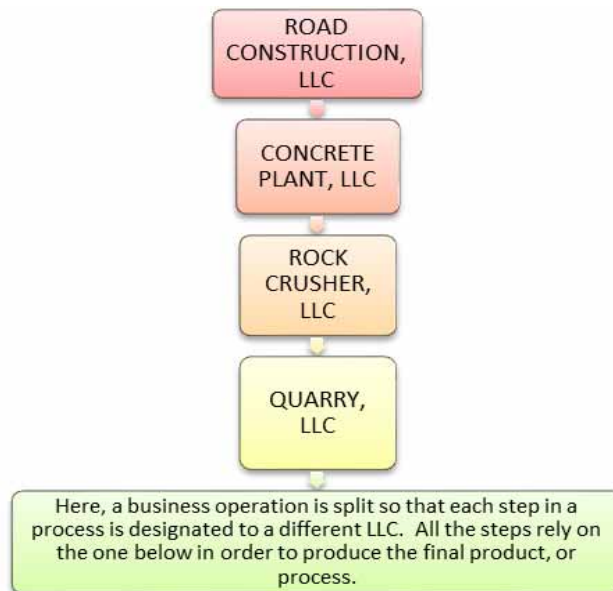
**i.** Horizontal Commonality is explained by the following chart: ( )



Here, the usual functions involved in a working potato farm are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC

**ii.** Vertical Commonality is explained by the following chart: ( )



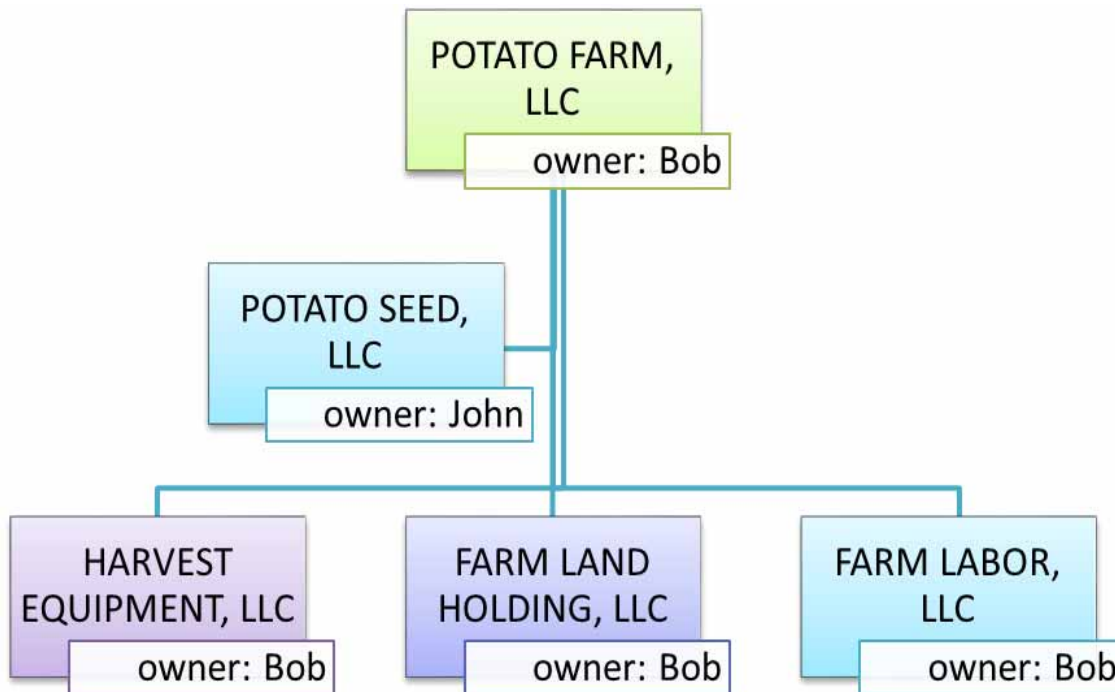


**b.** Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, the entities or individuals would be considered one (1) taxpayer for purposes of this exemption. ( )

**c.** Ownership alone does not determine whether entities are considered one (1) taxpayer for purposes of this exemption. Two (2) businesses can have identical ownership, and each receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. ( )

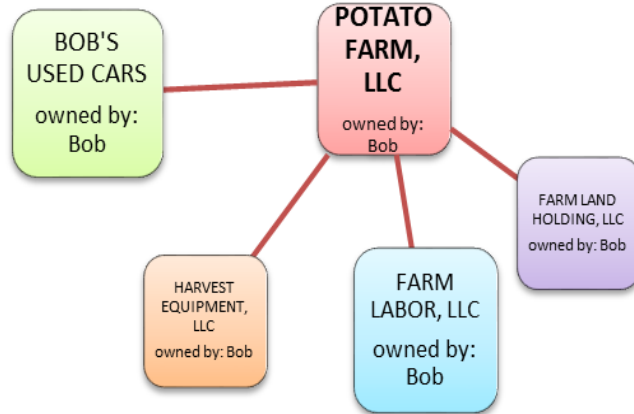
**d.** The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: ( )

**i.** Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ( )



So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.

ii. Example 2. This is an example of the same owner with multiple businesses not all united in a common enterprise. Bob's farm businesses are common enterprises, and therefore entitled to only one (1) exemption for all the farm businesses. Bob's used car business is not involved with Bob's farm businesses, so Bob is entitled to an additional exemption related to his used car business. ( )

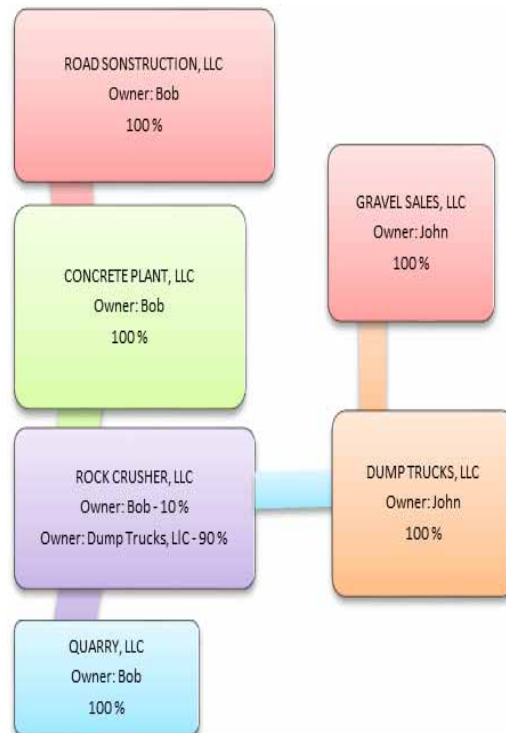


iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. ( )



Here, one exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

iv. Example 4. This is an example showing how owners of common enterprises may intersect. ( )



This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.

e. In cases of partial ownership as noted in example four wherein Bob owns ten percent (10%) and Dump Trucks, LLC owns ninety percent (90%) only the majority owner is eligible to receive this exemption. ( )

**09. Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code. ( )**

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. ( )

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. ( )

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ( )

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application. ( )

**10. Limitation on Replacement Money. ( )**

a. Once the 2013 amount of replacement money for each taxing district, and unit, and for each urban renewal district revenue allocation area is made final, following corrections as provided in this rule, there shall be no additions. However, there may be changes and reductions as follow: ( )

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. ( )

ii. If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. ( )

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. ( )

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 11 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. ( )

b. If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code, there shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property receives the exemption in Section 63-602KK(2) in the future. ( )

**11. Special Provision For Replacement Money For State Authorized Plant Facilities Levy.** The state authorized plant facilities levy will be applied to the exempt personal property, in any school district within which this levy has been certified in 2013, and the amount of tax calculated will be billed to the Commission as part of the property tax reduction list. The Commission shall remit any related funds directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. ( )

**12. Special Provision For Exempt Personal Property Within Urban Renewal Revenue Allocation Areas (RAAs).** When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. ( )

**13. Special Provision For Reporting Exempt Value.** Beginning in 2014, taxing district values submitted to the Commission as required in section 63-510, Idaho Code, shall indicate the otherwise taxable value exempt pursuant to section 63-602KK(2), in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor, or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho State Board of Education and the Idaho Department of Education for each school district, as required in Section 63-1312, Idaho Code. ( )

~~**0814. Cross Reference.**~~ ~~For more information on the lists and affidavit option, see Rule 302 of these rules.~~ For information on transient personal property see Rule 313 of these rules and for information on the definition of personal property see Rule 205 of these rules. (3-29-10)( )

(BREAK IN CONTINUITY OF SECTIONS)

**632. PROPERTY EXEMPT FROM TAXATION - OIL OR GAS RELATED WELLS (RULE 632).** ( )  
Section 63-60200, Idaho Code. ( )

**01. Definitions of Oil or Gas Well.** ( )

**a.** Wells drilled for the production of oil, gas or hydrocarbon condensate may include the well, casing, and other structures permanently affixed inside the well, and the land inside the perimeter of the well. ( )

**b.** The well shall include the part where the gas producing stratum has been successfully cased off from any oil. ( )

**02. Ineligible Land and Equipment.** ( )

**a.** Wellheads and gathering lines or any line extending above ground level shall not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate shall not qualify. ( )

**b.** Land, other than that used for the well as defined in Subsection 632.01 of these rules, shall not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land shall reflect the increase, unless the land qualifies independently for any other property tax exemption. ( )

**03. Application.** As provided in Section 63-602(3), Idaho Code, annual application is required for the exemption provided in this section and must be made to the county commissioners by April 15. ( )

~~632~~3. -- 644. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

**700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).** (3-15-02)  
Section 63-701, Idaho Code. (3-15-02)

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden of Proof.** See Rule 600 of these rules. (3-15-02)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. (3-30-07)

**a.** An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (3-30-07)

**i.** The annuity must not be part of any pension plan available to an employee; (3-30-07)

**ii.** No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (3-30-07)

iii. The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (3-30-07)

iv. Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (3-30-07)

b. Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (3-30-07)

c. The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (3-30-07)

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction of Value.** Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. (3-15-02)

a. There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)

b. In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. (4-2-08)

i. Example 1. The claimant is the sole occupant of the property but only owns fifty percent (50%) of the property. In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of \$50,000.

Land Market Value	\$50,000
Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value & Improvement Market Value (Land Market Value & Improvement Market Value x Percentage of Ownership)	\$100,000
Claimant's Homeowner's Exemption (Claimant's Share of Improvement and Land Market Value x 50%, not to exceed \$89,325 for 2007)	<\$50,000>
Claimant's Eligible Net Taxable Value equals Claimant's Share of Market Value less Homeowner's Exemption (\$100,000 - \$50,000 = \$50,000)	\$50,000

(4-2-08)

ii. Example 2. Tom Johnson and Marie Johnson, husband and wife, and property tax reduction claimant June Smith jointly own a property and occupy one (1) residential improvement located on the property. Calculate both homeowners' exemptions, and apply Ms. Smith's property tax reduction benefit to the tax on the net taxable value of her interest in the property.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 66.67%)	\$59,550	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 33.33%)	\$29,775	Ms. Smith's Homeowner's Exemption
Value of prorated interest less homeowner's exemption.	\$73,548	Ms. Smith's property tax reduction benefit is applied to the tax on the net taxable value.

(4-2-08)

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-15-02)

**08. Cross Reference.** See Chapter 79, Title 67, Idaho Code, for requirements relating to lawful presence in the United States. [See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Subsection 702.02.c. for information concerning authorization to release applicant information to a state or federal elected official.](#) (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).** Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-2-08)

**01. Definitions.** (4-5-00)

**a.** "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)



**b.** “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code.

(4-2-08)

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

<b>CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*</b>				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district’s decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999.

(4-6-05)

**d.** “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code.

(3-20-04)

**e.** “Recovered/Recaptured Property Substitute Funds Tax List.” Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections:

(5-8-09)

- i. Section 63-602G(5), Idaho Code; and (5-8-09)
- ii. Section 63-3029B(4), Idaho Code; and (5-8-09)
- iii. Section 31-808(11), Idaho Code. (5-8-09)

**f.** “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively.

(4-6-05)

**g.** “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991).

(4-2-08)

**02. Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed **and signed** L-2

Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed using the amount shown in the notice of budget hearing. (4-6-05)(\_\_\_\_)

**03. Budget Certification Requested Documents.** Using the completed L-2 Form, each board of county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission. (4-2-08)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-2-08)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; and (5-8-09)

iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code. (5-8-09)

v. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement. (4-6-05)

**f.** “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

**g.** Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

- iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)
- iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)
- h.** Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)
- i. For all taxing districts, L-2 worksheet. (3-20-04)
- ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)
- iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)
- iv. Voter approved fund tracker. (3-20-04)
- v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)
- vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)
- vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

- a.** The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)
- b.** Said new agreement succeeds the original agreement; and (3-30-01)
- c.** In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, Idaho Code, property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. For all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (5-8-09)

**a.** The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Section 63-3638(10), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Section 63-3638(10), Idaho Code. (5-8-09)

**b.** By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received. (4-2-08)

**c.** Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

**d.** For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. (5-8-09)

**e.** Levy limits shall be tested against the amount actually levied. (3-15-02)

**07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. (5-8-09)

**a.** Such property tax replacement money is not to be subtracted from the “balance to be levied” amount certified on the L-2 Form. (5-8-09)

**b.** The otherwise taxable value of the property subject to the exemption provided in Section 63-602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. (5-8-09)

**c.** The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.04.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. (5-8-09)

**08. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services.** For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**09. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**10. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the

ninth decimal place. No additional rounding is permitted for the column total.

(4-6-05)

**11. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this levy, sum the school district's tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

**12. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**13. Special Provisions for Levies for Payment of Judgments by Order of Court.** The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. (4-4-13)

**14. Cross Reference for School Districts with Tuition Funds.** For any school district certifying a tuition fund levy in 2006 or any year thereafter, see Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that the amount of property tax revenue for a tuition fund is not subject to the limitations of Section 63-802, Idaho Code. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).**

Sections ~~63-602KK~~, 63-704, and 63-902, Idaho Code.

~~(5-8-09)~~

~~**01. Tax Notices with Zero Tax Owed.** The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code *or as a result of the property tax exemption provided in Section 63-602KK, Idaho Code.* For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed. (5-8-09)(    )~~

~~**02. Tax Notices Applicable to Taxpayers Eligible for the Exemption Provided by Section 63-602KK, Idaho Code.** *The tax notice for taxpayers who receive a reduction in the amount of property tax due must show the gross value of the personal property, the gross tax amount, the amount exempted, the tax amount to be paid by the state, and the net tax due from the taxpayer even if zero (0) tax is owed.* (5-8-09)~~

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.09 - WINE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0109-1301**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

**Rule 012** Clarifies when the exemption applies to wine sold by Idaho wine direct shippers to customers outside Idaho.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 91.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no documents being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-1301  
(Only those Sections being amended are shown.)

012. EXEMPTIONS (RULE 012).

**01. Burden of Proof.** The burden of proving any exemption, deduction, credit, or refund allowed by the Act and these rules is upon the person claiming it. (7-1-93)

**02. Wholesale Sales of Wine Outside This State.** Every resale of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state ~~shall be~~ is exempt from tax on wine. (7-1-93)( )

**03. Sales By Wine Direct Shippers Outside This State.** If an Idaho wine direct shipper is licensed as a wine direct shipper in another state, sales of wine by the wine direct shipper to a resident of that state and delivered to a location in that state are exempt from Idaho tax on wine. ( )

**034. Sales to Purchasers on Military Reservations.** Sales to authorized purchasers on military reservations for the purpose of and resulting in sale or consumption on such reservation ~~shall be~~ are exempt from ~~the~~ tax on wine. (7-1-93)( )

**045. Sales to Idaho State Liquor Dispensary.** Sales of wine to the Idaho State Liquor Dispensary ~~shall~~ be are exempt from ~~the~~ tax on wine. (7-1-93)( )

**056. Dispositions From One Distributor to Another.** Any disposition of wine by transfer or sale or any other means from one (1) distributor to another distributor ~~shall be~~ is exempt. (7-1-93)( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 63-105, 63-2501, and 63-2553 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

**Rule 019** House Bill 7 (2011) amended the statutory definition of “wholesale sales price” to include “any person” selling tobacco products. The rule section on “wholesale sales price” has been updated to reflect the change. In addition, the rule change addresses when separately stated charges are part of the wholesale sales price subject to tax and when those charges should be excluded. Finally, the rule provides several new examples of how the wholesale sales price should be applied to sales made by out-of-state distributors who voluntarily hold an Idaho tobacco tax permit.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), pages 92 and 93.

**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 rules, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1301  
(Only those Sections being amended are shown.)

019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

01. **Shipments to Retailers/Distributors.** In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. (3-30-07)

02. **Nontaxed Tobacco Purchases from Outside the State.** Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (7-1-93)

03. **Determining Wholesale Sales Price.** Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (7-1-93)( )

a. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for shipping, handling, transportation, and delivery may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Idaho State Tax Commission may adjust it. ( )

b. An out-of-state distributor with nexus in the state of Idaho must use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. If an out-of-state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. ( )

i. Example 1. An out-of-state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesale sales price shall be the price at which it sells to the Idaho distributor, retailer or end user. ( )

ii. Example 2: An out-of-state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under this subsection, where the wholesale sales price is unknown, the wholesale sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The "purchase price of the product" is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor. ( )

iii. Example 3: An out-of-state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC Section 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesale sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then this subsection requires the wholesale sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. ( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.14 - PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES

#### DOCKET NO. 35-0114-1301 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105, and 31-4813, Idaho Code.

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

House Bill 193 (2013) imposed a new 2.5% fee on the sale of prepaid wireless telecommunications service. Starting January 1, 2014, the prepaid wireless E911 fee will be collected by retailers of such service from their customers. A new chapter of rules must be created to address the administration of the fee.

Rules 001 – 006 are the standard rules required for any new chapter of rules.

Rule 100 clarifies that the fee only applies to the sale of prepaid wireless service, not a device that utilizes such a service. However, the rule explains the circumstances under which the fee must be collected on the entire transaction if the price of the prepaid wireless service is not separately stated from the price of the other items in the transaction.

Rule 200 clarifies which sellers of prepaid wireless service must collect the fee. The collection responsibility is imposed on any retailer that would be required to collect the Idaho sales tax (on transactions subject to sales tax).

