

# IDAHO ADMINISTRATIVE BULLETIN

October 7, 2015 -- Volume 15-10

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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. This is done through negotiated rulemaking procedures or after proposed rulemaking has 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 **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The August 2015 Bulletin is cited as Volume **15-8**.

## 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 until approved as final.

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 must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. 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 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) if any document is incorporated by reference in the proposed rule, a brief written synopsis of why the incorporation is needed must be included in the notice of proposed rulemaking, along with a link to the electronic version of the incorporated material or information on how it can be obtained.
- e) the text of the proposed rule prepared in legislative format;
- f) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- g) 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;
- h) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- i) 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 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, however, 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 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 “-”, (**38-0501-1401**). 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. 38-0501-1401”**

“**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**).

“**1401**” 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 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “**1402**”. The docket number in this scenario would be 38-0501-**1402**.

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 2015**

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date  | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 15-1     | January 2015              | <b>*November 28, 2014</b>      | January 7, 2015   | January 28, 2015               |
| 15-2     | February 2015             | January 9, 2015                | February 4, 2015  | February 25, 2015              |
| 15-3     | March 2015                | February 6, 2015               | March 4, 2015     | March 25, 2015                 |
| 15-4     | April 2015                | March 6, 2015                  | April 1, 2015     | April 22, 2015                 |
| 15-5     | May 2015                  | April 3, 2015                  | May 6, 2015       | May 27, 2015                   |
| 15-6     | June 2015                 | May 8, 2015                    | June 3, 2015      | June 24, 2015                  |
| 15-7     | July 2015                 | June 5, 2015                   | July 1, 2015      | July 22, 2015                  |
| 15-8     | August 2015               | July 10, 2015                  | August 5, 2015    | August 26, 2015                |
| 15-9     | September 2015            | August 7, 2015                 | September 2, 2015 | September 23, 2015             |
| 15-10    | October 2015              | <b>**September 4, 2015</b>     | October 7, 2015   | October 28, 2015               |
| 15-11    | November 2015             | October 9, 2015                | November 4, 2015  | November 25, 2015              |
| 15-12    | December 2015             | November 6, 2015               | December 2, 2015  | December 23, 2015              |

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2016**

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date  | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 16-1     | January 2016              | <b>*November 27, 2015</b>      | January 6, 2016   | January 27, 2016               |
| 16-2     | February 2016             | January 8, 2016                | February 3, 2016  | February 24, 2016              |
| 16-3     | March 2016                | February 5, 2016               | March 2, 2016     | March 23, 2016                 |
| 16-4     | April 2016                | March 4, 2016                  | April 6, 2016     | April 27, 2016                 |
| 16-5     | May 2016                  | April 8, 2016                  | May 4, 2016       | May 25, 2016                   |
| 16-6     | June 2016                 | May 6, 2016                    | June 1, 2016      | June 22, 2016                  |
| 16-7     | July 2016                 | June 3, 2016                   | July 6, 2016      | July 27, 2016                  |
| 16-8     | August 2016               | July 8, 2016                   | August 3, 2016    | August 24, 2016                |
| 16-9     | September 2016            | August 5, 2016                 | September 7, 2016 | September 28, 2016             |
| 16-10    | October 2016              | <b>**September 2, 2016</b>     | October 5, 2016   | October 26, 2016               |
| 16-11    | November 2016             | October 7, 2016                | November 2, 2016  | November 23, 2016              |
| 16-12    | December 2016             | November 4, 2016               | December 7, 2016  | December 28, 2016              |