Rule 300 clarifies that out-of-state sales are exempt from the fee and provides guidance to sellers in making the determination when a sale is out-of-state.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 94.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The statute imposing the prepaid wireless E911 fee requires the Tax Commission to administer the fee as similarly to the sales tax as possible. Therefore, the sales tax administrative rules are incorporated and will be referenced when necessary. In addition, the Tax Commission administration and enforcement rules apply to all taxes and fees administered by the Tax Commission.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0114-1301**

**IDAPA 35**  
**TITLE 01**  
**CHAPTER 14**

**35.01.14 - PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY.**

In accordance with Sections 63-105 and 31-4813, Idaho Code, the Tax Commission has the authority to promulgate rules implementing and administering the prepaid wireless E911 fee. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules will be cited as IDAPA 35.01.XX, "Prepaid Wireless E911 Fee Administrative Rules." ( )

**02. Scope.** These rules will be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a fee on all sales of prepaid wireless communications service in Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address. ( )

**003. ADMINISTRATIVE APPEALS.**

This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE**

These rules incorporate IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules" and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." ( )

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

**01. Main Office.** The Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The phone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the fax number is (208) 334-7846. The e-mail address is "taxrep@tax.idaho.gov." All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. ( )

**007. -- 099. (RESERVED)**

**100. IMPOSITION OF THE PREPAID WIRELESS E911 FEE.**

The prepaid wireless E911 fee is only imposed on a sale of prepaid wireless telecommunications service at two and one-half percent (2.5%) of the sales price. The prepaid wireless E911 fee is not imposed on a sale of any device, such as a cell phone, that utilizes the prepaid wireless telecommunications service. However, the sale of the device will be subject to the fee if all of the following apply: ( )

**01. Separately State the Cost.** The seller does not separately state the cost of the prepaid wireless telecommunications service from the rest of the transaction, ( )

**02. Service Sold Exceeds.** The amount of the prepaid wireless telecommunications service sold exceeds ten (10) minutes or five dollars (\$5.00), and ( )

**03. Portion of the Sale.** The seller cannot show from its records the portion of the sale that should properly be applied to the sale of the prepaid wireless telecommunications service. ( )

**101. -- 199. (RESERVED)**

**200. SELLERS REQUIRED TO COLLECT THE PREPAID WIRELESS E911 FEE.**

**01. Requirements to Collect.** If any of the following apply to a seller making sales of prepaid wireless telecommunications service in Idaho, the seller must register for a prepaid wireless E911 fee permit and collect the prepaid wireless E911 fee: ( )

**a.** The seller is legally required to hold an Idaho sales tax permit, ( )

**b.** The seller already holds an Idaho sales tax permit, whether it is legally required or not, or ( )

**c.** The seller has a physical presence in Idaho. ( )

**02. Sales into Idaho by an Out-of-State Seller.** If a seller does not meet any of the above requirements, the seller does not need to collect the prepaid wireless E911 fee even if making sales to Idaho customers. ( )

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

**300. OUT-OF-STATE SALES.**

**01. Prepaid Wireless Telecommunications Service Cards.** As part of a sale of prepaid wireless telecommunications service, a seller may transfer to the customer a physical card or similar object containing a code required for activation or extension of the prepaid wireless telecommunications service. If the seller mails the card or similar object to a customer at an out-of-state address, the sale is not subject to the prepaid wireless E911 fee. ( )

**02. Sales by Phone or Over the Internet.** If a seller completes a sale of prepaid wireless telecommunications service by phone or over the internet without transferring any physical object to the customer, the seller must rely on the billing address of the customer to determine whether the sale is subject to the prepaid wireless E911 fee. If the billing address is in the state of Idaho, the seller must charge the prepaid wireless E911 fee. If the billing address is outside the state of Idaho, the seller does not have to charge the prepaid wireless E911 fee. ( )

**03. Seller Relies on the Billing Address.** If a seller relies on the billing address to determine whether the prepaid wireless E911 fee applies to a sale, the seller must retain documentation of the billing address. If a seller that holds or is required to hold a prepaid wireless E911 fee permit makes a sale of prepaid wireless telecommunications service without charging the fee and does not retain documentation of the billing address, the Tax Commission may hold the seller liable for the prepaid wireless E911 fee on that sale. ( )

**301. -- 999. (RESERVED)**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1301**

**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 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Rule 705 is being promulgated consistent with 2013 House Bill 3 to give additional guidance on the procedures required to make a valid request for information regarding the name and address of the user of the stolen tax identification number.

**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 changes are 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 Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 20th day of August, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1301**  
**(Only those Sections being amended are shown.)**

**705. DISCLOSURE OF INFORMATION -- IDENTITY THEFT (RULE 705).**

Section 63-3077F, Idaho Code.

( )

**01. In General.** The Tax Commission may disclose to a victim of identity theft the name and address of an individual using the victim's social security number or other tax identification number. If the victim of identity theft is a minor, the Tax Commission may disclose the information to the parent or legal guardian. If the victim is deceased, the Tax Commission may disclose the information to the surviving spouse or executor of the estate. ( )

**02. Written Authorization to Disclose Information.**

( )

**a.** The Tax Commission may disclose the name and address to the victim upon receipt of a valid written information request. ( )

**b.** The written request must contain:

( )

**i.** The victim's name, address, and social security number or other tax identification number; ( )

**ii.** The tax year affected; ( )

**iii.** The signature of the victim or legal representative; ( )

**iv.** Copies of the victim's driver's license and social security card or passport, if applicable. ( )

**v.** If the victim is a minor, a copy of the birth certificate along with the driver's license or passport of the parent or legal guardian. ( )

**vi.** If the victim is deceased, a copy of the legal document authorizing the executor of the estate along with the executor's driver's license or passport. ( )

**7056. -- 799. (RESERVED)**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1302**

**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 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Rule 310 is being amended to add the interest rate for calendar year 2014 and the Revenue Ruling where the federal rate for the calculation can be found.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 22nd Day of August, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1302**  
**(Only those Sections being amended are shown.)**



**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24
<u>Calendar Year 2014</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2013-18</u>

(4-4-13)( )

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.60 - RULES GOVERNING LICENSE PLATE PROVISIONS

#### DOCKET NO. 39-0260-1301

### 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 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 October 16, 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: Amend administrative rule to implement Senate Bill 1243 (2012) and House Bill 169 (2013) that establish restrictions and guidelines for the introduction and approval of new special plates. Rule changes to implement SB1243 were rejected by the 2013 Legislature. HB 169 was passed in the 2013 session and amends how special plates can be introduced, to also allow such special plate programs to be approved through the Legislature any that were passed but failed to follow through and meet the qualifications.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This is a rule update based on changes to statute in House Bill 169 (2013). The rule change incorporates the language to clarify that the legislation regarding specialty license plates may be approved by either the Department and passed on to the Legislature on behalf of the program sponsor, or can be passed by the Legislature. Either way, minimum requirements must be met in accordance with both House Bill 169 (2013) and Senate Bill 1243 (2012). The changes in the rule will reflect the changes both bills require. It also contains slight changes to the text regarding Temporary Proof of Registration and further tightens personalized license plate messages to prohibit gang related or criminal affiliations, and that the Department may utilize the expertise of law enforcement.

**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 rule is a update based on changes to statute in House Bill 169, 2013. As such, the rule changes do not lend themselves 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 temporary and proposed rule, contact Chris Fisher, Program Specialist, 334-8679.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 19th day of August, 2013.

Lori Garza  
Office of Governmental Affairs  
Idaho Transportation Department  
[lori.garza@itd.idaho.gov](mailto:lori.garza@itd.idaho.gov)

3311 W. State Street, Boise, ID 83703  
PO Box 7129, Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-332-4107

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 39-0260-1301  
(Only those Sections being amended are shown.)**

**012. TEMPORARY PROOF OF REGISTRATION FOR NEW, REPLACEMENT, OR REISSUED LICENSE PLATES.**

**01. Temporary Proof of Registration Document.** Upon receipt of payment for required registration and program fees, ~~a forty-five (45) day temporary~~ proof of registration receipt document may be issued, indicating “license plates on order.” This option will be used whenever license plates are required to be manufactured after the registration transaction has been completed. The ~~temporary proof of~~ registration receipt document shall provide proof that the vehicle has been registered and fees have been paid, and the vehicle may be operated until new plates have been received by the registrant. At the discretion of the Department, more than one (1) ~~forty-five (45) day temporary proof of~~ registration may be issued, if needed, in order to manufacture license plates. ~~(4-2-08)~~(7-1-13)T

**02. Placement of Temporary Proof of Registration Document.** The ~~forty-five (45) day temporary proof of~~ registration receipt document shall be displayed in the rear window of the vehicle for which it is issued. When issued to a convertible, motorcycle, or other vehicle in which it is not possible to display in the rear window, the ~~temporary proof of~~ registration must be conspicuously displayed where the license plate number and expiration date of the ~~permit newly issued plate~~ may be easily read, and where it is protected from exposure to weather conditions, which would render it illegible. ~~(4-2-08)~~(7-1-13)T

**03. Issuance of Manually Completed Temporary Registrations When Automated System is Unavailable.** Upon receipt of payment for required registration and program fees, the county may issue a manual temporary registration for thirty (30) days, through use of a temporary form provided by the Department, in the event the automated system is unavailable. When the system resumes normal operation, the county office shall enter such registration information, and produce the registration form and validation decals and mail to the registered applicant. The manual temporary registration form shall be displayed in the rear window of the vehicle for which it is issued. When issued to a convertible, motorcycle, or other vehicle in which it is not possible to display in the rear window, the temporary registration must be conspicuously displayed where the number and expiration date of the permit may be easily read, and where it is protected from exposure to weather conditions, which would render it illegible. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**155. PROVISIONS FOR SPECIAL LICENSE PLATE PROGRAM PREQUALIFICATION AND APPLICATION PROCEDURES.**

**01. Special License Plate Prequalification.** Anyone desiring legislation to establish a Special License Plate Program may make application to the Department on a Special Plate Program application form designed and provided by the Department. If all the prequalification requirements are met by the submission of other documentation, this will also be acceptable. A Special Plate Program Development Guide will also be provided to each applicant, detailing the procedures for the prequalification and application and providing information regarding the steps required to successfully accomplish a special plate program from prequalification through passage of the legislation, statutory requirements and standards for the plate color and license plate design. (7-1-13)T

**02. Special License Plate Approved by the Legislature.** If a special license plate program is approved by the Idaho legislature, prior to production and sale of the special license plates, the sponsor shall be meet the requirements outlined in Subsection 155.03 of this rule. (7-1-13)T

**03. Special Plate Requirements:** (7-1-13)T

**a.** The individual responsible for representing the agency requesting the prequalification/application procedure will complete and sign a Special Plate Program application form that will contain a declaration of the responsible individual for certifying compliance with the requirements to the Department. (7-1-13)T

**b.** Responsible individual representing the agency will submit a financial plan detailing the use for the proceeds from the special plate sales. (7-1-13)T

**c.** For non-profit agencies, the responsible individual will provide evidence that the applicant has had 501 (c) Federal Income Tax status for at least two (2) years. (7-1-13)T

**04. Special License Plate Program Application Approval:** (7-1-13)T

**a.** Upon approval of application by Department, applicant will, by September 1, deposit programming and administration fees determined by an estimate of projected programming hours required. One thousand dollars (\$1,000) of this fee will not be refundable. (7-1-13)T

**b.** Applicant will complete and submit a list of two hundred fifty (250) applicants, currently registered in Idaho, who intend to purchase the Specialty License Plates when available. The form may be delivered to the Department by mail or electronic means such as e-mail or facsimile. (7-1-13)T

**05. Submission to the Legislature.** (7-1-13)T

**a.** For those desiring legislation, when all requirements have been met, the Department will forward the completed application to the chairmen of the Transportation and Defense Committees of the Senate and the House of Representatives for consideration in the next Legislative Session. This submission will be on a form developed by the Department or other documentation that meets all the requirements listed in this rule. (7-1-13)T

**b.** For those Special License Plate Programs with enacting legislation that fail to meet the requirements of this Section, the Department shall report such finding to the chairmen of the Transportation and Defense Committees of the Idaho State Senate and the House of Representatives, and shall not proceed with production and sale of the special plates. (7-1-13)T

**06. Annual Report.** An annual report form, designed and provided by the Department, will be made available to special license plate sponsors. The report will require an accounting of revenues and expenditures associated with the funds collected for the special license plate program. The report will be completed and submitted to the Department by January 1 so that by January 15 of each year the Department has the necessary data compiled and the required information forwarded to the chairmen of the Transportation and Defense Committees of the Idaho State Senate and the House of Representatives. If the agency fails to provide the required report, the Department will suspend special license plate sales for that program until the accounting is provided. Military License Plate programs will not be included in this requirement. (7-1-13)T

**07. Appeals.** The appeals process will allow the applicant for a special license plate program to appeal the Department's decision to deny the application (See Section 003 of this rule). The notice of the appeal will be sent in writing via mail, electronic mail or facsimile within twenty (20) days of the denial. (7-1-13)T

**1556. -- 198. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. PROVISIONS FOR PERSONALIZED LICENSE PLATES.**

**01. Special Characters or Marks.** No special characters, or punctuation marks, may be used for personalized messages on license plates. (1-3-92)

**a.** Up to seven (7) letters or any combination of seven (7) letters and numbers and spaces (no half spaces) may be used for personalized messages on eligible six inch by twelve inch (6" x 12") license plates. (5-8-09)

**b.** Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on four inch by seven inch (4" x 7") motorcycle plates. (5-8-09)

**c.** Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on specialty program license plates. (5-8-09)

**d.** Disability six inch by twelve inch (6" x 12") plates will display the international handicapped symbol followed by up to five (5) letters, numbers, and spaces in the personalized message. Disability four inch by seven inch (4" x 7") motorcycle plates will display the international handicapped symbol followed by up to four (4) letters, numbers, and spaces (no half spaces) in the personalized message. (5-8-09)

**02. Issue of Personalized Plates.** Personalized plates can be issued only to vehicles if no specific wording is required on the plate to identify the purpose for which the vehicle is registered. Personalized plates will not be issued if such plates would jeopardize the integrity of unique plate identification requirements. Examples include but are not limited to: (1-3-92)

**a.** Commercial vehicles registered under the International Registration Plan (IRP), because the designators PRP are required to be printed on the plate; (1-3-92)

**b.** Vehicles for which the designators "PRP" are required to be printed on the plate to identify the use; and (4-2-08)

**c.** Utility, horse, or enclosed car hauling trailers with RV facilities or boat trailers. (4-2-08)

**03. Specific Requests.** Requests for specific plate letters and/or numbers will be issued on a first come, first served basis. In the event of a request for the same plate by more than one (1) individual, the request with the earliest postmark, e-mail transmission time, or fax transmission time will prevail. If the postmarks are the same, the date stamped upon arrival at the Department will prevail. Applications submitted at county assessors' offices will not be considered valid until stamped in by the Department. Telephone requests will not be accepted. (4-2-08)

**04. Lack of Current Plates.** When an applicant for personalized plates does not have current regular number plates: (1-3-92)

**a.** The Department may issue a thirty (30) day temporary registration to allow time for the billing process for personalized plates. The fee for each thirty (30) day temporary registration shall be as required by Section 49-523, Idaho Code. (4-2-08)

**b.** The Department may, upon payment of all required fees, issue a ~~temporary proof of~~ registration document as provided in Section 012 of these rules. ~~(4-2-08)~~(7-1-13)T

**05. Credits.** When personalized plates are issued before an applicant's current registration is expired, credit will be given for unexpired registration fees only. (1-3-92)

**06. Renewing Plates.** The applicant will have the choice of renewing existing personalized plates with validation stickers or ordering a new set of plates at the time of renewal. If new plates are requested, the plate fee will be charged in addition to all other fees that are due. New plates must be purchased every seven (7) years as provided in Section 49-443, Idaho Code. (4-2-08)

**07. Transfer of Plates.** When personalized plates are issued, the vehicle's regular number plates may be transferred to another vehicle belonging to the owner. If registration credit is given from the regular number plates to the personalized, the regular number plate registration is canceled. (1-3-92)

**08. Acceptability of Plates Message.** Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria: (1-3-92)

**a.** The combination of numbers and letters requested or combinations of same may not duplicate an existing combination in use, with the following exception. A duplication is allowed only when the combination of numbers and letters requested is the same on a small (ie: motorcycle sized plate) and a large (ie: passenger car) sized plate. ~~(1-3-92)~~(7-1-13)T

**b.** The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of obscenity, contempt, prejudice, hostility, insult, racial degradation, ethnical degradation, or profanity, or vulgarity, as defined in dictionaries of general use, including, but not limited to, Webster's Unabridged Dictionary and the Harper & Row New Dictionary of American Slang. (7-1-13)T

**i.** The message may not refer to any of the following: bodily functions, bodily fluids, or intimate body parts; sexual preference or orientation; acts of violence; or illegal substances; or vulgarity, as defined in dictionaries of general use, including, but not limited to, Webster's Unabridged Dictionary and the Harper & Row New Dictionary of American Slang. ~~(3-2-10)~~(7-1-13)T

**ii.** The message may not represent a club, membership, or gang that is commonly known to promote violence, illegal substances or illegal acts. (7-1-13)T

**c.** The criteria in Paragraph 202.08.b. of these rules is not to be considered an exhaustive list. A compilation of offensive or obscene words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. The Department may also rely on information obtained from law enforcement agencies within or outside of Idaho. ~~(4-2-08)~~(7-1-13)T

**d.** When a complaint is received from the public concerning an issued plate, the name of the caller will not be recorded nor, if known, revealed. (1-3-92)

**e.** Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles. The determination process shall include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision. (4-2-08)

**09. Message Preferences.** Applicants may submit three (3) message preferences including the specific meaning of each. The first choice that is available and acceptable will be issued. If none of the preferences are available or acceptable, the applicant will be notified by return mail. (4-2-08)

**10. Recalled Plates.** Personalized plates may be recalled by the Department for the following reasons: (1-3-92)

**a.** Error in manufacturing; or (1-3-92)

**b.** Clerical error. (1-3-92)

**c.** Unacceptable personalized messages as outlined in Paragraph 202.08.b. of these rules. (4-2-08)

**11. Unexpired Fees.** If a set of personalized plates is recalled, the personalized plate program fee, unexpired portion of the registration fee, E.M.S. fee, plate fee, (if plates are returned to the Department), and all other applicable special plate fees, will be refunded or transferred to a new issue of personalized plates. (4-2-08)

**12. Expired Plates.** Personalized plates that are allowed to expire shall become immediately available for reissue to another applicant. There is no grace period. (1-3-92)

# IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

## 39.03.50 - RULES GOVERNING SAFETY REST AREAS

DOCKET NO. 39-0350-1301

### 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(s) 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 October 16, 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 rule prohibits the discharge of firearms at Safety Rest Areas. The department has posted signs prohibiting firearms at Safety Rest Areas. In Senate Bill 1441, 2008 the Legislature completely pre-empted the field of firearm regulation and prohibited state agencies from regulating firearms because it interfered with second amendment rights. Under Section 18-3302J, Idaho Code, counties and cities may regulate the discharge of firearms within its boundaries. State agencies, with the exceptions of universities and the Idaho Department of Fish Game, do not have that authority. As a result, this rule must be amended.

**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 this rule must be amended so the rule changes do not lend themselves 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 Cathy Ford, Roadside Program Admin., 334-8416.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 19th day of August, 2013.

Lori Garza  
Office of Governmental Affairs  
Idaho Transportation Department  
[lori.garza@itd.idaho.gov](mailto:lori.garza@itd.idaho.gov)

3311 W. State Street, Boise, ID 83703  
PO Box 7129, Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-332-4107

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#### THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0350-1301 (Only those Sections being amended are shown.)

#### 001. TITLE AND SCOPE.

**01. Title.** This rule shall be cited as IDAPA 39.03.50, "Rules Governing Safety Rest Areas." ( )

**02. Scope.** The purpose of this rule is to regulate use of and set standards of behavior for all persons using or visiting developed rest areas. ~~(12-26-90)~~( )

**002. WRITTEN INTERPRETATIONS.**  
There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**  
Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**  
There are no documents incorporated by reference in this chapter. ( )

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

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ( )

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. ( )

**04. Idaho Transportation Department District Offices.** Offices are at the following locations:( )

**a.** Idaho Transportation Department District 1  
Mailing address - 600 W. Prairie, Coeur d'Alene, Idaho 83815-8764  
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone - (208) 772-1200 ( )

**b.** Idaho Transportation Department District 2  
2600 Frontage Road, Lewiston  
Mailing address - P.O. Box 837, Lewiston, Idaho 83501-0837  
Office Hours - 7:00 a.m. to 4:00 p.m., Pacific Time Zone  
Phone - (208) 799-5090 ( )

**c.** Idaho Transportation Department District 3  
8150 Chinden Blvd., Boise  
Mailing address - P.O. Box 8028, Boise, Idaho 83707-2028  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 334-8300 ( )

**d.** Idaho Transportation Department District 4  
216 Date Street, Shoshone  
Mailing address - P.O. Box 2-A, Shoshone, Idaho 83352-0820  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 886-7800 ( )

**e.** Idaho Transportation Department District 5  
5151 South 5th, Pocatello  
Mailing address - P.O. Box 4700, Pocatello, Idaho 83205-4700  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 239-3300 ( )

**f.** Idaho Transportation Department District 6  
206 North Yellowstone, Rigby



Mailing address - P.O. Box 97, Rigby, Idaho 83442-0097  
Office Hours - 8:00 a.m. to 5:00 p.m., Mountain Time Zone  
Phone - (208) 745-7781

( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code.

( )

**0027. -- 099. (RESERVED)**

**100. SANITATION.**

The following acts are prohibited: (12-26-90)

**01. Designated Trash Containers.** Failing to dispose of all garbage and trash, including paper, cans, bottles and other waste materials by either removal from the site or depositing in designated trash containers. (12-26-90)

**02. Vehicle Refuse or Water.** Draining or dumping refuse or waste from any trailer or other vehicle except in places or receptacles provided. (12-26-90)

**03. Water Facilities.** Cleaning fish or other food, washing clothing or household articles at hydrants or water faucets. (12-26-90)

**04. Water Systems.** Polluting or contaminating water used for human consumption or water systems used for the delivery of such water. (12-26-90)

**05. Comfort Station.** Depositing body waste in or on any portion of a comfort station not intended for that purpose. (12-26-90)

**06. Dumping.** Dumping of household or commercial garbage or trash brought as such from private property off-site into any on-site refuse containers or other refuse facilities. ~~(12-26-90)~~( )

**101. -- 199. (RESERVED)**

**200. PUBLIC BEHAVIOR AND TREATMENT OF PUBLIC PROPERTY.**

The following acts are prohibited: (12-26-90)

**01. Behavior.** Indulging in boisterous, abusive, threatening, or indecent conduct or creating unnecessary noise which interferes with the reasonable use of the area by other visitors. (12-26-90)

**02. Treatment of Natural Features or Plants.** Destroying, defacing, cutting, sampling, or removing any natural feature or plant. (12-26-90)

**03. Treatment of Public Property.** Damaging by defacing, plugging, breaking, or removing any facility, fixture, sign or marker provided for use of the public. (12-26-90)

**04. Donations.** Begging, panhandling, hitchhiking and asking for or accepting donations unless specifically authorized by the Idaho Transportation Department. ( )

**045. Soliciting.** Selling ~~or offering for sale~~ of any merchandise or offering of any service for sexual gratification or monetary gain. ~~(12-26-90)~~( )

**056. ~~Firearms~~/Fireworks/Incendiary Devices.** Discharging ~~firearms~~ ~~or~~ fireworks or any other incendiary device. ~~(12-26-90)~~( )

**067. Noise Producing Devices.** Operating or using any audio devices, including radio, television and musical instrument, and other noise producing devices, such as electrical generator plants and equipment driven by

motors or engines, in such a manner and at such times so as to disturb other persons. (12-26-90)

201. -- 299. (RESERVED)

300. OCCUPANCY OF DEVELOPED REST AREAS.

The following acts are prohibited: (12-26-90)

01. **Camping/Occupancy of Site.** ~~Camping or~~ occupying a site rest area for any primary purpose other than ~~resting~~ and ~~refreshing of travelers~~ relaxation from the fatigue of travel. ~~(12-26-90)( )~~

02. **Assembling.** Assembling or attracting groups of people except for public service functions by civic, fraternal or religious organizations as approved by the Department. (12-26-90)

03. **Time Limits.** Remaining in a rest area for a period of time longer than that established by the Idaho Transportation Department. Occupancy of the rest areas on interstate highways is limited to eight (8) consecutive hours. Occupancy of rest areas on other routes of the State Highway System is limited to sixteen (16) consecutive hours. (12-26-90)

04. **Fires.** Building fires outside the confines of ~~a~~ stoves, grills or fireplaces. ~~(12-26-90)( )~~

05. **Failure to Clean.** Failing to clean the place space occupied before departing. ~~(12-26-90)( )~~

06. **Animals.** (12-26-90)

a. Bringing a dog, cat or other animal into a rest area unless it is a certified service animal or crated, caged, leashed or otherwise under physical restrictive control at all times. ~~(12-26-90)( )~~

b. Permitting a dog, cat or other animal to exercise and/or defecate in areas ~~not signed for such purpose~~ outside of specifically designated pet areas. ~~(12-26-90)( )~~

301. -- 399. (RESERVED)

400. VEHICLES.

The following acts are prohibited: (12-26-90)

01. **Rates of Speed.** ~~Driving~~ Operating any motor vehicles ~~at in~~ excessive rates of fifteen (15) mph speed within the confines of a rest area with the exception of acceleration or deceleration ramps. ~~(12-26-90)( )~~

02. **Driving or Parking.** Driving or parking a vehicle or trailer except in places developed for such purpose. (12-26-90)

03. **Careless Driving.** Driving a vehicle carelessly and heedlessly in disregard of the rights or safety of others; or driving at a speed, or in a manner which endangers, or is likely to endanger, any person or property. (12-26-90)

~~04. **Motorbikes/Motoreycles.** Driving motorbikes and motoreycles on trails within developed rest areas. (12-26-90)~~

~~05. **Paths/Roads/Trails in Rest Areas.** Driving motorbikes, motoreycles, or other motor Operating any vehicles on paths, roads, or trails in developed rest areas for any purpose other than entering or leaving the area, unless specifically allowed by appropriate signage. (12-26-90)( )~~

~~06. **Accelerating Engine.** Excessively accelerating the engine of any motor vehicle or motorcycle when such vehicle is not moving or is approaching or leaving a stopping place the rest area. (12-26-90)( )~~

~~06. **Skateboards/Rollerblades.** Use of skateboards or rollerblades on sidewalks or in areas primarily intended for use by motor vehicles. ( )~~

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.04.02 - RULES GOVERNING MARKING OF HAZARDS TO AIR FLIGHT**  
**DOCKET NO. 39-0402-1301**  
**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 21-519, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Amendments to Section 21-515A(4), Idaho Code, during 2013 Legislature included House Bill 216 (BPA Guyed Towers) that exempted power marketing firms from lighting and marking guyed towers, and Senate Bill 1065 (Amateur Radio Towers) that exempted "Ham" and "CB" radio towers from the requirement to light and mark their guyed towers. These amendments require changes to IDAPA 39.04.02, Rules Governing Marking of Hazards to Air Flight.

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

This rule change simply clarifies which entities are exempt from the requirements of lighting and marking guyed towers.

**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 to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these are required changes to IDAPA 39.04.02. As such, the rules changes do not lend themselves 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 temporary and proposed rule, contact Bill Statham, Manager, 334-8784.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 19th day of August, 2013.

Lori Garza  
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3311 W State Street, Boise, ID 83703  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0402-1301**  
**(Only those Sections being amended are shown.)**

**100. REQUIREMENTS.**

**01. Hazardous Structures.** Any structure which obstructs the airspace more than two hundred (200) feet above the ground or water level, or at any height near an established airport as defined by Section 21-101(c), Idaho Code, when determined by the Department to be an aviation hazard or a potential aviation hazard, as defined in Section 21-101(n), Idaho Code, to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted, or designated in a manner approved by the Department. (4-4-13)

**02. Guyed Towers.** Any temporary or permanent guyed tower fifty (50) feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower's appearance is not otherwise governed by state or federal law, rule or regulation, shall be lighted, marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand (2,000) feet. (4-4-13)

**a.** Guyed towers shall be painted in seven (7) equal alternating bands of aviation orange and white. Such alternating bands shall begin with orange at the top of the tower and end with orange at the base. (4-4-13)

**b.** Guyed towers shall have one flashing obstruction light at the top of the tower. Such light shall meet the technical requirements of medium intensity flashing white obstruction light systems as specified in Federal Aviation Administration Advisory Circular AC 70/7460-1K. (4-4-13)

**c.** For guyed towers the surface area under the footprint of the tower and six (6) feet beyond the outer tower anchors shall have a contrasting appearance with any surrounding vegetation. (4-4-13)

**d.** Guyed towers shall have two (2) marker balls, having a minimum diameter of twenty (20) inches attached to and evenly spaced on each of the outside guy wires. Said spheres to be of the split-sheet, clamp-on type which are to be alternated in two (2) contrasting solid colors of gloss yellow and international orange, and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (4-4-13)

**e.** Guyed towers shall have a seven (7) foot long safety sleeve colored to contrast with background vegetation at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point. (4-4-13)

**f.** Any guyed tower that was erected prior to July 1, 2012 shall be marked as required by the provisions of Section 100 before July 1, 2013. Any guyed tower that is erected on or after July 1, 2012 shall be marked as required by the provisions of Section 100 at the time it is erected. (4-4-13)

**g.** The provisions of this Subsection 100.02, shall not apply to power poles or structures owned and operated by an electric supplier as defined in Section 61-332A(4), Idaho Code, to facilities used by a federal power marketing agency to serve public utilities or consumer-owned utilities, or any structure, ~~the~~ whose primary purpose ~~of~~

which is to support telecommunications equipment, including citizens band (CB) radio towers and all other amateur radio towers. ~~(4-4-13)~~(7-1-13)T

**03. Lines, Wires, and Cables.** Power lines, communication lines, wires, or cable more than two hundred (200) feet above the terrain crossing canyons, rivers, navigable bodies of water, terrain undulations, or guy structures or any height where such wire, cable or obstruction cross navigable bodies of water near established seaplane bases, if determined by the Department to be a hazard to air navigation, shall be marked at two hundred (200) feet intervals of spacing by sphere-type markers having a minimum diameter of thirty-six (36) inches. Said sphere to be of the split-sheet, clamp-on type which are to be alternated in three (3) contrasting solid colors of gloss white, gloss yellow, and international orange and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (4-4-13)

**04. Spans Between Support Piers.** Long spans that exceed lengths of one-half (1/2) mile between support piers, each pier shall be marked with flashing strobe or beacon lights of a type and brilliance acceptable to the Department if such is deemed pertinent to safety and recognition of obstructions. (4-4-13)

**05. Construction.** Any construction sponsor is required to submit a notice to the Aeronautics Division Administrator if his construction meets one (1) or more of the following conditions: (4-4-13)

**a.** If the proposed object will be more than two hundred (200) feet above ground level at its location. (4-4-13)

**b.** If the proposed object will be within twenty thousand (20,000) feet of an airport (\*) or seaplane base with a runway of more than three thousand two hundred (3,200) feet in length; and will penetrate an imaginary surface that is one (1) foot in height for each one hundred (100) feet (100:1) horizontally from the nearest point of the nearest runway.

\* To qualify, an airport as defined in Section 21-101(c), Idaho Code, must be listed in the Idaho Airport Facilities Directory, or in the Airport /Facility Directory published by the US-DOT, National Charting Office or operated by a public entity. (4-4-13)

**c.** If the proposed object will be within ten thousand (10,000) feet of an airport having no runway more than three thousand two hundred (3,200) feet in length; and will penetrate an imaginary surface that is one (1) foot in height for each fifty (50) feet (50:1) horizontally from the nearest runway. (4-4-13)

**d.** If the proposed object will be within five thousand (5,000) feet of a heliport listed in the "Airport Facilities Directory" or operated by a public entity; and will penetrate an imaginary surface that is one (1) foot in height for each twenty-five (25) feet (25:1), horizontally from the nearest landing and take-off area of that heliport. (4-4-13)

**e.** If the proposed object is a traverse way which will exceed at least one (1) of the standards listed in Subsections 100.05.a. through 100.05.c. above, after its height is adjusted upward seventeen (17) feet for an Interstate Highway, fifteen (15) feet for any other public roadway, ten (10) feet (or the height of the highest mobile objects that would normally traverse the road) for a private road, twenty-three (23) feet for a railroad, or an amount equal to the height of the highest mobile objects that would traverse a waterway or any other thoroughfare not previously mentioned. (4-4-13)

**06. Notice Submittal.** The notice required under Subsection 100.05 of this rule must be submitted: (1-2-93)

**a.** At least thirty (30) days before the construction or alteration is to begin; or the application for construction permit is to be filed. (11-28-90)

**b.** Immediately by telephone or other expeditious means, with written notification submitted within five (5) days thereafter, if immediate construction or alteration is required as in cases involving public services, health, or safety. (1-2-93)

**07. Notice of Proposed Construction.** A notice of proposed construction or alteration is required so that the Department may: (4-4-13)

- a. Depict obstructions on aeronautical charts. (11-28-90)
- b. Identify appropriate markings as required by Section 21-515, Idaho Code. (4-4-13)
- c. Be made aware of potential aeronautical hazards in order to minimize their danger to the flying public. (11-28-90)
- d. Protect the lives and property of persons in the air and on the ground. (11-28-90)

**08. Submittal of Notice.** Written notice of intended construction or alteration must be submitted by mail or hand-delivered to the Aeronautics Division Administrator using the contact information in Section 005 of this rule. (4-4-13)

**09. Intent.** It is the intent that the resultant markings required in this rule be compatible with FAA policies and directives in order to maintain consistency of object marking and lighting. (4-4-13)

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

**39.04.04 - RULES GOVERNING IDAHO AIRPORT AID PROGRAM**

**DOCKET NO. 39-0404-1301**

**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 21-105 and 21-111, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

The Idaho Transportation Department, Division of Aeronautics, Aeronautics Advisory Board, approved new procedures for the administration of the Idaho Airport Aid Program. The new procedures entitled the 'Airport Project Prioritization and Annual Program Allocation' establish a uniform project prioritization methodology and a uniform annual grant program funding allocation methodology. Certain formulas, priorities, percentages, and procedures of the program changes, and require changes to IDAPA 39.04.04.

**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 this rule change simply establishes a uniform project prioritization methodology and a uniform annual allocation methodology for the grant program funding. It further states grant requirements from Idaho statute. The rule changes do not lend themselves 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 Bill Statham, Project Manager, 334-8784.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 19th day of August, 2013.

Lori Garza  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W. State Street, Boise, ID 83703  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0404-1301  
(Only those Sections being amended are shown.)