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

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

| <b>ALPHABETICAL INDEX OF STATE AGENCIES<br/>AND CORRESPONDING IDAPA NUMBERS</b> |  |
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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<br>Electrical Board (07.01)<br>Plumbing Board (07.02)<br>Building Codes & Manufactured Homes (07.03)<br>Building Code Advisory Board (07.03.01)<br>Public Works Contractors License Board (07.05)<br>Uniform School Building Safety (07.06)<br>HVAC Board (07.07) |
| <b>IDAPA 43</b>   | <b>Canola and Rapeseed Commission</b> , Idaho  |
| <b>IDAPA 28</b>   | <b>Commerce</b> , Idaho Department of  |
| <b>IDAPA 06</b>   | <b>Correction</b> , Board of   |
| <b>IDAPA 19</b>   | <b>Dentistry</b> , Board of  |
| <b>IDAPA 08</b>   | <b>Education</b> , State Board of and State Department of  |
| <b>IDAPA 10</b>   | <b>Engineers and Land Surveyors</b> , Board of Professional  |
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| <b>IDAPA 12</b>   | <b>Finance</b> , Department of   |
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| <b>IDAPA 48</b>   | <b>Grape Growers and Wine Producers Commission, Idaho</b>   |
| <b>IDAPA 16</b>   | <b>Health and Welfare, Department of</b>  |
| <b>IDAPA 41</b>   | <b>Health Districts, Public</b>   |
| <b>IDAPA 45</b>   | <b>Human Rights Commission</b>  |
| <b>IDAPA 17</b>   | <b>Industrial Commission</b>  |
| <b>IDAPA 18</b>   | <b>Insurance, Department of</b>   |
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| <b>IDAPA 20</b>   | <b>Lands, Department of</b>   |
| <b>IDAPA 30</b>   | <b>Libraries, Commission for</b>  |
| <b>IDAPA 52</b>   | <b>Lottery Commission, Idaho State</b>  |
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| <b>ALPHABETICAL INDEX OF STATE AGENCIES<br/>AND CORRESPONDING IDAPA NUMBERS</b> |   |
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| <b>IDAPA 33</b>   | <b>Real Estate Commission, Idaho</b>  |
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| <b>IDAPA 57</b>   | <b>Sexual Offender Management Board</b>   |
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| <b>ALPHABETICAL INDEX OF STATE AGENCIES<br/>AND CORRESPONDING IDAPA NUMBERS</b> |   |
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| <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 06 - BOARD OF CORRECTION**  
**06.01.02 - RULES OF CORRECTIONAL INDUSTRIES**  
**DOCKET NO. 06-0102-1502**  
**NOTICE OF PROCLAMATION OF RULEMAKING**

**EFFECTIVE DATE:** The effective date of this rule is November 6, 2015.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-413A, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

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

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

This rulemaking will amend IDAPA 06.01.02, Rules of Correctional Industries, by revising the definition of private agricultural employer, and by replacing language throughout the rule related to obligations to act.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Andrea Sprengel, Services Manager, at (208) 577-5561.

DATED this 13th Day of August, 2015.

Andrea Sprengel  
Services Manager  
Idaho Correctional Industries  
1301 N. Orchard St. Suite 110  
Boise, ID 83706  
Ph: (208)577-5561; Fax: (208)577-5560

**THE FOLLOWING IS THE TEXT OF THE PROCLAMATION FOR DOCKET NO. 06-0102-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- 01. Inmate.** An individual in the physical custody of the Board. (7-4-14)
- 02. Private Agricultural Employer.** As person as defined in 44-1601(2), Idaho Code, ~~any individual~~

~~engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes.~~ (7-4-14)(11-6-15)

- 03. Work Site.** Any place where inmates may be found when assigned to a work project. (7-4-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. CONTRACTS WITH PRIVATE AGRICULTURAL EMPLOYERS.**

Correctional Industries ~~shall~~ **will** make all reasonable efforts to ensure non-inmate workers are not displaced when entering into a contract with a private agricultural employer for inmate labor. (7-4-14)(11-6-15)

**01. Wage Determination.** On an annual basis, Correctional Industries ~~shall~~ **will** request a prevailing wage determination letter from the Idaho Department of Labor (IDOL) for the prevailing wage of the region for Standard Occupational Classification codes related to the agricultural work to be performed. (7-4-14)(11-6-15)

**02. Prior to Contract.** Prior to entering into any contract with a private agricultural employer for inmate labor, Correctional Industries ~~shall~~ **will** conduct a work site evaluation with assistance from Idaho Department of Correction staff to identify inmate safety and security risks and needs. (7-4-14)(11-6-15)

**03. Contract Requirements.** Contracts with a private agricultural employer ~~will~~ **must** include the following: (7-4-14)(11-6-15)