007. -- ~~099~~. (RESERVED)

**010. DEFINITIONS.**

**01. Airport Service Area Population.** The airport service area population is the number of people within the service area boundary based upon the most recent approved census data. An airport's service area is the geographic locale within a thirty (30) minute average drive time from the airport. ( )

**02. Adjusted Service Area Population.** The adjusted service area population is the subject airports service area population reduced by the population within the service area of a nearby 'more developed' airport(s) that overlaps the subject airports service area. The adjusted service area population is used to determine the match rate for Community airport grants. ( )

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

(BREAK IN CONTINUITY OF SECTIONS)

**200. PROJECT ALLOCATION ~~PRIORITIES~~ PRIORITY PRINCIPLES.**

The discretionary allocation programs will be based on six (6) important principles. These principles are:

(1-1-90)( )

**041. Aircraft Operations Safety.** Priority will be given to projects involving safety of aircraft operations. (1-1-90)

**062. Priority Will Be Given to Projects Which Protect Prior Public Investments.** (1-1-90)

**053. Federal Funds.** Priority will be given to assuring maximum use and benefit of available federal funds. (1-1-90)

**024. Aircraft Landing Projects.** Priority will be given to projects at existing aircraft landing facilities where need is demonstrated. Projects must provide benefits associated with aircraft landing facility utilization on a statewide basis. (1-1-90)

**045. Preservation and Acquisition.** Priority will be given to the preservation and acquisition of existing aircraft landing facilities in danger of being lost. (1-1-90)

**036. Aircraft Landing Development.** Priority will be given to the development of new, additional aircraft landing facilities in areas of greatest need: (1-1-90)

a. Large geographical areas with no "air accessibility." (1-1-90)

b. Additional new sites in urban areas where landing sites are rapidly becoming non-existent. (1-1-90)

c. Recreational area development where land availability is becoming difficult to obtain. (1-1-90)

201. -- 299. (RESERVED)

**300. PROGRAM CRITERIA AND LIMITATIONS.**



The allocation program is designed to provide the greatest and best utilization of limited Idaho Airport Aid Program Funds. The primary goal of the allocation program is to further the proper development of a statewide system of airports and fair distribution of aviation tax money. This policy requires: (5-8-09)

**01. Master Plan.** Each city, county, airport authority, political subdivision, or public corporation, hereinafter referred to as airport sponsor, should have a master plan or an airport or heliport layout plan to be eligible for participation in the allocation program. The plan must be approved by the Division of Aeronautics. (5-8-09)

**02. Percentages of Cost.** Matching percentages must be determined not to exceed the following guidelines, subject to the approval of the Idaho Transportation Board: (1-1-90)

~~**a.** Municipal governments not eligible for Federal funding assistance that are supporting towns with a population of less than one thousand (1,000), which do not have an airport, may receive up to one hundred percent (100%) of the cost for a minimum standard airport. The airport sponsor shall provide the land required. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. (5-8-09)~~

~~**b.** Airport sponsors not eligible for Federal funding assistance that are supporting towns with a population of less than one thousand (1,000) may receive up to ninety percent (90%) of the cost for maintenance and upgrade of a minimum standard airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. (5-8-09)~~

**ea.** Airport sponsors not eligible for Federal funding assistance that ~~are supporting towns with a population of one thousand (1,000) up to~~ **that have an adjusted service area population of less than** five thousand (5,000), may receive up to seventy-five percent (75%) of project cost for maintenance and upgrade of an **minimum standard** airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. (5-8-09)(    )

**eb.** Airport sponsors not eligible for Federal funding assistance that ~~are supporting towns with a population of more than five thousand (5,000)~~ **that have an adjusted service area population of five thousand (5,000) or more** may receive up to fifty percent (50%) of the cost for maintenance and upgrade of an **minimum standard** airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided. (5-8-09)(    )

**ec.** Airport sponsors eligible for Federal funding assistance, may be considered for State funding assistance up to fifty percent (50%) of the sponsor's share when using Federal aid for the cost of maintenance and upgrade of existing facilities. If no Federal participation, each such project shall be considered on its merit. The amount of State financial aid will be negotiated in each case. (5-8-09)

**fd.** All airport sponsors eligible for funding under IDAPA 39.04.04, "Rules Governing Idaho Airport Aid Program," may apply to participate in the maintenance and safety supplies program. This is part of the discretionary allocation program that provides at no charge or a reduced charge for the following such items: (5-8-09)

- i. Runway and taxiway light fixtures, bulbs, and parts; (5-8-09)
- ii. Rotating beacon fixtures; (5-8-09)
- iii. Windsocks, windsock frames and standards; (5-8-09)
- iv. Tie-down chain sets; (5-8-09)
- v. Utility light bulbs; and (5-8-09)
- vi. Taxiway reflectors. (5-8-09)

**ge.** All municipal airport sponsors eligible for funding under IDAPA 39.04.04, may apply to participate

in the small projects program which provides grant funding assistance of less than two thousand dollars (\$2,000) for unscheduled or emergency improvements, with approval from the aeronautics administrator, from the current years allocation. (5-8-09)

**03. Face Value Contributions.** Labor and equipment contributions by the airport sponsor may be approved at face value in force-account financial evaluation as matching funds. The following items will not be eligible for force-account contribution: (5-8-09)

- a. Land values previously acquired. (1-1-90)
- b. Previous building construction or improvements. (5-8-09)
- c. Previous State or FAA grants. (1-1-90)

**04. Public Funds Protection.** In order to protect the investment of public funds, the Idaho Transportation Board may require proof of ownership or lease of all land upon which any project is proposed, and require that the airport be zoned to prevent incompatible land uses and the creation or establishment of structures or objects of natural growth which would constitute hazards or obstructions to aircraft operating to, from, on, or in the vicinity of the subject airport. (~~5-8-09~~)(      )

**05. Applications for Aid.** (5-8-09)

a. Each project submitted for funding consideration from airport sponsors not eligible for Federal funding assistance will be presented in a written application for aid which outlines economic capability and source of funds. The application form will be supplied by the Division of Aeronautics. Eligibility and priority will be determined by an annual revision of a State allocation program for airport improvement. (5-8-09)

b. Each project application submitted for funding consideration from airport sponsors that are eligible for Federal funding assistance will consist of a full and complete copy of the federal application for assistance. (5-8-09)

c. Each request for participation in the maintenance and safety supplies program or the small projects program must be made through written, telephone, or electronic request. (5-8-09)

d. Projects deemed by the Board to require special legislative appropriations will be submitted for legislative support and consideration. (5-8-09)

**06. Projects Other Than Allocation Plan.** All projects other than the annual allocation plan will be individually considered and acted upon at a regular meeting of the Board. All projects will be resolved by eligibility and priorities established by each year's review of the total State need. The availability of funds, or legislative appropriations, shall always be the final determination of grant approvals. Consideration of all factors, including relative needs and priorities involved in an airport construction project will be considered. Attention will be given to effort made at the sponsor's level to assure availability of continuing financing and management support to keep the airport in good repair. (5-8-09)

**07. Granted Allocation Items.** Allocations may be granted for the following items: (1-1-90)

- a. Development of required airport planning, land ownership, airspace, land use compatibility, and land use zoning documents. (5-8-09)
- b. Land acquisition for development and improvement of aircraft landing facilities. (1-1-90)
- c. Grading and drainage necessary for construction or reconstruction of runways or taxiways. (1-1-90)
- d. Construction or reconstruction of runways or taxiways. (1-1-90)

- e.** Acquisition of “runway protection zones” as defined in current regulations of the Federal Aviation Administration. (5-8-09)
- f.** Acquisition of easements through or other interests in airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility. (1-1-90)
- g.** Removal of natural obstructions from runway protection zones. (5-8-09)
- h.** Installation or rehabilitation of “segmented circle airport marker systems” as defined in current regulations of the Federal Aviation Administration. (5-8-09)
- i.** Installation or rehabilitation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment. (5-8-09)
- j.** Erection or rehabilitation of appropriate security fencing around the perimeter of an aircraft landing facility. (5-8-09)
- k.** Grading and drainage necessary to provide for parking of transient general aviation aircraft. (1-1-90)
- l.** Air navigation facilities. (1-1-90)
- m.** Such other capital improvements as may be designated by the Board. (1-1-90)
- n.** New building construction of public use facilities such as storage hangars, pilot lounge, rest rooms, etc., that are owned by the airport sponsor. (5-8-09)

# IDAPA 52 - IDAHO STATE LOTTERY COMMISSION

## 52.01.02 - GAMING RULES OF THE IDAHO STATE LOTTERY COMMISSION

DOCKET NO. 52-0102-1301

### 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 67-7714, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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:

Last legislative session (2013), legislation was passed that modified certain statutes in Chapter 77, Title 67 (Bingo/Raffle Act) regarding record retention requirements, and including removal of Holiday Christmas Tree Fundraising, among others. Corresponding rule changes were not promulgated at that time, but are now required in order to render them consistent with that law change. The Lottery needs to amend applicable administrative rules to coincide with this change in law and render its rules consistent with now-existing law. They are currently inconsistent, instead mirroring the applicable law prior to the passing of SB 1127 last session. This rulemaking amends IDAPA 52.01.02 to render the rules consistent with Sections 67-7709 and 67-7710, Idaho Code, regarding record retention requirements, removal of Holiday Christmas Tree Fundraising among others. This rulemaking simply renders applicable rules consistent with Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, it is not feasible or necessary to conduct negotiated rulemaking for this rulemaking. The changes are proposed simply to render applicable rules consistent with applicable Idaho Code. Legislation was passed last session (2013) that modified record retention requirements, removed Holiday Christmas Tree Fundraising, among others. Corresponding rule changes were not promulgated at that time, but are now required in order to render them consistent with the statute changes. There is nothing to be negotiated.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeffrey Anderson, Executive Director, at (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Jeffrey Anderson  
Executive Director  
Idaho State Lottery  
1199 Shoreline Ln., Ste. 100

P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 334-3522

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 52-0102-1301**  
**(Only those Sections being amended are shown.)**

**010. DEFINITIONS (RULE 10).**

As used in these rules, each word defined in this Section has the meaning given here unless a different meaning is clearly required from context: (4-2-08)

**01. Audit.** The review of documents or other records pertaining to operation of bingo or raffles, including, but not limited to, ledgers, bank statements, checks and deposit records, nightly logs, receipts, register tapes, computer records, contracts and leases, records showing use of all revenues for charitable activities, and tax records, by representatives of the Lottery, the attorney general, other law enforcement agencies, or independent auditors. (2-19-09)

**02. Autodaubing Features or Autodaubing.** Electronic bingo card daubers, including software or equipment interfaced with electronic bingo cards that automatically daub the numbers as called without requiring the player to manually input the number called. (4-2-08)

**03. Bingo.** The traditional game of chance using a card with five (5) rows and five (5) columns containing numbers from a range of one (1) to seventy-five (75) and played for a prize determined before the game begins, as elaborated in Subsection 010.03 of these rules, and other games authorized by Title 67, Chapter 77, Idaho Code, and by these rules, for example, "U-Pick Em." See Section 67-7702(1), Idaho Code: (4-2-08)

**a. Bingo Cards, Regular.** Regular bingo cards (reusable or disposable) contain five (5) rows and five (5) columns of squares arranged in a five-by-five (5x5) grid; each square is imprinted with randomly placed numbers from a range of one (1) through seventy-five (75), except for the center square, which may be a free space. The letters "B-I-N-G-O" must also be imprinted on the card in order with one (1) letter above each of the five (5) columns (the letter "B" above the first column and so on). (4-2-08)

**b. Bingo Cards, Electronic, or Face.** An electronic facsimile of a regular bingo card. See Section 67-7702(6), Idaho Code. (4-2-08)

**c. Play Method.** Players who have paid consideration for the cards that they are holding compete for a prize by covering numbers on their cards when designators with the same number are randomly drawn and called. The balls or other designators in the selection device are numbered in the same manner as the possible numbers on the bingo cards, from one (1) through seventy-five (75). The winner is the first player to cover a predetermined arrangement of numbers on the players' cards, for example, any row, column or diagonal of the five (5) rows and (5) columns and two (2) diagonals of the bingo card. Upon approval of the Bingo-Raffle Advisory Board there may be other forms of bingo games allowed, such as, but not limited to, Blackouts, Bonanza, and "U-Pick Em" games. The game begins when the first number is called and ends when a player has covered the previously designated arrangement and declares a bingo. Each winning card must be independently verified by a floor worker and another player by calling back the winning combination of numbers in the predetermined arrangement or by entering the serial number printed on the bingo card into an electronic verification system that can verify whether a card is a winner. (4-2-08)

**d. Exclusions from Bingo.** Bingo does not include "instant bingo," which is a game of chance played by the selection of one (1) or more prepackaged cards, with the winner determined by the appearance of a preprinted winning designation on the card. (4-2-08)

**04. Bingo-Raffle Advisory Board or Board.** The board established and appointed according to Sections 67-7702(2), 67-7703, and 67-7704, Idaho Code. (4-2-08)

**05. Blackout.** A game of bingo where all numbers are covered on a bingo card. This game is also referred to as "coverall." (4-2-08)

- 06. Bonanza.** A game of bingo that is played on a prefolded card or on another kind of card on which the numbers are not revealed until the card is purchased and in which a designated number of balls are emitted from the machine in the usual manner and displayed. If there is no “Bingo” called on these numbers, the game may continue with one (1) additional ball emitted at a time until there is a winner. (4-2-08)
- 07. Charitable Contribution Acknowledgement Report Form or CCARF.** A form, prepared by the Director, upon which the recipient of a donation for a charitable purpose must indicate the charitable purpose for which the donation will be used; the name, address, and phone number of the person receiving the donation; and acknowledgement that the recipient will provide any and all information necessary in order for the Director or his representatives to verify that the donation was used for a charitable purpose, as well as any other information needed by the Director to assure that the donation is used for a charitable purpose. See Section 67-7709(2), Idaho Code. (4-2-08)
- 08. Charitable Donation Reporting Form.** A form prepared by the Director, upon which each licensed organization shall record all charitable donations made from the proceeds of charitable bingo or raffles held during the license year on which they are reporting. This report shall require the names, addresses, contact person’s name, contact person’s telephone number, dollar amount and purpose of the donation. This report will be submitted to the Lottery along with the Annual Bingo Report or Annual Raffle Report and will be subject to audit as defined in Subsection 010.01. (2-19-09)
- 09. Charitable Organization.** See definition in Section 67-7702, Idaho Code. (2-19-09)
- 10. Charitable Purpose.** A purpose of supporting a bona fide charitable organization, as defined by Section 67-7702(3), Idaho Code. (4-2-08)
- 11. Commission.** The Idaho State Lottery Commission established and appointed according to Sections 67-7402, 67-7404(2) and 67-7405, Idaho Code. See Section 67-7702(4), Idaho Code. (4-2-08)
- 12. Concessions.** Food and beverages or other incidental items (for example, caps or tee-shirts) unrelated to gaming that are sold to players at bingo games. (4-2-08)
- 13. Director.** The Director of the Idaho State Lottery appointed and confirmed according to Section 67-7407, Idaho Code. (4-2-08)
- 14. Disposable Paper Bingo Card.** A non-reusable, paper bingo card. (4-2-08)
- 15. Distributor.** Any person who purchases or otherwise obtains or supplies equipment for use in conducting gaming activities, including, but not limited to, bingo or raffles, from any person or entity, and sells or otherwise furnishes such equipment or supplies to any person or entity who engages in gaming activity. (4-2-08)
- 16. Duck Race.** A charitable raffle as defined in Section 67-7702(5), Idaho Code. (4-2-08)
- 17. Electronic Bingo Device.** An electronic device used to monitor bingo games as defined by Section 67-7702(7), Idaho Code. Electronic bingo devices may be used to monitor bingo cards (“mind cards”) only if they meet the requirements of Section 67-7702(7)(a), Idaho Code. No devices described in Section 67-7702(7)(b), Idaho Code, can be lawfully used in a bingo operation. (4-2-08)
- 18. Electronic Gaming Devices.** Gaming or gambling devices electronically operated by inserting a coin or token and then pulling a handle or pushing a button to activate the game. Electronic gaming devices can generate points or payout slips for accumulated wins. (4-2-08)
- 19. Gaming.** Gambling as defined in Section 18-3801, Idaho Code, including gaming authorized by Title 67, Chapters 74 and 77, Idaho Code. (4-2-08)
- 20. Gross Revenues.** See definition in Section 67-7702, Idaho Code. (2-19-09)
- a.** For Bingo. All moneys paid by players during a bingo game or session of play bingo, including fees

for use of electronic bingo cards or electronic bingo devices, but excluding money paid for concessions. Gross revenues are calculated before any deductions for prizes or other expenses. (4-2-08)

**b.** For Raffles and Other Gaming Authorized by Title 67, Chapter 77, Idaho Code. All moneys or other value paid to or due to any operator of a raffle or other gaming authorized by Title 67, Chapter 77, Idaho Code, activity for any chance taken or other fees for participation in the raffle or other gaming activity. Gross revenues are calculated before any deductions for prizes or other expenses. (4-2-08)

**21. Hard Bingo Cards.** Reusable bingo cards with sliding windows or shutters to cover the numbers on the cards. Hard cards are legal in sessions with less than ten thousand dollars (\$10,000) of annual gross revenue or for special occasions. (4-2-08)

~~**22. Holiday Christmas Tree Fundraiser.** A charitable game played by persons bidding on decorated holiday trees, as defined by Section 67-7702(9), Idaho Code. (4-2-08)~~

~~**23. Host System.** See definition in Section 67-7702, Idaho Code. (2-19-09)~~

**24. Instant Bingo.** A Lottery game played by the use of premarked cards which, when opened, scratched or otherwise revealed, determine whether the cardholder is a winner without any competition among players. "Instant Bingo" is not a game of "Bingo" as defined by these rules. (4-2-08)

~~**25. License.** A permission issued by the Director of the Lottery to operate bingo games or raffles or to manufacture, sell, distribute, furnish or supply gaming machines, equipment or material. (4-2-08)~~

~~**26. Licensed Game Operator.** A person who qualifies as a nonprofit or charitable organization who may operate bingo or raffles and who is licensed pursuant to Section 67-7711, Idaho Code. (4-2-08)~~

~~**27. Licensed Vendor.** A person who manufactures, sells, distributes, furnishes or supplies gaming machines, equipment or material who is licensed pursuant to Section 67-7715, Idaho Code. (4-2-08)~~

~~**28. Lottery.** The Idaho State Lottery created by Section 67-7402, Idaho Code, and, as context requires, the Lottery Commission and the Lottery's officers and employees. (4-2-08)~~

~~**29. Manufacturer.** Any person who fabricates or assembles a completed piece of gaming equipment or pieces of gaming equipment, or supplies completed gaming equipment, or pieces of gaming equipment for use in gaming activities, including, but not limited to, bingo and raffles, and who sells or otherwise furnishes the completed gaming equipment or pieces of gaming equipment to any distributor, operator, or retail outlet. (4-2-08)~~

~~**30. Net Proceeds of a Charitable Raffle.** The gross revenues of a charitable raffle less the cost of prizes awarded. Net proceeds of a duck race mean gross revenues less the cost of prizes awarded and the rental cost of the ducks used in the race (if there are rental costs). See Section 67-7710(3), Idaho Code. *Net proceeds of a holiday Christmas tree fundraiser mean the gross revenues less the costs of procuring the tree or other prizes. See Section 67-7710(3), Idaho Code.* Donated prizes are considered to have no cost and do not reduce the receipts when calculating net proceeds. (4-2-08)( )~~

~~**31. Nonprofit Organization.** See definition in Section 67-7702, Idaho Code. (2-19-09)~~

~~**32. Organization.** A charitable organization or a nonprofit organization. (2-19-09)~~