**a.** At a minimum, the hourly rate per inmate paid to Correctional Industries by the private agricultural employer for inmate labor ~~will~~ **must** be set at the prevailing wage provided by IDOL for that region, or state minimum wage, whichever is higher. The hourly rate per inmate ~~will~~ **must** also account for any other costs the private agricultural employer would be required by law to pay for non-inmate workers even if not required by law to pay for inmate workers, for example workers compensation insurance premiums. (7-4-14)(11-6-15)

**b.** The security and safety provisions identified during the work site evaluation and the responsibilities of each party. Security and supervision of the inmates will be provided at the work site by Idaho Department of Correction (IDOC) correctional officers. (7-4-14)

**c.** A statement certifying that the private agricultural employer was unable to employ a sufficient number of non-inmate workers to complete the job as described in the contract. (7-4-14)

**013. INMATE COMPENSATION.**

**01. Correctional Industries Betterment Account.** The moneys received from the private agricultural employer for inmate labor ~~shall~~ **will** be deposited into the Correctional Industries Betterment Account pursuant to Section 20-416, Idaho Code. The funds deposited will be dispersed between Correctional Industries and the IDOC to cover costs of the agricultural inmate labor program and contribute to the Idaho Victim's Compensation Fund. (7-4-14)(11-6-15)

**a.** The funds dispersed to Correctional Industries will also be used in accordance with Section 20-416, Idaho Code. (7-4-14)

**b.** The funds dispersed to IDOC ~~shall~~ **may** also be used to offset the costs of incarceration, supplement education opportunities to inmates, and provide resources for reentry to the community. (2-6-15)(11-6-15)

**02. Inmate Trust Account.** Inmates will be compensated for their work in accordance with Section 20-412, Idaho Code. Inmate earnings ~~will~~ **must** be deposited into the inmate's trust account. Upon deposit, deductions for court-ordered financial obligations, including child support and restitution, will be made by IDOC. Any other deductions by IDOC will be made according to IDOC policy. (2-6-15)(11-6-15)

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.03 - RULES GOVERNING PERMIT FEE SCHEDULE**  
**DOCKET NO. 07-0203-1501 (FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2605, 54-2606, 54-2622, and 54-2623, 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 21, 2015.

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

When the thirty-eight dollar (\$38) fee for individual water or sewer permits was proposed, the proposal was premised on the assumption that most of these permits would be issued in conjunction with new construction projects, and that other plumbing inspections occurring concurrently would mitigate the decrease in revenues. Unfortunately, the premise has proved untrue, as evidenced by the three hundred fifty (350) inspections of this type conducted on an annual basis. Unfortunately, many of these inspections are for line repairs and or replacements in outlying rural areas where travel costs are significant.

Fees for individual water or sewer line permits increase from thirty-eight dollars (\$38) to sixty-five dollars (\$65). The permit fee for installations where both sewer and water lines are installed at the same time remains at sixty-five dollars (\$65).

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

The Plumbing Board is authorized to establish fees pursuant to Section 54-2602, Idaho Code. This rule increases the inspection fee for a separate water or sewer inspection from thirty-eight dollars (\$38) to the standard DBS base inspection rate of sixty-five dollars (\$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 rule increases the inspection fee for a separate water or sewer inspection from thirty-eight (\$38) to the standard DBS base inspection rate of sixty-five dollars (\$65). This will result in a revenue increase of approximately nine thousand five hundred dollars (\$9,500) to the dedicated fund, based on an average of three hundred fifty (350) of these types of inspections annually. This does not affect 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 April 1, 2015 Idaho Administrative Bulletin, [Vol. 15-4, pages 14 and 15](#).

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

**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 28, 2015.

DATED this 18th Day of August, 2015.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 07-0203-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**011. FEE SCHEDULE.**

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

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

(4-9-09)

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

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

(3-26-08)

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

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

(3-26-08)

**a.** Plumbing system cost not exceeding ten thousand dollars (\$10,000): sixty dollars (\$60) plus two percent (2%) of the total plumbing system cost. (3-26-08)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**a.** Nonresidential S sewer and water service line permit fees ~~for excavators or property owners~~ shall be



assessed ~~at the same rate as residential or nonresidential based on the classification of the construction project in accordance with Subsection 011.04 of these rules.~~ ~~(3-30-06)~~( )

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

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

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

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

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

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

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

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.01 - RULES OF BUILDING SAFETY**