~~**33. Person.** See definition in Section 67-7702, Idaho Code. (2-19-09)~~

~~**34. Raffle.** An event in which prizes are won by random drawings or other selections of a ticket, duck or other means of identifying the one (1) or more persons purchasing chances. See Section 67-7702(14), Idaho Code. Duck races *and holiday Christmas tree fundraisers* are a forms of raffles. See Sections 67-7702(5) and 67-7702(9), Idaho Code. (4-2-08)( )~~

~~**35. Reusable Bingo Cards.** Bingo cards constructed out of a durable material that use sliding windows~~

or shutters or chips to cover the numbers and that can be reused from one (1) game to another. (4-2-08)

**365. Separate Bank Account.** A bank account in the name of, and controlled by, a charitable or nonprofit organization established for purposes of complying with the accounting requirements of Section 67-7709(1), Idaho Code, regarding accounting for revenues and disbursements for bingo operations. All gross revenues received in connection with licensed bingo games must be placed in the separate bank account. Concessions and other moneys received (if any) from non-gaming revenues should not be deposited in the separate bank account. (4-2-08)( )

**376. Session.** A period of time not to exceed eight (8) hours in any one (1) day in which players are allowed to participate in bingo games operated by a charitable or nonprofit organization. See Sections 67-7702(15) and 67-7708, Idaho Code. (4-2-08)

**387. Site System.** See definition in Section 67-7702, Idaho Code. (2-19-09)

~~**39. Special Committee.** Persons (including officers and directors, if so designated) listed on an organization's application for a license who are designated to be responsible for insuring that a bingo game or bingo session conducted by that organization will be run according to the requirements of statute and of these rules. If no persons are designated as a special committee, the members of the governing body of the applicant will be held responsible for the operations of the bingo games and sessions or the operations of the raffle. See Section 67-7711(3), Idaho Code. (4-2-08)~~

~~**40. Special Permit.** A permit that can be obtained by an unlicensed charitable organization that qualifies the organization to operate an exempt bingo operation. This permit allows a qualified organization to operate bingo games at a state or county fair for the duration of the fair. See Section 67-7702(17), Idaho Code. (4-2-08)~~

~~**4138. Tracking.** The documentation of sales by sequentially numbered bingo paper or numbered tickets in raffles. See Section 67-7709(3), Idaho Code. (4-2-08)~~

~~**4239. U-Pick Ems.** A game where players select their own numbers on a two (2) part duplicated bingo card. One (1) copy is retained by the player and used as a bingo card. Numbers are called until there is a winner. The winner is determined by the first player to cover the numbers on a "U-Pick-Em" card. (4-2-08)~~

~~**430. Vendor.** See definition in Section 67-7702, Idaho Code. (2-19-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. MEMBERS OF ~~SPECIAL COMMITTEE~~ ORGANIZATION IN ATTENDANCE -- TRAINING OF EMPLOYEES (RULE 103).**

At least one (1) member or representative of the licensed organization must be in attendance at each session of bingo to supervise all bingo-related activities of a licensed organization. See Section 67-7711(3), Idaho Code. All bingo game employees, volunteers, and managers of all organizations, whether licensed or unlicensed, must be trained in the proper conduct of the game and the control of funds. (7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. MINORS (RULE 105).**

Persons under the age of eighteen (18) years are prohibited from playing bingo in a game in which a cash prize is offered, or where the prize exceeds twenty-five dollars (\$25) in value for merchandise, or where any merchandise is redeemable, in whole or in part, for cash, ~~or in a game operated by a licensed charitable or non-profit organization.~~ See Section 67-7707(2), Idaho Code. Bingo operators may allow minors to work in a bingo game or session as per



local house rules.

~~(3-30-01)~~( )

**106. TRACKING REQUIREMENTS IN GAMES USING PAPER BINGO CARDS (RULE 106).**

**01. Bingo Paper -- For Whom Required.** All licensed organizations operating bingo sessions that use paper bingo cards and all organizations exempt from licensing under Section 67-7713, Idaho Code, that use paper bingo cards must track their bingo sales for each session by using sequentially numbered/colored bingo paper. Each such organization must keep a ledger of the numbers of all bingo papers used. The non-reusable colored paper cards must be manufactured with a pre-printed series and a pre-printed serial number on each card. These cards may be assembled in multiple card sheets, single sheets, or packets. A sequential series and serial number must be printed on each individual card. (4-2-08)

**02. Tracking by Game For Bingo Paper.** The tracking may vary according to games sold at each session (packets, specials, singles, six (6) ons, three (3) ons, etc.) and may be designated by game name or color of paper. (4-2-08)

**03. Tracking By Bingo Paper Packet.** If sales are completed by packet, then those packets must not be separated for sale as singles. Individual games or packets sold must be recorded sequentially for effective tracking. The tracking records must be retained with permanent records. Tracking records are not required to be submitted with the Annual Bingo Report form. (4-2-08)

**04. Late Players When Bingo Paper Used.** Packets of bingo paper sold to late players must have the previously played games sheets removed and voided. The tracking must account for sheets removed and voided. (4-2-08)

**05. Designation of Bingo Paper Color For Games.** Each game is assigned a particular color of paper card. Other colors will not be accepted. (4-2-08)

**06. Documentation For Bingo Paper.** All bingo paper must be tracked as either sold, damaged, donated, or omitted from the original distributor or manufacturer. Invoices from the distributor or manufacturer and other documentation of transactions involving bingo funds must be kept with the *permanent* records for that bingo operation. Operators may contact the Lottery Security Division for clarification concerning proper documentation to track sold, damaged, donated, or omitted bingo paper. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**122. GENERAL LEDGER (RULE 122).**

**01. Establishment of General Ledger.** A general ledger must be established to account separately for the bingo operation. Ledgers must track all transactions for the funds generated from bingo. (3-30-01)

**02. Documentation.** The accounting of revenues from sales of bingo cards or other entry fees and all disbursements must be documented. The accounting should include, but not be limited to, total prize payouts per session, and bingo related expenses per session, charitable contributions per session, wages, date and purpose or payee for each entry. (7-1-97)

**03. Annual Report.** Copies of general ledgers must accompany the Annual Bingo Report filed with the Lottery. Copies of the Charitable Contribution Acknowledgement Report Forms and Charitable Donation Reporting Form shall also accompany the Annual Bingo Report. All disbursements shall be recorded in the general ledger. (2-19-09)

**04. Retention of Records.** An accounting of all gross revenues and disbursements required by statute and these rules must be retained in *permanent* records with the organization **for a period of five (5) years**, including the date and amount of each transaction, as well as the name and address of each payee for all prize payments

exceeding one hundred dollars (\$100). A copy of each CCARF and the Charitable Donation Reporting Form shall be retained in permanent records of the organization. ~~(2-19-09)~~( )

**123. ANNUAL REPORT (RULE 123).**

**01. When Due.** Every licensed charitable or nonprofit organization conducting bingo games shall prepare an annual report within thirty (30) days after the close of its license year and shall file the annual report with the Lottery. See Section 67-7709(2), Idaho Code. (3-30-01)

**02. Information Required By Forms.** The nightly reports, receipts, winner records, and payouts must be documented and kept with the organization's ~~permanent~~ records for ~~three~~ **five (5)** years. Any further information required by the forms prescribed by the Lottery pursuant to statute and rule. ~~(7-1-97)~~( )

**03. Independent Audit.** Organizations that exceed two hundred thousand dollars (\$200,000) in annual gross revenue from bingo games, raffle events, or bingo games and raffles combined must submit an independent audit ~~from performed by~~ a **certified** public accountant ~~or accounting firm~~ **licensed in Idaho and who meets peer review requirements set forth by the Idaho State Board of Accountancy.** This independent audit must be submitted within ninety (90) days of the end of the licensed organization's license year. ~~(3-30-01)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. ACCOUNTING OF REVENUES AND EXPENSES (RULE 125).**

**01. Deposit of Receipts.** Bingo funds received in check form must be payable to the organization. All funds must be deposited in a Separate Bank Account ~~for bingo funds~~. ~~(7-1-97)~~( )

**02. Ledger Entries and Receipts For Expenses.** All ledger entries must track disbursements of cash and checks. Expenses must be documented with receipts. The receipts shall include the payee's name and address, date, and an authorized signature from the licensed organization. (7-1-97)

**03. Recording of Wages.** Wages paid must be recorded on expense records as gross amounts before withholding of taxes or other withholding and net amount paid, with each item of withholding shown. Wages paid must be documented with copies of pay stubs, or other records showing gross wages and withholding. (7-1-97)

**04. Submission With Annual Report.** Copies of ledgers containing the documentation of all transactions must be submitted with the Annual Bingo Report. Inventory tracking of sequentially numbered paper must be retained in ~~permanent~~ records **for a period of five (5) years** and kept available for examination. Do not submit these records with the annual bingo report. All documents must be legible and compiled in an orderly manner. ~~(7-1-97)~~( )

**126. INSPECTION OF BOOKS (RULE 126).**

All financial books, papers, records and documents of an organization shall be kept as required by these rules and shall be open to inspection by the county sheriff of the county where the bingo games were held, or the chief of police of the city where the bingo games were held, or the prosecuting attorney of the county where the bingo games were held, or the attorney general or the Lottery, or any of their agents, at reasonable times and during reasonable hours. All records must be kept for ~~three~~ **five (5)** years. ~~(7-1-97)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. MAXIMUM PRIZES (RULE 203).**

The maximum aggregate value of cash prizes that may be offered or paid for any single raffle event, which is not a duck race ~~or a holiday Christmas tree fundraiser~~, is one thousand dollars (\$1,000). There is no limit on the maximum

value of merchandise that may be offered as raffle prizes if the merchandise is not redeemable for cash. There is no limit on the maximum amount of the aggregate cash prizes for a duck race if the cash prize is underwritten by insurance, otherwise the maximum aggregate cash prize for a duck race is one thousand dollars (\$1,000). ~~There is no limit on the maximum value of a tree that may be raffled in a holiday Christmas tree fundraiser.~~ There is no limit on the maximum value for the merchandise used as prizes for a duck race ~~or a holiday Christmas tree fundraiser~~ if the merchandise is not redeemable for cash. See Section 67-7710(2), Idaho Code. (4-2-08)( )

(BREAK IN CONTINUITY OF SECTIONS)

**207. INDEPENDENT AUDIT OF LARGE RAFFLES (RULE 207).**

Every charitable or non-profit organization whose gross annual revenues exceed two hundred thousand dollars (\$200,000) from the operation of raffles shall provide the Commission with a copy of an annual report of raffle events. The audit shall be performed by ~~an independent~~ a certified public accountant licensed in Idaho and who meets the peer review requirements set forth by the Idaho State Board of Accountancy. The audit must be submitted within ninety (90) days after the end of the organizations license year. (3-30-01)( )

(BREAK IN CONTINUITY OF SECTIONS)

**302. INFORMATION TO BE PROVIDED IN APPLICATION (RULE 302).**

**01. Background Check of Applicants.** The application for an initial license and for a renewal license to operate a bingo game or to conduct a raffle will be reviewed and relevant background investigations will be conducted on all persons listed on the application as officers, directors or members of the ~~special committee charitable or nonprofit organization.~~ ~~The members of the governing board will be considered the de facto special committee if the governing board has not designated a special committee in its application. See Section 67-7711(3), Idaho Code.~~ The signature from the organization's representative on the application gives the Lottery authority to conduct the required investigations ~~of members of the special committee.~~ The persons listed on the application must be officers or directors of the organization ~~or members of the special committee~~ applying for a license and the application must be signed by an officer of the organization. (4-2-08)( )

**02. Proper Identification.** The application must list the name, address, date of birth, driver's license number and social security or tax identification number of the applicant, if applicable. If the applicant is a corporation, association or similar legal entity, the application must also list the full name, current home address and phone number, date of birth, social security number, driver's license number and state of issuance, of each listed officer, and director ~~or member of the special committee~~ in order to conduct background investigations. See Section 67-7711(2)(a) and (b), Idaho Code. (4-2-08)( )

**03. Charitable Organizations.** The application of a charitable organization must include a copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service that indicates that the organization is a charitable organization and that states the section of the tax code under which the exemption is granted, except that if the organization is a state or local branch, lodge, post of chapter or a national organization, a copy of the determination letter of the national organization will satisfy this requirement. See Section 67-7711(2)(c)(i), Idaho Code. The applicant must also provide verifiable documentation to prove charitable function, purpose and activities. Acceptable documentation includes, but is not limited to, meeting minutes, donation documentation, and membership list. (2-19-09)

**04. Incorporated Nonprofit Organizations.** The application of an incorporated nonprofit organization must include a copy of the certificate of existence issued by the secretary of state pursuant to Title 30, Chapter 3, Idaho Code, establishing the organization's good corporate standing in the state. See Section 67-7711(2)(c)(ii), Idaho Code. The applicant must also provide verifiable documentation to prove charitable function, purpose and activities. Acceptable documentation includes, but is not limited to, meeting minutes, donation documentation, and membership list. (2-19-09)

**05. Locations.** The application must list the location or locations at which the applicant will conduct bingo games or bingo sessions or drawings for raffles. See Section 67-7711(2)(d), Idaho Code. (7-1-97)

**06. Raffle Drawings.** Raffle drawings must be held in Idaho and conducted within the license year for licensed organizations or within twelve (12) months from the date the first ticket was sold for unlicensed organizations. ( )

**067. License Year and Fiscal Year.** An organization may apply for a license to coincide with the organization's fiscal year. See Section 67-7711(5), Idaho Code. (4-2-08)

**078. Failure to Provide Information.** Failure to provide all information required for an application may result in a delay in considering an application or denial or dismissal of an application for a bingo/raffle license. See Section 67-7711(1), Idaho Code. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**306. SUSPENSION OR REVOCATION OF LICENSE -- CIVIL AND CRIMINAL PENALTIES (RULE 306).**

Violation of the bingo and raffle statutes or of these bingo/raffle rules or of any conditions of a license may be grounds for administrative, civil or criminal actions, including, but not limited to, placement on probationary status, suspension of operations, license revocation, penalties, or fines. See Section 67-7707, Idaho Code. See also Sections 500 through 504 of these rules. (4-2-08)( )

**307. EXEMPTION FROM LICENSING AND LICENSING FEES (RULE 307).**

Section 67-7713, Idaho Code, exempts charitable and non-profit organizations operating certain low-stakes bingo or raffle games from licensing. (4-2-08)

**01. Low-Stakes Bingo.** A charitable or nonprofit organization conducting a bingo game does not need to obtain a license if its gross annual bingo sales (gross revenues from bingo operations) are less than ten thousand dollars (\$10,000). (4-2-08)

**02. Low-Stakes Raffle.** A charitable or nonprofit organization does not need to obtain a license to conduct a raffle if the maximum aggregate value of merchandise awarded as prizes for the raffle does not exceed one five thousand dollars (\$15,000). (4-2-08)( )

**03. Exemption From Licensing Not Exemption From Rules.** Organizations exempt from licensing under this rule must still comply with applicable requirements of statute and bingo/raffle rules. This information is available by contacting the Lottery. (7-1-97)

## **IDAPA 57 - Sexual Offender Management Board**

### **57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**

#### **DOCKET NO. 57-0101-1201 (CHAPTER REPEAL)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is November 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 18-8314, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 the agency's supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: Due to extensive changes necessary to implement procedures mandated of the Sexual Offender Management Board by Idaho's 2011 Legislature, the proposed rulemaking repeals this entire chapter of the existing Administrative Rule and the chapter has been re-written.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To implement amendments to Section 18-8314, Idaho Code, as intended and enacted by Idaho's 2011 Legislature, temporary adoption of this rulemaking is appropriate for: Protection of the public health, safety or welfare; and Conferring a benefit.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 3, 2012 Idaho Administrative Bulletin, [Volume 12-10, page 991](#).

**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 Kathy Baird at (208) 954-8511.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013. Written comments may be sent electronically by email to: [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov).

DATED this 27<sup>th</sup> day of August, 2013.

Kathy Baird, Management Assistant  
Sexual Offender Management Board  
1299 N Orchard St., Ste. 110  
Boise, ID 83706

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Fax: (208) 954-8519  
E-mail: [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov)

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**IDAPA 57.01.01 IS BEING REPEALED IN ITS ENTIRETY**

## **IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD**

### **57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**

#### **DOCKET NO. 57-0101-1202 (CHAPTER REWRITE - FEE RULE)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is November 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 18-8314, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 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 the agency's supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking will implement and effectuate procedures that were mandated of the Sexual Offender Management Board during Idaho's 2011 legislative session, in SB1154aa.

Existing standards and procedures for psychosexual evaluations and certification of psychosexual evaluators are modified in this re-write of IDAPA 57.01.01. New statewide standards and procedures will be established for sexual offender treatment programs, sexual offender treatment providers and post-conviction sexual offender polygraph examiners that are consistent with national best practices. Additionally certification of sexual offender treatment providers and post-conviction sexual offender polygraph examiners will be implemented. This rulemaking will also establish a quality assurance process to ensure adherence to the standards and procedures, and a hearing process for disciplinary action against a certificate holder.

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

To implement amendments to Section 18-8314, Idaho Code, as intended and enacted by Idaho's 2011 Legislature, temporary adoption of this rulemaking is appropriate for protection of the public health, safety or welfare and to confer a benefit.

The standards and guidelines established by the Sexual Offender Management Board will create a higher level of consistency and continuity among Idaho's sexual offender service practitioners, as well as establish and impose statewide standards for sexual offender treatment practices.

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

Section 18-8314, Idaho Code, provides authority for the agency to collect fees for provider certification processing.

With this rulemaking, three (3) levels of provider certification will be established for psychosexual evaluators and sexual offender treatment providers, and one (1) level of certification will be established for post-conviction sexual offender polygraph examiners. The proposed application processing fee structure will be set as follows:

Seventy-five dollars (\$75) for initial certification applications and fifty dollars (\$50) for biennial certification renewal applications for: senior/approved level psychosexual evaluators, associate/supervised level psychosexual evaluators, senior/approved level sexual offender treatment providers, associate/supervised level sexual offender treatment providers, and post-conviction sexual offender polygraph examiners.

Fifty dollars (\$50) for initial certification applications and thirty dollars (\$30) for annual certification renewal applications for entry-level provisional/supervised psychosexual evaluators and provisional/supervised sexual offender treatment providers.

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

No negative fiscal impact on state general funds is anticipated with this rulemaking. Provider certification processing fees collected by the agency are deposited into a dedicated fund. No additional costs to the agency are anticipated to carry out the quality assurance processes as funding is currently factored into the agency's budget.

**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 October 3, 2012 Idaho Administrative Bulletin, **Volume 12-10, page 991**.

The agency conducted open meetings with impacted psychosexual evaluators, sexual offender treatment providers, and polygraph examiners in addition to making direct contact with psychosexual evaluators, sexual offender treatment providers, and polygraph examiners to solicit feedback during drafting of the standards for certification qualifications and sexual offender management best practices.

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

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled into documents entitled "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" edition 2013, and the Sexual Offender Management Board's "Required Format for Psychosexual Evaluation Reports" effective 2013, which are incorporated by reference into this rulemaking to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication. They can be found on the agency's website, <http://socb.idaho.gov/>.

Also incorporated by reference into this rule are professional and ethical standards from nationally recognized organizations, as applicable to sexual offender management practices. These citations include:

"Association for the Treatment of Sexual Abusers Professional Code of Ethics" 2001 revision, and "Association for the Treatment of Sexual Abusers Practice Standards and Guidelines for the Evaluation, Treatment and Management of Adult Male Sexual Abusers" 2005 revision. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication. They are available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005.

"Bylaws and Constitution of the American Association of Police Polygraphists" effective May, 2010. This document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. It is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068.

"Bylaws of the American Polygraph Association" effective 2012. This document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. It is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird at (208) 954-8511.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013. Written comments may be sent electronically by email to: [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov)

DATED this 27<sup>th</sup> day of August, 2013.

Kathy Baird, Management Assistant  
Sexual Offender Management Board  
1299 N Orchard St., Ste. 110  
Boise, ID 83706  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF FEE DOCKET NO. 57-0101-1202**

**IDAPA 57**  
**TITLE 01**  
**CHAPTER 01**

**57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 18-8314(3), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8316, Idaho Code. (11-1-13)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules are cited as IDAPA 57.01.01, "Rules of the Sexual Offender Management Board." (11-1-13)T

**02. Scope.** These rules provide procedures for the Sexual Offender Management Board to: (11-1-13)T

**a.** Establish certified evaluator, sexual offender treatment provider and post conviction sexual offender polygraph examiner qualifications; (11-1-13)T

**b.** Establish standards for psychosexual evaluations and sexual offender treatment programs based on current and evolving best practices; (11-1-13)T

**c.** Approve, issue, renew, deny, suspend, revoke, restrict or otherwise monitor a certification; (11-1-13)T

**d.** Establish fees for initial and renewal certification; (11-1-13)T

**e.** Establish procedures for standards and qualification quality assurance; and (11-1-13)T

**f.** Establish standard protocols for sexual offender management, assessment and classification. (11-1-13)T

**03. Relationship to the Department of Correction.** The Board is created within the Idaho Department of Correction, and relies upon the department for fiscal and administrative support. The governor appoints the Board members. The powers and duties of the Board are separate from the Department of Correction,



and are set forth in Section 18-8314, Idaho Code. (11-1-13)T

**002. WRITTEN INTERPRETATIONS.**

The Board may have written statements that pertain to the interpretation of the rules of this chapter. These interpretations, if any, may be found on the Board's website. (11-1-13)T

**003. ADMINISTRATIVE APPEALS.**

Due to the size of this board, the frequency and nature of its proceedings, it is in the best interests of the Board and those it serves to decline to adopt the majority of the procedures regarding contested cases in, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 000 through 799; however, to the extent there is no conflict between the rules of the Board and the rules of the Attorney General, certain provisions of the rules of the Attorney General are adopted or are modified herein to reflect administrative practice before the Board. (11-1-13)T

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (11-1-13)T

**01. "Association for the Treatment of Sexual Abusers Professional Code of Ethics"** 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (11-1-13)T

**02. "Association for the Treatment of Sexual Abusers Practice Standards and Guidelines for the Evaluation, Treatment and Management of Adult Male Sexual Abusers"** 2005 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (11-1-13)T

**03. "Bylaws and Constitution of the American Association of Police Polygraphists"** effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (11-1-13)T

**04. "Bylaws of the American Polygraph Association"** effective January 2012, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (11-1-13)T

**05. "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices"** edition 2013, is herein incorporated by reference and is available from the Board's office and on the Board website, <http://socb.idaho.gov/>. (11-1-13)T

**06. The Sexual Offender Management Board's "Required Format for Psychosexual Evaluation Reports"** effective 2013, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://socb.idaho.gov/>. (11-1-13)T

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

The office of the Sexual Offender Management Board is located within the Idaho Department of Correction, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m. Monday through Friday except legal holidays. The Board's telephone number is (208) 954-8511 and the FAX number is (208) 954-8519. The Board's official website is <http://www.somb.idaho.gov/>. (11-1-13)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

**01. Administrative Rules.** The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (11-1-13)T

**02. Public Records Requests.** Requests for public information are processed in compliance with IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. (11-1-13)T

007. -- 009. (RESERVED)

**010. DEFINITIONS.**

- 01. Board.** The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (11-1-13)T
- 02. Central Roster.** A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (11-1-13)T
- 03. Certificate Holder.** A person who has been approved by the Board and certified as meeting qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (11-1-13)T
- 04. Certified Evaluator.** Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (11-1-13)T
- 05. Certified Polygraph Examiner.** A polygraph examiner who has received specialized post conviction sex offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. (11-1-13)T
- 06. Certified Treatment Provider.** A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (11-1-13)T
- 06. Client.** A person receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (11-1-13)T
- 08. Established Standards.** The "Idaho Sexual Offender Management Board's Standards and Guidelines for Adult Sexual Offender Management Practices," as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (11-1-13)T
- 09. Provisional/Supervised Psychosexual Evaluator.** A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the direct supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. (11-1-13)T
- 10. Provisional/Supervised Sex Offender Treatment Provider.** A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the direct supervision of a senior/approved sex offender treatment provider. (11-1-13)T
- 11. Psychosexual Evaluation.** A comprehensive evaluation and assessment specifically addressing a

person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, by a person who has been certified by the Board. (11-1-13)T

**12. Quality Assurance.** Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (11-1-13)T

**13. Sexual Offender.** A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (11-1-13)T

**14. Sexual Offender Classification Board.** A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (11-1-13)T

**15. Supervision.** (11-1-13)T

**a.** For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (11-1-13)T

**b.** For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor. (11-1-13)T

**16. Treatment.** For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (11-1-13)T

**17. Violent Sexual Predator.** A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (11-1-13)T

**011. ABBREVIATIONS.**

**01. ATSA.** The Association for the Treatment of Sexual Abusers. (11-1-13)T

**02. DSM.** The "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association. (11-1-13)T

**03. IDOC.** The Idaho Department of Correction. (11-1-13)T

**04. PCSOT.** "Post conviction sex offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sex offenders. (11-1-13)T

**05. SOCB.** The Sexual Offender Classification Board. (11-1-13)T

**06. SOMB.** The Sexual Offender Management Board. (11-1-13)T

**012. -- 019. (RESERVED)**

**020. RECORDKEEPING.**

**01. Certificate Holders.** Records on all applicants and certifications issued, renewed, denied, suspended, revoked, or otherwise monitored shall be maintained for a period not less than five (5) years. (11-1-13)T

**02. Violent Sexual Predators.** The file on a sexual offender who was designated as a violent sexual predator by the SOCB is maintained by the Board and is considered the official file for all purposes. (11-1-13)T

**021. BOARD MEETINGS.**

**01. Meetings.** The Board meets at least quarterly and may meet more frequently. All business of the Board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (11-1-13)T

**02. Agenda.** An agenda for each regularly scheduled meeting is posted in compliance with Section 67-2343, Idaho Code. (11-1-13)T

**022. -- 039. (RESERVED)**

**040. CERTIFIED EVALUATOR QUALIFICATIONS.**

**01. Certified Evaluators.** Each evaluator who conducts or assists with the conduct of a psychosexual evaluation pursuant to Section 18-8316, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (11-1-13)T

**02. Certification Requirements.** Minimum requirements for certification as a psychosexual evaluator include criteria, requirements, and expectations in the following categories: (11-1-13)T

- a. Formal educational requirements; (11-1-13)T
- b. Professional licensure requirements; (11-1-13)T
- c. Clinical experience requirements; (11-1-13)T
- d. Specialized training requirements; and (11-1-13)T
- e. Continuing education and professional development requirements. (11-1-13)T

**041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.**  
The Board issues certificates within three (3) levels reflective of a person's training and experience: (11-1-13)T

**01. Senior/Approved Psychosexual Evaluator.** (11-1-13)T

**a.** Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (11-1-13)T

**b.** Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (11-1-13)T

**c.** Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (11-1-13)T

**02. Associate/Supervised Psychosexual Evaluator.** (11-1-13)T

**a.** Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (11-1-13)T

**b.** Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; (11-1-13)T

**c.** Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (11-1-13)T

**d.** Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (11-1-13)T

**03. Provisional/Supervised Psychosexual Evaluator.** (11-1-13)T

**a.** Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (11-1-13)T

**b.** Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (11-1-13)T

**c.** May assist with the conduct of psychosexual evaluations only under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (11-1-13)T

**042. -- 079. (RESERVED)**

**080. SEXUAL OFFENDER TREATMENT PROVIDER QUALIFICATIONS.**

**01. Certified Sexual Offender Treatment Provider.** Each person who provides treatment to sexual offenders as ordered or required by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or the Idaho Department of Juvenile Corrections, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (11-1-13)T

**02. Certification Requirements.** Minimum requirements for certification as a sexual offender treatment provider include criteria, requirements, and expectations in the following categories: (11-1-13)T

**a.** Formal educational requirements; (11-1-13)T

**b.** Professional licensure requirements; (11-1-13)T

**c.** Clinical experience requirements; (11-1-13)T

**d.** Specialized training requirements; and (11-1-13)T

**e.** Continuing education and professional development requirements. (11-1-13)T

**081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.** The Board issues certificates within three (3) levels reflective of a person's training and experience: (11-1-13)T

**01. Senior/Approved Sexual Offender Treatment Provider.** (11-1-13)T

**a.** Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (11-1-13)T

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. (11-1-13)T

**02. Associate/Supervised Sexual Offender Treatment Provider.** (11-1-13)T

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (11-1-13)T

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (11-1-13)T

c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (11-1-13)T

**03. Provisional/Supervised Sexual Offender Treatment Provider.** (11-1-13)T

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (11-1-13)T

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (11-1-13)T

c. Shall only provide treatment services under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (11-1-13)T

**082. -- 099. (RESERVED)**

**100. SPECIALIZED TRAINING FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.**

For initial certification as a psychosexual evaluator or sexual offender treatment provider, an applicant must have participated in specialized training in the field of sexual abuse, as set forth in the established standards issued by the Board. Sources for such training may be formal conferences, symposia, seminars and workshops in areas such as: (11-1-13)T

**01. Sexually Abusive Behavior.** Contemporary research regarding the etiology of sexually abusive behavior; (11-1-13)T

**02. Offending Behavior.** Research-identified risk factors for the development and continuation of sexually abusive/offending behavior; (11-1-13)T

**03. Assessment, Treatment, and Management of Adult Sex Offenders.** Contemporary research and practice in the areas of assessment, treatment, and management of adult sex offenders; (11-1-13)T

**04. Specific Risk Assessment Tools.** Research-supported, sex offender-specific risk assessment tools; and (11-1-13)T

**05. Deviant Sexual Arousal and/or Interests.** Physiological assessment of deviant sexual arousal and/or interests. (11-1-13)T

**101. CONTINUING EDUCATION FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.**

To maintain certification as a psychosexual evaluator or sexual offender treatment provider, a certificate holder must receive continuing education in the field of sexual abuse. (11-1-13)T

**01. Senior/Approved and Associate/Supervised Certification Levels.** A psychosexual evaluator or sexual offender treatment provider who is certified at a senior/approved or an associate/supervised level must receive a minimum of forty (40) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. (11-1-13)T

**02. Provisional/Supervised Certification Level.** A provisional/supervised psychosexual evaluator or sexual offender treatment provider must receive a minimum of twenty (20) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training annually as set forth in the established standards issued by the Board. (11-1-13)T

**102. -- 149. (RESERVED)**

**150. REQUEST FOR CONDITIONAL WAIVER.**

**01. Conditional Waiver.** The Board may consider an applicant's request for conditional waiver for deficiencies in experience qualifications as set forth in the established standards issued by the Board. Conditional waiver requests shall only be considered for psychosexual evaluator or sexual offender treatment provider applicants at the senior/approved or associate/supervised level. (11-1-13)T

**02. Duration.** A conditional waiver is limited to a period of three (3) years. Conditional waivers may not be extended or renewed after the third year. (11-1-13)T

**151. CRITERIA EXCEPTION FOR PSYCHOSEXUAL EVALUATORS.**

Any person currently certified by the Board to conduct psychosexual evaluations on the date the established standards issued by the Board become effective and in force will be granted continued certification by the Board upon application. The certificate holder shall be assigned to the level of certification reflective of his training and experience in accordance with the established standards issued by the Board. (11-1-13)T

**152. RECIPROCITY.**

The Board may consider reciprocity for any applicant who has been licensed or certified to conduct psychosexual evaluations or sexual offender treatment in another state or jurisdiction as set forth in the established standards issued by the Board. (11-1-13)T

**153. EXCLUSION.**

Each mental health employee of the Idaho Department of Correction or Idaho Department of Juvenile Corrections who conducts psychosexual evaluations or provides sexual offender treatment is exempt from the certification process. This exemption shall only apply while the employee is acting within the course and scope of his employment with the applicable agency. (11-1-13)T

**154. REQUEST FOR CHANGE IN CERTIFICATION LEVEL.**

**01. Request to Advance in Level of Certification.** A certificate holder may apply at any time during an effective certification to advance to the next higher level of certification provided that he meets the established qualifications and requirements as set forth in the established standards issued by the Board. (11-1-13)T

**02. Request to Change to a Less Independent Level of Certification.** A certificate holder may apply at any time during an effective certification for a reduction in his level of certification in the event that he no longer meets the established qualifications and requirements for his current level of certification as set forth in the established standards issued by the Board. (11-1-13)T

**155. APPLICATION FOR CHANGE IN CERTIFICATION LEVEL.**

Application for change in certification level shall be on a form provided by the Board and shall be submitted with the required supporting documentation and applicable renewal application processing fee: (11-1-13)T

**01. Advance to Senior/Approved Level of Certification Application Fee.** A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (11-1-13)T

**02. Advance to Associate/Supervised Level of Certification Application Fee.** A non-refundable renewal application fee payable to the Board in the amount of thirty dollars (\$30) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (11-1-13)T

**03. Change to a Less Independent Level of Certification Application Fee.** A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (11-1-13)T

**156. -- 199. (RESERVED)**

**200. POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER QUALIFICATIONS.**

**01. Certified Examiner.** Each person who conducts post conviction sexual offender polygraphs as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (11-1-13)T

**02. Certification Requirements.** Minimum requirements for certification as a sexual offender treatment provider include criteria and requirements in the following categories: (11-1-13)T

- a.** Educational requirements; (11-1-13)T
- b.** Experience requirements; (11-1-13)T
- c.** Specialized training requirements; and (11-1-13)T
- d.** Continuing education and professional development requirements. (11-1-13)T

**201. -- 229. (RESERVED)**

**230. SPECIALIZED TRAINING FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.**

For initial certification as a post conviction sexual offender polygraph examiner, an applicant must have successfully completed a minimum of forty (40) hours of formal post conviction sex offender polygraph testing (PCSOT) training, beyond the basic polygraph training course requirements, from an accredited American Polygraph Association program or school. (11-1-13)T

**231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.**

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of forty (40) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. Twenty (20) hours of such continuing education



shall pertain to specialized sexual offender polygraph training. (11-1-13)T

**232. -- 299. (RESERVED)**

**300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.**

**01. General Considerations for Certified Evaluators and Certified Treatment Providers.** Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (11-1-13)T

**a.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (11-1-13)T

**b.** Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004 of these rules; (11-1-13)T

**c.** Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (11-1-13)T

**d.** Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (11-1-13)T

**e.** Be committed to community protection and safety; (11-1-13)T

**f.** Provide services in a manner that ensures humane and ethical treatment of clients; (11-1-13)T

**g.** Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (11-1-13)T

**h.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (11-1-13)T

**i.** Have no sexual relationships with any client. (11-1-13)T

**02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.** Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (11-1-13)T

**a.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (11-1-13)T

**b.** Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the American Polygraph Association; (11-1-13)T

**c.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the American Polygraph Association or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (11-1-13)T

**d.** Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the Association for the Treatment of Sexual Abusers, as referenced in Section 004 of these rules; (11-1-13)T

**e.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (11-1-13)T

**f.** Have no sexual relationships with any client. (11-1-13)T

**301. -- 329. (RESERVED)**

**330. INITIAL CERTIFICATION APPLICATION.**

An applicant seeking certification by the Board must submit a completed application on forms provided by the Board for the applicant's area of practice accompanied by documentation as outlined in the established standards issued by the Board and an initial certification application fee made payable to the Board. (11-1-13)T

**331. EXPIRATION AND RENEWAL OF CERTIFICATION.**

No certification shall be renewed, except as follows: (11-1-13)T

**01. Renewal.** At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. (11-1-13)T

**02. Removal from the Roster.** A certificate holder who has not renewed his certification shall be removed from the central roster thirty (30) days after his certification has expired. (11-1-13)T

**03. Renewal After Certification Expiration.** A certificate holder whose certification has expired may reapply at any time for certification as follows: (11-1-13)T

**a.** A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (11-1-13)T

**b.** A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (11-1-13)T

**332. FEES.**

The following non-refundable application processing fees are established by the Board: (11-1-13)T

**01. Initial Certification.** Application processing fees for initial certification shall be: (11-1-13)T

**a.** Senior/Approved Psychosexual Evaluator or Treatment Provider – Seventy-five dollars (\$75). (11-1-13)T

**b.** Associate/Supervised Psychosexual Evaluator or Treatment Provider – Seventy-five dollars (\$75). (11-1-13)T

**c.** Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (11-1-13)T

**d.** Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (11-1-13)T

**02. Renewal Certification.** Application processing fees for renewal certification shall be: (11-1-13)T

**a.** Senior/Approved Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (11-1-13)T

**b.** Associate/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (11-1-13)T

**c.** Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (11-1-13)T

**d.** Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (11-1-13)T

**03. Change in Certification Level.** Application processing fees for a change in certification level shall be as referenced in Section 155 of these rules. (11-1-13)T