#### **DOCKET NO. 07-0301-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, and 39-4109, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 docket would liberalize the requirement for fire alarm systems in some building occupancies by raising the threshold for the requirement in a Group E occupancy to match that contained in the latest, un-adopted version of the International Building Code (IBC) from 30 to 50 occupants before the fire alarm system is required. The rulemaking also amends the 2012 International Residential Code (IRC) to clarify the methods that can be used to establish fire-resistive wall assemblies in townhouses that can be utilized to avoid the need for fire sprinkler systems; the current language is confusing. Also, the International Energy Conservation Code (IECC) is amended to exempt buildings which are heated or cooled solely to be suitable of equipment, not personnel, from the building envelope provisions that would otherwise apply; IECC code reference corrections are required.

The rulemaking changes the threshold for when a manual fire alarm system in a Group E occupancy is needed to 50 occupants from the current 30. It also provides clear delineation of methods that may be employed in the construction of fire-resistive wall systems between townhome units to obviate the need for fire sprinkler systems. The remainder of the rulemaking addresses necessary corrections in code references, inserting an "R" or "C" to indicate "residential" or "commercial" as it relates to energy code provisions. The rulemaking also removes an amendment currently in rule that is no longer applicable, as it is already reflected the adopted code. Finally, the rulemaking amends subsection C101.5.3 of the IECC to exempt buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 1, 2015 Idaho Administrative Bulletin, [Vol. 15-4, pages 22 and 23](#).

**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: NA

**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 28, 2015.

DATED this 18th Day of August, 2015.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. Pursuant to Section 39-4109, Idaho Code, the effective date of any edition of the codes adopted in this Section, or any amendments identified thereto, shall be January 1 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the International Code Council at <http://www.iccsafe.org>. (3-20-14)

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

**a.** Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

**b.** Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

**c.** Delete section 310.5 and replace with the following: Residential Group R-3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: (3-20-14)

i. Buildings that do not contain more than two (2) dwelling units; (3-20-14)

ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

iii. Boarding houses (transient) with ten (10) or fewer occupants; (3-20-14)

iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care; (3-20-14)

v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or (3-20-14)

vii. Dwelling units providing day care for twelve (12) or fewer children. (3-20-14)

**d.** Delete section 310.5.1 and replace with the following: Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are

within a single-family dwelling are permitted to comply with the International Residential Code. (3-20-14)

**e.** Amend IBC section 907.2.3 - Group E as follows: ( )

**i.** Delete exception No. 1 contained under IBC section 907.2.3 - Group E, and replace with the following: A manual fire alarm system is not required in Group E occupancies with an occupant load of fifty (50) or less. ( )

**ii.** Add the following as exception No. 2 under IBC section 907.2.3 - Group E: Emergency voice/ alarm communication systems meeting the requirements of Section 907.5.2.2, and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of one hundred (100) or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5. ( )

**iii.** Re-number exception No. 2 as exception No. 3 under IBC section 907.2.3 - Group E. ( )

**iv.** Delete exception No. 3 and replace with the following as exception No 4: Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply: ( )

**(1)** 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1. ( )

**(2)** 4.2 The emergency voice/alarm communication system will activate on sprinkler waterflow. ( )

**(3)** 4.3 Manual activation is provided from a normally occupied location. ( )

**ef.** Delete footnote (f) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures, and replace with the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (4-4-13)

**fg.** Delete footnote (g) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (3-20-14)

**02.** **International Residential Code.** 2012 Edition with the following amendments: (3-20-14)

**a.** Delete exception No. 1 contained under IRC section R101.2 - Scope. (3-20-14)

**b.** Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with five (5) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings. (4-11-15)

**c.** Delete item No. 7 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

**d.** Add the following item No. 11 at the end of the "Building" subsection of IRC section R105.2 - Work exempt from permit: Flag poles. (3-20-14)