**333. CERTIFICATION PERIOD.**

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (11-1-13)T

**01. Senior/Approved Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter. (11-1-13)T

**02. Associate/Supervised Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter. (11-1-13)T

**03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder's month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (11-1-13)T

**04. Post Conviction Sexual Offender Polygraph Examiner.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter. (11-1-13)T

**334. APPLICABILITY AND NOTIFICATION OF CHANGES.**

Certification shall only apply to the person named therein and is not transferrable. The Board must be notified in writing within thirty (30) days of any change in the certificate holder's name, business address or phone number. (11-1-13)T

**335. REQUEST FOR PLACEMENT ON INACTIVE STATUS.**

Any certificate holder may request placement on inactive status by submitting a written request to the SOMB specifying the reasons for the request and indicating the inactive status effective date. A certificate holder who is placed on inactive status shall be removed from the central roster of certified evaluators, treatment providers and post conviction sexual offender polygraph examiners. A person who has been placed on inactive status may reapply for certification in accordance with the established standards issued by the Board. (11-1-13)T

**336. -- 349. (RESERVED)**

**350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH PROVIDERS.**

**01. Identification.** The Board shall publish a central roster of psychosexual evaluators, sexual offender treatment providers and post conviction sexual offender polygraph providers pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: (11-1-13)T

- a. The certificate holder's name; (11-1-13)T
- b. The certificate holder's business address and telephone number; (11-1-13)T
- c. Whether the certificate holder is certified or approved by conditional waiver; (11-1-13)T
- d. The category and applicable level of certification; (11-1-13)T

- e. The expiration date of the certification or conditional waiver; and (11-1-13)T
- f. Current formal disciplinary action imposed on a certificate holder by the Board. (11-1-13)T

**02. Availability.** A copy of the central roster may be obtained from the Board, and shall be posted on the Board's website. (11-1-13)T

**351. -- 379. (RESERVED)**

**380. DENIAL AND GROUNDS FOR DISCIPLINE.**

**01. Cause.** The Board may deny, suspend, revoke, restrict or otherwise monitor certification of an applicant or certificate holder for the following reasons: (11-1-13)T

- a. Failure to meet or maintain the minimum eligibility criteria and qualifications for certification; (11-1-13)T
- b. Falsification of any information or documentation, or concealing a material fact in the application for certification, or during any investigation or quality assurance review; (11-1-13)T
- c. Misrepresentation of current level or designation of certification, or practicing outside the scope or current level or designation of certification; (11-1-13)T
- d. Failure to comply with Section 18-8316, Idaho Code, any portion of this chapter, or the standards adopted by the Board; (11-1-13)T
- e. Failure to demonstrate an understanding of counter-transference issues and a broad knowledge of sexuality in the general populations, and basic theories and typologies of sexual offenders and sexual assault victims; (11-1-13)T
- f. Failure or refusal to comply with the quality assurance review process or to cooperate during any investigation concerning certification, including failure or refusal to provide data, information or records as requested by the Board or designee; (11-1-13)T
- g. Failure to comply with any informal disciplinary measures, remedial steps, corrective action or final order issued by the Board as a condition of continued certification, including practicing on a suspended or restricted certification; (11-1-13)T
- h. Engaging in conduct that departs from the standards established by the Board; (11-1-13)T
- i. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by a professional licensing board; (11-1-13)T
- j. Conviction of, or entry of a withheld judgment or plea of nolo contendere to conduct constituting a felony or crime of moral turpitude; or (11-1-13)T
- k. Failure to notify the Board in writing of any circumstances that affect a certificate holder's eligibility for certification, including any disciplinary action taken by a respective professional licensing board or conviction of any felony or crime of moral turpitude. (11-1-13)T

**02. Mirroring Orders.** In the event a state licensing board with authority over a certificate holder's professional license takes action against the certificate holder's professional license in any fashion which suspends, restricts, limits or affects the certificate holder's ability to provide services pursuant to their SOMB certification, the SOMB shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the certificate holder's SOMB certification in the same fashion as the professional licensing board action as outlined in the established standards issued by the Board. (11-1-13)T

**03. Emergency Suspension.** Pursuant to Section 67-5247, Idaho Code, if the Board finds that public health, safety or welfare requires immediate emergency action the Board may take such action necessary to prevent or avoid the immediate danger as outlined in the established standards issued by the Board. (11-1-13)T

**381. REAPPLICATION FOLLOWING CERTIFICATION DENIAL OR DISCIPLINARY ACTION.**

**01. Denial.** An applicant whose certification was denied may reapply when evidence is available confirming that he meets the required qualifications for the respective area of practice as referenced in Sections 040, 080 or 200 of these rules; (11-1-13)T

**02. Suspension.** A person whose certification has been suspended may apply for reinstatement after the suspension period has expired and following completion of any remedial steps or corrective action ordered by the Board, as outlined in the established standards issued by the Board; (11-1-13)T

**03. Restriction.** A person whose certification has been restricted or otherwise monitored may request removal of the restrictions after the restriction period has expired. If no period of restriction was established, the request may be made following completion of any remedial steps or corrective action ordered by the Board, as outlined in the established standards issued by the Board; (11-1-13)T

**04. Revocation.** A person whose certification has been revoked may request reinstatement after the revocation period has expired, as outlined in the established standards issued by the Board. The Board shall have discretion to impose any monitoring conditions upon a certificate holder whose certification has been reinstated following revocation; (11-1-13)T

**05. Withheld Discipline and Probation.** A certificate holder whose formal discipline was withheld and placed on probationary status may request reinstatement after the probationary period has expired and any conditions imposed have been met, as outlined in the established standards issued by the Board. (11-1-13)T

**382. LEVELS OF DISCIPLINE.**

The levels of disciplinary action utilized by the Board against a certificate holder may generally include formal discipline, informal discipline or withholding formal discipline and probation. (11-1-13)T

**383. FORMAL DISCIPLINE.**

Formal disciplinary action consists of suspension, revocation or other restrictions. Formal disciplinary actions restrict or otherwise impede a certificate holder's ability to perform sexual offender services consistent with their certification level. (11-1-13)T

**384. INFORMAL DISCIPLINE.**

Informal disciplinary action consists of monitoring a certificate holder or issuing letters of informal reprimand or counseling. Informal disciplinary actions do not restrict or otherwise impede a certificate holder's ability to perform sexual offender services consistent with their certification level. (11-1-13)T

**385. WITHHOLDING FORMAL DISCIPLINE AND PROBATION.**

The Board may withhold the imposition of formal discipline and place the certificate holder on a period of probation not to exceed two (2) years. The Board may impose any conditions of probation as deemed necessary to ensure compliance with the established standards issued by the Board. Such probationary conditions may include attendance at specialized training, review of the certificate holder's work product by the Board or its designee, or supervised practice by a senior level certificate holder. Failure to comply with a probationary condition imposed by the Board may result in the imposition of any suspended disciplinary action. (11-1-13)T

**386. COMPLAINTS.**

Any individual may file against a certificate holder by submitting a written complaint to the Board, as outlined in the established standards issued by the Board. (11-1-13)T

**01. Initial Review.** The Board's designee shall conduct an initial review of any complaint or information received to determine if the Board has jurisdiction. (11-1-13)T

**02. Investigation.** The Board's designee shall conduct an investigation upon a determination that the Board has jurisdiction and a possible violation may exist. Investigative findings shall be presented to the Board as outlined in the established standards issued by the Board. (11-1-13)T

**387. DISCIPLINARY PROCESS.**

The disciplinary process may be initiated as a result of a complaint received by the Board or a quality assurance review, or be based upon a review of information submitted to the Board during the certification process, monitoring process or while under formal probation. The Board must provide the applicant or certificate holder with notice of intent to deny, suspend, revoke, restrict or otherwise monitor certification, and the right to appeal. (11-1-13)T

**01. Notification.** The Board shall notify the applicant or certificate holder of the Board's intended action in writing using certified mail. (11-1-13)T

**02. Notice Contents.** The notice shall: (11-1-13)T

**a.** State the basis for the intended action; (11-1-13)T

**b.** May suggest means by which the matter might be remedied; and (11-1-13)T

**c.** Provide the applicant or certificate holder notice of the right to a hearing in the matter. (11-1-13)T

**388. RESPONSE TO NOTICE OF INTENDED ACTION.**

The applicant or certificate holder shall have not more than thirty (30) days from the date on which the Board's notice of intended action is served upon him to request a hearing with the Board. The written request shall include documentation supporting the applicant or certificate holder's argument refuting the Board's intended action and a requested remedy. (11-1-13)T

**01. Failure to Respond.** The board shall issue a final order imposing formal disciplinary action if the applicant or certificate holder fails to respond to the Board's notice of intended action or request a hearing within the designated time frame. (11-1-13)T

**02. Petition for Reconsideration.** A petition for reconsideration may be filed by an applicant or certificate holder who failed to respond or request a hearing within the required time frame. (11-1-13)T

**389. HEARING.**

Hearings in contested cases shall be conducted by a hearing officer appointed by the Board as outlined in the established standards issued by the Board. (11-1-13)T

**01. Recommended Order.** All decisions by the hearing officer are considered to be a recommended order and will be reviewed by the Board prior to the issuance of a final order or remanded back to the hearing officer for further consideration. (11-1-13)T

**02. Response to Recommended Order.** Within twenty-one (21) days of the service of the recommended order, any party may submit in writing to the Board to support or take exceptions to any part of the recommended order and file briefs in support of the party's position on any issue in the proceeding. The request must identify all legal and factual bases of disagreement with the recommended order. A review by the Board will be conducted as outlined in the established standards issued by the Board. (11-1-13)T

**03. Resolution without a Hearing.** Any contested case may be resolved without a hearing on the merits of the notice of intended action by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss a request for hearing that is not filed within the time limits set forth in these rules. (11-1-13)T

**390. FINAL ORDER.**

The Board will issue a final order or notice of remand within sixty (60) days of the service of the recommended order, unless a review of the recommended order was filed. (11-1-13)T

**391. APPEAL TO DISTRICT COURT**

Any person aggrieved by a final order issued by the Board in a contested case may appeal to district court pursuant to Section 67-5270, Idaho Code, and IDAPA 04.11.01., "Idaho Rules of Administrative Procedure of the Attorney General," Sections 790 through 799. (11-1-13)T

**392. -- 399. (RESERVED)**

**400. QUALITY ASSURANCE.**

Policies for technical review and quality assurance of psychosexual evaluation reports and sexual offender treatment services are outlined in the established standards issued by the Board. The Board shall develop a quality assurance process for review of post conviction sexual offender polygraph examinations. (11-1-13)T

**401. -- 449. (RESERVED)**

**450. PSYCHOSEXUAL EVALUATIONS.**

Pre-sentence psychosexual evaluations shall be conducted pursuant to the established standards issued by the Board and written utilizing the "Required Format for Psychosexual Evaluations," as referenced in Section 004 of these rules. (11-1-13)T

**01. Testing.** The evaluator shall utilize testing instrumentation and assessment measures as outlined in the established standards issued by the Board. (11-1-13)T

**02. Client Participation.** The client being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the client's refusal or declination in the psychosexual evaluation report. (11-1-13)T

**451. -- 479. (RESERVED)**

**480. POLYGRAPH EXAMINATIONS.**

Post conviction sexual offender polygraph examinations performed pursuant to an order or requirement by the court or requested by the Idaho Department of Correction or Idaho Commission for Pardons and Parole shall be conducted by a person certified by the Board to conduct such examinations and shall follow the established standards issued by the Board. (11-1-13)T

**481. -- 499. (RESERVED)**

**500. SEXUAL OFFENDER TREATMENT.**

Specialized sexual offender treatment conducted pursuant to an order or requirement by the court, the Idaho Department of Correction, the Idaho Commission for Pardons and Parole or the Idaho Department of Juvenile Corrections shall be conducted by a person certified by the Board to conduct such treatment and shall follow the established standards issued by the Board. (11-1-13)T

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### **PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES**

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*Deadline for submission of written comments is October 23, 2013, unless otherwise noted.  
Deadline for public hearing requests is October 16, 2013, unless otherwise noted.  
(Temp & Prop) indicates the rule is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### **DEPARTMENT OF AGRICULTURE PO Box 790 Boise, ID 83701**

**02-0625-1301, Rules Governing the Planting of Beans Other Than Phaseolus Species in Idaho.** Requires all lots of soybean seed and seed from other related plant species for planting in Idaho to be tested for bean diseases of concern and nematodes that do not occur in Idaho.

#### **IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS PO Box 83720, Boise, ID 83720-0285**

**05-0102-1301, Rules and Standards for Secure Juvenile Detention Centers.** Clarifies the Prison Rape Elimination Act (PREA) standards and how detention standards and PREA standards relate.

#### **IDAPA 07 - DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Ste. 150, Meridian, ID 83642**

**07-0106-1301, Rules Governing the Use of National Electrical Code.** Incorporates by reference the 2014 NEC with amendments related to circuits and receptacles located near sinks, in laundry rooms and kitchens, and on decks and porches, and retains previous amendment requiring the use of AFCI circuit breakers in bedrooms.

**07-0110-1301, Rules Governing Certification and Approval of Electrical Products and Materials.** Provides that all electrical products and materials for installation in Idaho may be approved either through certification and listing by a nationally recognized testing laboratory or through a field evaluation process performed using recognized practice and procedures.

**07-0501-1301, Rules of the Public Works Contractors License Board.** Allows for submission of applications for licensure to be done electronically other than by facsimile; clarifies acceptable formats for communication with the Division; provides for time extension when renewing a license.

**07-0701-1301, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems.** Incorporates by reference the 2012 editions of the International Mechanical Code, the International Fuel Gas Code, and Parts V and VI of the International Residential Code related to HVAC installations with amendments.

#### **IDAPA 08 - STATE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION PO Box 83720, Boise, ID 83720-0037**

**08-0201-1302, Rules Governing Administration.** Changes to the GED testing divides the section on GED testing from the high school equivalency section more clearly and specifies that state set's the fee paid by each individual for GED exam; clarifies that the passing minimum score is set by the GED Testing Service; removes requirement that test takers must be Idaho residents; requires test takers to show proof of identification using government issued identification.

**08.02.02 - Rules Governing Uniformity**

**\*08-0202-1306**, (\*PH) Updates incorporation by reference of the Idaho Standards for Initial Certification of Professional School Personnel manual and the Idaho Procedures for Idaho Public Driver Education Programs manual.

**\*08-0202-1307**, (\*PH) (Temp & Prop) Clarifies requirements for out-of-state applicants taking the Idaho Comprehensive Literacy Course and allows for Department-approved courses to be taught as part of the recertification process.

**\*08-0202-1308**, (\*PH) Updates several endorsement to reflect best practices and qualifications for Idaho educators and eliminates the Driver Education endorsement which is no longer offered.

**08.02.03 - Rules Governing Thoroughness**

**08-0203-1301**, Sets out the requirements for the State Board to recognize Distinguished Schools, as well as grant Additional Yearly Growth Awards.

**\*08-0203-1306**, (\*PH) Sets out minimum requirements for physical education at all levels and adds CPR as graduation requirement; allows students to take dual credit engineering or dual credit computer science or AP computer science as a math or science credit rather than as electives.

**\*08-0203-1307**, (\*PH) Implements cursive writing as a core standard in elementary schools in the 2013-14 school year.

**IDAPA 11 - IDAHO STATE POLICE  
700 S. Stratford Dr., Meridian, ID 83642**

**11-1001-1301**, *Rules Governing Idaho Public Safety and Security Information System*. Increases fees for ILETs system users.

**11-1002-1301**, *Rules Establishing Fees for Services - Idaho Criminal Justice Information System*. Adds terms and references terms as defined in Idaho Code; provides procedures to: expunge of a person's criminal history record; transmit criminal history arrest fingerprints; and challenge the accuracy and completeness of a criminal history record in the BCI database.

**IDAPA 13 - FISH AND GAME COMMISSION  
PO Box 25, Boise, ID 83707****13.01.08 - Rules Governing the Taking of Big Game Animals in Idaho**

**13-0108-1302**, (Temp & Prop) An adult accompanying a Nonresident Junior Mentored Tag holder is no longer required to have a tag valid in the same area.

**13-0108-1303**, (Temp & Prop) Clarifies rule for designating a controlled hunt tag from a parent or grandparent to his or her minor child or grandchild.

**13-0109-1301**, *Rules Governing the Taking of Game Birds in Idaho*. (Temp & Prop) Clarifies rule for designating a controlled hunt tag from a parent or grandparent to his or her minor child or grandchild.

**13.01.11 - Rules Governing Fish**

**13-0111-1301**, (Temp & Prop) Defines the terms "single-point hook" and "watercraft" as used in fish season proclamations.

**13-0111-1302**, (Temp & Prop) Clarifies that sturgeon angling is "catch-and-release" only and they may not be removed from the water. This language was inadvertently removed from rule during a chapter restructure, but the rule was never rescinded by the Commission.

**IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS  
PO Box 83720, Boise, ID 83720-0078**

**14-0101-1301**, *Rules of Procedure of the Board of Registration for Professional Geologists*. Defines term 'responsible charge' and clarifies when a geologist may seal work prepared by someone else.

**IDAPA 15 - OFFICE OF THE GOVERNOR  
MILITARY DIVISION - BUREAU OF HOMELAND SECURITY  
700 S. Stratford Dr., Bldg. 600, Meridian, ID 83642**

**15-0603-1301**, *Public Safety Communications Rules*. Changes chapter name to more accurately reflect scope of

rule; corrects citations, provides internal consistency in terminology, and eliminates redundant and unnecessary language.

**15-0604-1301, Rules Governing Idaho Youth Challenge Program.** New chapter administers the Idaho Youth Challenge Program; establishes student acceptance and selection criteria and funding and accounting processes; creates an admissions board and establishes its duties; and creates a governing board and a board of trustees.

**15-1301-1301, Rules of the Idaho Emergency Response Commission.** Chapter is repealed because Commission was dissolved.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16.03.01 - Eligibility for Health Care Assistance for Families and Children**

**16-0301-1301,** Chapter is being repealed and rewritten.

**16-0301-1302,** Chapter rewrite conforms to federal law changes by revising eligibility criteria, application requirements, definitions, financial and non-financial requirements, health coverage for children and adults and access to other health plans; addresses annual eligibility renewal and reporting requirements.

**16-0304-1301, Rules Governing the Food Stamp Program in Idaho.** Exempts federal income tax refunds from resource limits for up to 12 months from the time of receipt as a liquid resource; allows a standard medical expense deduction for qualifying individuals; allows the Department flexibility to select options allowed under federal regulation when calculating expense changes used for food stamp benefits.

**16-0305-1301, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).** Simplifies verification requirements for proof of citizenship and lawful alien status; updates residency requirements to reflect federal law; removes child support requirements that do not meet federal requirements while retaining policies to cooperate with obtaining medical support.

**16-0306-1301, Refugee Medical Assistance.** Amends definitions and eligibility determination requirements to comply with federal law.

**16.03.09 - Medicaid Basic Plan Benefits**

**\*16-0309-1302, (\*PH)** Aligns rule to federal regulations and complies with CMS requirements related to missed appointments; re-validates provider enrollment information no less frequently than every 5 years; ensures providers prescribing drugs or ordering services for Medicaid participants are enrolled with the agency; ensures providers complete a screening process involving site visits and fee payments for certain types of providers either through the Medicaid agency itself or Medicare; and aligns appeals process for providers denied enrollment with federal requirements.

**\*16-0309-1303, (\*PH)** Adds the federally required tobacco cessation counseling for all non-pregnant Medicaid eligible adults over the age of 21.

**16-0504-1301, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding.** Incorporates by reference the "Service Standards for ICDVVA-Funded Programs," Edition 2014-1.

**16-0507-1301, The Investigation and Enforcement of Fraud, Abuse, and Misconduct.** Aligns rule to Idaho statute to include all public assistance providers and programs that would be subject to investigation and enforcement actions to increase accountability for all programs to help prevent fraud and abuse of public funds.

**16-0612-1301, Rules Governing the Idaho Child Care Program (ICCP).** Exempts in-home child care providers from health and safety inspections, but each in-home provider must complete health and safety training.

**16-0730-1301, Behavioral Health Community Crisis Centers.** (\*PH) Establishes the benefit and eligibility process for behavioral health community crisis centers for programs providing behavioral health crisis services to persons residing in Idaho.

**IDAPA 17 - INDUSTRIAL COMMISSION  
PO Box 83720, Boise, ID 83720-0041**

**17-0209-1301, Medical Fees.** Adjusts the dispensing fees for pharmacies allowed under the pharmaceutical fee schedule.

**17-0210-1301, Security For Compensation -- Insurance Carriers.** Changes the deductible policy reporting period from February 1st to March 3rd to coincide with the premium tax due date and the mandatory data elements in the proof of coverage reports; removes the Appendices B and C reporting forms from rule.

**17-0211-1301, Security For Compensation - Self-Insured Employers.** Allows the Industrial Commission to presume that the most recent proof of coverage information contained in the Industrial Commission's database is correct for determining coverage by a self-insured employer.

**IDAPA 18 - DEPARTMENT OF INSURANCE  
700 W. State St., 3RD Floor, Boise, ID 83720**

**18-0123-1301, Rules Pertaining to the Idaho Insurance Holding Company System Regulatory Act.** Conforms rule to HB 197 by setting forth the elements of the new filing requirements for a new Form F - Enterprise Risk Report.

**18-0150-1301, Adoption of the International Fire Code.** Incorporates by reference the 2012 International Fire Code, with amendments.

**IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY  
PO Box 83720, Boise, ID 83720-0021**

**19-0101-1301, Rules of the Idaho State Board of Dentistry.** Updates incorporation by reference; clarifies practice standards for hygienist and assistants; reduces application by credential fee for dentists; revises advertising rules; reduces number of continuing education hours for specific license endorsements; requires dentists to maintain certain certifications to maintain specific sedation permits.

**IDAPA 21 - DIVISION OF VETERANS SERVICES  
PO Box 83720, Boise, ID 83720-0092**

**21-0102-1301, Rules Governing Emergency Relief for Veterans.** Allows Native American tribal veterans' representatives to apply for reimbursement from the Division for travel expenses for attending one regional training conference each year in support of the statewide service officer program.

**21-0108-1301, Rules Governing Veterans Recognition Fund Grant Program.** New chapter provides procedures for the application, review and award of grant moneys for veteran support programs.

**IDAPA 22 - IDAHO BOARD OF MEDICINE  
PO Box 83720, Boise, ID 83720-0058**

**22-0103-1301, Rules for the Licensure of Physician Assistants.** (Temp & Prop) Conforms rule regarding physician assistant prescriptive authority to statutory changes and rules governing prescriber drug outlets of the Board of Pharmacy.

**22-0113-1301, Rules for the Licensure of Dietitians.** Corrects name of the accrediting agency for dietetic educational programs from the "American Dietetic Association" to the "Academy of Nutrition and Dietetics"; corrects statutory citations.

**IDAPA 23 - BOARD OF NURSING  
PO Box 83720, Boise, ID 83720-0061**

**23-0101-1302, Rules of the State Board of Nursing.** (Temp & Prop) Allows a nurse moving to Idaho to practice for 90 days using an existing license from another Compact state while a new residency application is processed.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES  
PO Box 83720, Boise, ID 83720-0063**

**24-0201-1301, Rules of the Board of Barber Examiners.** Removes the 20-hour continued education requirement for barber instructor and barber styling instructor licensure renewal; removes obsolete grandfather rights provision.

**24-0401-1301, Rules of the Idaho Board of Cosmetology.** Defines 'clinical services'; reduces original and renewal fees for establishment, retail dealer, glamour photography, personal, instructor, and school licenses and for

endorsement fees; clarifies new school inspection process, when a student can provide clinical services, and that schools and establishments must post the sanitary rules.

**24-0501-1302, Rules of the Board of Drinking Water and Wastewater Professionals.** Reduces application and licensure fees and equalizes fees for on-line and written exams; amends education requirement for operators qualifying for a very small water system license or a very small wastewater system license.

**24-1101-1301, Rules of the State Board of Podiatry.** Updates incorporation by reference; updates examination rules and application process; amends exam fee section; increases continuing education to 15 hours after 1/1/2015; allows but limits a carryover of CE hours; provides a special exemption for hardship cases.

**24-1801-1301, Rules of the Real Estate Appraiser Board.** Conforms rule to changes to Appraiser Qualification Board in federal law and regulations regarding state licensed or certified appraisers; addresses appraisers' duties when appraisals are in litigation.

**24-2601-1301, Rules of the Idaho Board of Midwifery.** Increases application and initial and renewal license fees.

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

**1365 N. Orchard, Suite 172, Boise, ID 83706**

**25-0101-1201, Rules of the Outfitters and Guides Licensing Board.** Clarifies that hunting organizations and clubs offering outfitted facilities and services, including acquiring access to private land for hunting and for commercial gain, are subject to the rules governing licensed commercial outfitters.

#### **IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION**

**PO Box 700, Boise, ID 83720-0065**

**26.01.20 - Rules Governing the Administration of Park and Recreation Areas and Facilities**

**26-0120-1301, (\*PH)** Increases state park campsite fee caps by \$10 per night and by \$50 per night for Idaho state park camper cabins and yurts.

**26-0120-1302, (\*PH)** Increase fee caps for the Winter Access Program passes offered by Harriman and Ponderosa State Parks and adds two new pass types to program.

#### **IDAPA 27 - IDAHO BOARD OF PHARMACY**

**PO Box 700, Boise, ID 83720-0067**

**27.01.01 - Rules of the Idaho State Board of Pharmacy**

**27-0101-1207,** Amends the Board approved continuing pharmacy education requirements; mandates 1 hour of CPE for all pharmacists doing sterile compounding; clarifies the maximum allowable quantity of a CV scheduled controlled substance that can be dispensed by a pharmacist without prescription is 4 ounces; addresses drug storage and removal from a secured area adjacent to a pharmacy; clarifies that pharmacy structural security rules pertain to all pharmacies.

**27-0101-1301,** Establishes standards for the compounding of drugs, including general compounding standards controls that regulate equipment, practices, policies and procedures, compounding accuracy, certain records, and labeling; expands sterile product preparation rules.

**27-0101-1302,** Extends the acceptable forms of positive identification to obtain controlled substance prescriptions to include Enhanced Drivers Licenses (EDLs), Nexus Cards, and PASS Cards.

#### **IDAPA 28 - DEPARTMENT OF COMMERCE**

**700 W. State St., Boise, ID 83720**

**28-0207-1301, Rules Governing the Administration of the IGEM Grant Program.** New chapter establishes procedures for the administration of the IGEM grant program.

#### **IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**

**PO Box 700, Boise, ID 83720-0067**

**31-0101-1301, Rules of Procedure of the Idaho Public Utilities Commission.** Allows PUC to update its list of current utilities and railroads subject to the annual regulatory assessments; increases public involvement by making RSS feeds more user-friendly; recognizes utilities formed as limited liability companies; clarifies rules regarding customer notices.

**31-7103-1301, Railroad Safety and Accident Reporting Rules.** Adopts the 2013 edition of the federal safety regulations pertaining to the transportation of hazardous materials by railroads that are incorporated by reference.

**IDAPA 35 - STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35.01.01 - Income Tax Administrative Rules**

**35-0101-1301,** Revises time period relating to a net operating loss (NOL) carryback; removes language relating to NOL subtracted from income; establishes provisions relating to a NOL for a taxable year commencing on or after 1/1/2013; establishes provisions relating to the subtraction of a portion of a NOL; revises provisions on claims for credit or refund for overpayments attributable to a NOL carryback and provides that certain claims for NOLs shall be made pursuant to law; provides that certain loss recoveries are deductible; provides for a sourcing formula to Idaho for partnership income with exceptions; revises reporting and paying periods for Idaho income tax withheld by certain employers.

**35-0101-1302,** Clarifies term “place of abode” for federal foreign income exclusion; addresses pension income; adds tax brackets for 2013; amends income adjustment addition of credit for taxes paid to other states; adds deduction for certain loss recoveries; limits deduction for donation of technological equipment to the lesser of cost, fair market value, or taxpayer's Idaho taxable income; revises provisions relating to a NOL carryback; clarifies qualifying for the energy efficiency upgrade deduction; conforms to federal law for medical expense itemization minimums; clarifies that total income is federal total income; clarifies certain deductions for part-year or nonresidents; provides for a sourcing formula to Idaho for partnership income with exceptions; addresses bonus depreciation tax credit; clarifies the requirements for claiming investment tax credit carryovers; clarifies that the permanent building fund is paid by pass-through entities paying Idaho income tax for individuals on a composite return but not when the entity pays backup withholding for individuals; amends credit and refund rules.

**35-0102-1302, Sales Tax Administrative Rules.** Clarifies that signs such as traffic and street signs become real property after installation while others, such as business signs, do not; defines 'primary' and 'primarily' regarding use of tangible personal property; clarifies that events where participants pay to participate in a tasting, the charges are still taxable; clarifies that all coatings (paint, powder coating, etc.) are the same for sales tax purposes; clarifies that sales and use of equipment primarily used to improve and install real property are taxable even if the real property is used in production; conforms rule with federal program for food stamp exemption; clarifies promoter's responsibility in regards to documentation that must be obtained from participants at the event.

**35-0103-1302, Property Tax Administrative Rules.** Updates documents incorporated by reference used to determine values of certain property and to measure assessment level and uniformity; updates method used to value recreational vehicle living quarters; clarifies that certain properties are improvements (buildings and structures) and real property and should not be eligible for the personal property exemption; provides methodologies for valuing public rate regulated electric utility operating property; amends process for property tax valuation appeal hearings; provides guidance to the Commission and companies on how to report exempt personal property for operating property; defines oil and gas wells and the land that is eligible for exemption; clarifies that Commission will not approve a property tax levy computed on a property tax budget amount that exceeds the amount stated in the budget hearing notice; deletes requirement to issue tax notices for accounts that have zero balances due to the personal property exemption.

**35-0109-1301, Wine Tax Administrative Rules.** Clarifies when the exemption applies to wine sold by Idaho wine direct shippers to customers outside Idaho.

**35-0110-1301, Idaho Cigarette and Tobacco Products Tax Administrative Rules.** Redefines “wholesale sales price” to include “any person” selling tobacco products; addresses when separately stated charges are part of the wholesale sales price subject to tax and when they should be excluded; provides examples of how the wholesale sales price should be applied to sales made by out-of-state distributors who voluntarily hold an Idaho tobacco tax permit.

**35-0114-1301, Prepaid Wireless E911 Fee Administrative Rules.** New chapter administers the fees collected by retailers on the sale of prepaid wireless telecommunications service and clarifies that fee applies to sale of prepaid wireless service, not a device using such service and who must collect fee; clarifies when a sale is out-of-state and that it is exempt from the fee.



**35.02.01, Administration and Enforcement Rules**

**35-0201-1301**, Clarifies procedures for making a valid request for obtaining the name and address of the user of a stolen tax ID number.

**35-0201-1302**, Adds the interest rate for 2014 and the Revenue Ruling where the federal rate for the calculation can be found.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT****PO Box 7129, Boise ID 83707-1129**

**39-0260-1301, Rules Governing License Plate Provisions.** (Temp & Prop) Establishes restrictions and guidelines for the introduction and approval of new special plates.

**39-0350-1301, Rules Governing Safety Rest Areas.** Removes prohibition against discharging firearms at Safety Rest Areas because department has no authority to regulate firearms; restricts panhandling and donation seeking or soliciting; clarifies other provisions.

**39-0402-1301, Rules Governing Marking of Hazards to Air Flight.** (Temp & Prop) Clarifies which entities are exempt from the requirements for lighting and marking guyed towers.

**39-0404-1301, Rules Governing Idaho Airport Aid Program.** New procedures establish a uniform project prioritization methodology and a uniform annual grant program funding allocation methodology for the Idaho Airport Aid Program.

**IDAPA 52 - IDAHO STATE LOTTERY COMMISSION****PO Box 6537, Boise, ID 83707-6537**

**52-0102-1301, Gaming Rules of the Idaho State Lottery Commission.** Conforms rules to amendments to Idaho Code regarding record retention requirements and removal of Holiday Christmas Tree Fundraising.

**IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD****1299 N Orchard St Ste 110, Boise 83706****57.01.01 - Rules Governing the Sexual Offender Management Board**

**57-0101-1201**, (Temp & Prop) Chapter is being repealed and rewritten.

**57-0101-1202**, (Temp & Prop) Chapter rewrite amends existing standards and procedures for psychosexual evaluations and certification of psychosexual evaluators; establishes new standards and procedures for sexual offender treatment programs, sexual offender treatment providers and post-conviction sexual offender polygraph examiners; implements certification procedures for sexual offender treatment providers and post-conviction sexual offender polygraph examiners; establishes quality assurance process for adherence to standards and procedures; adds a hearing process for disciplinary action against a certificate holder.

**NOTICE OF ADOPTION OF TEMPORARY RULE****IDAPA 08 - BOARD OF EDUCATION/DEPT OF EDUCATION**

**08-0203-1305**, Rules Governing Thoroughness.

**NOTICE OF PUBLIC HEARING****IDAPA 02 - DEPT OF AGRICULTURE**

**02-0609-1301**, Rules Governing Invasive Species

Please refer to the Idaho Administrative Bulletin, **October 2, 2013, Volume 13-10**, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Fax: 332-1896; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*July 1, 1993 -- Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*This online index provides a history of all agency rulemakings from 1993 to the present.  
It tracks all rulemaking activities on each chapter of rules and includes negotiated,  
temporary, proposed, pending and final rules, public hearing notices,  
vacated rulemaking notices, and executive orders of the Governor.*

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# **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*April 4, 2013 -- October 2, 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** 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
- 02-0303-1301** 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** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
- 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)

**02.06.02, 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
- 02-0609-1301** Public Hearing, Bulletin Vol. 13-10

**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
- 02-0613-1301** 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
- 02-0622-1301** Adoption of Pending Rule, Bulletin Vol. 13-10 (eff. \*PLR 2014)

**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

**02-0623-1301** Adoption of Pending Rule, Bulletin Vol. 13-10 (eff. \*PLR 2014)

**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

**02-0625-1301** Proposed Rulemaking (New Chapter - Fee Rule), Bulletin Vol. 13-10

**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 05 -- DEPARTMENT OF JUVENILE CORRECTIONS***

**05.01.02, Rules and Standards for Secure Juvenile Detention Centers**

**05-0102-1301** Proposed Rulemaking, Bulletin Vol. 13-10

***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

**07-0106-1301** Proposed Rulemaking, Bulletin Vol. 13-10

**07.01.10, Rules Governing Certification and Approval of Electrical Products and Materials**

**07-0110-1301** Proposed Rulemaking, Bulletin Vol. 13-10

**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

**07.05.01, Rules of the Public Works Contractors License Board**

**07-0501-1301** Proposed Rulemaking, Bulletin Vol. 13-10

**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

**07-0701-1301** Proposed Rulemaking, Bulletin Vol. 13-10

***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)
- 08-0201-1302** Proposed Rulemaking, Bulletin Vol. 13-10

***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
- 08-0202-1301** Adoption of Pending Rule and Amendment to Temporary Rule, Bulletin Vol. 13-10 (eff. 8-16-13)T - (eff. \*PLR 2014)
- 08-0202-1306** Proposed Rulemaking, Bulletin Vol. 13-10
- 08-0202-1307** Temporary and Proposed Rulemaking, Bulletin Vol. 13-10 (eff. 8-26-13)T
- 08-0202-1308** Proposed Rulemaking, Bulletin Vol. 13-10

***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
- 08-0203-1304** Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-8
- 08-0203-1301** Proposed Rulemaking, Bulletin Vol. 13-10
- 08-0203-1302** Rescission of Temporary Rule and Vacation of Proposed Rulemaking, Bulletin Vol. 13-10
- 08-0203-1305** Temporary Rulemaking, Bulletin Vol. 13-10 (eff. 8-26-13)T
- 08-0203-1306** Proposed Rulemaking, Bulletin Vol. 13-10
- 08-0203-1307** Proposed Rulemaking, Bulletin Vol. 13-10

***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)

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