**e.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

**f.** IRC Table R302.1(1) Exterior Walls -- delete Table R302.1(1) and replace with the following:

**TABLE R302.1(1)**  
**EXTERIOR WALLS**

| EXTERIOR WALL ELEMENT |                           | MINIMUM FIRE-RESISTANCE RATING   | MINIMUM FIRE SEPARATION DISTANCE |
|-----------------------|---------------------------|--|----------------------------------|
| Walls                 | Fire-resistance rated     | 1 hour-tested in accordance with ASTM E 119 or UL263 with exposure from both sides | < 3 feet                         |
|                       | Not fire-resistance rated | 0 hours  | ≥ 3 feet                         |
| Projections           | Fire-resistance rated     | 1 hour on the underside  | ≥ 2 feet to < 3 feet             |
|                       | Not fire-resistance rated | 0 hours  | ≥ 3 feet                         |
| Openings in Walls     | Not allowed               | N/A  | < 3 feet                         |
|                       | 25% maximum of wall area  | 0 hours  | ≥ 3 feet to < 5 feet             |
|                       | Unlimited                 | 0 hours  | 5 feet                           |
| Penetrations          | All                       | Comply with Section R302.4   | < 3 feet                         |
|                       |                           | None required  | ≥ 3 feet                         |

For SI: 1 foot = 304.8 mm.  
 N/A = Not Applicable

(4-11-15)

**g.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: ~~Two (2) exceptions: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. (3-29-10)( )~~

**i.** When provided with an automatic fire sprinkler system per section R313.1, a common one (1)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts, or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. ( )

**ii.** Two (2) one (1)-hour fire-resistance-rated wall assemblies (as specified in Section R302.1) or a common two (2)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 are permitted for townhouses. If two (2) one (1)-hour fire-resistance-rated walls are used, plumbing and electrical installations within the wall cavity shall conform to fire-resistance penetration requirements in accordance with section R302.4 through R302.4.2 for each of the two (2) one (1)-hour rated walls penetrated. The two (2)-hour fire-resistance-rated common wall shall not contain plumbing or mechanical equipment, ducts or vents within its wall cavity. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. ( )

**h.** Delete IRC section R303.4 and replace with the following: R303.4 Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1507.3

Exception: Where the air infiltration rate of a dwelling unit is equal to 5 air changes per hour or greater when tested with a blower door at a pressure of 0.2 inch w.c. (50 pa) in accordance with Section N1102.4.1.2. (4-11-15)

i. Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where either two (2) one (1)-hour fire-resistance-rated walls or a common two (2)-hour fire-resistance rated wall, as specified in exception 2 of section R302.2 is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. ~~(3-29-10)( )~~

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

k. Add the following to IRC section R315.3 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (3-20-14)

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

m. Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)

n. Delete IRC section R501.3 and its exceptions. (3-20-14)

o. Delete IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. (3-20-14)

~~p.~~ *Delete section N1102.4.3 and replace with the following: Fireplaces. New wood burning fireplaces shall have tight fitting flue dampers and outdoor combustion air.* (4-4-13)

~~q.~~ Chapter 11 [RE] Energy Efficiency - The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond to the appropriate section: (3-20-14)

i. Table N1102.1.1 (Table R402.1.1) - Insulation and Fenestration Requirements by Component; (3-20-14)

ii. Table N1102.1.3 (Table R402.1.3 - Equivalent U-Factors; (3-20-14)

iii. Table N1102.2.6 (Table R402.2.6) - Steel-Frame Ceiling, Wall and Floor Insulation (R-Value); (3-20-14)

iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; (3-20-14)

v. Section N1102.4.1.1 (R402.4.1.1) - Insulation; (3-20-14)

vi. Table N1102.4.1.1 (Table R402.4.1.1) - Air Barrier and Insulation Installation; (3-20-14)

vii. Section N1102.4.1.2 (R402.4.1.2) Testing Option; (3-20-14)

viii. Add Section N1102.4.1.3 (R402.4.1.3) - Visual Inspection Option; (3-20-14)

ix. Add Section N1102.6 (R402.6) - Residential Log Home Thermal Envelope; (3-20-14)

- x. Add Table N1102.6 (Table R402.6) - Log Home Prescriptive Thermal Envelope Requirements by Component; and (3-20-14)
- xi. Section N1104.1 (R404.1) - Lighting Equipment. (3-20-14)
- 03. International Existing Building Code.** 2012 Edition. (4-4-13)
- 04. International Energy Conservation Code.** 2012 Edition with the following amendments. (3-20-14)

**a.** Add the following as new subsection C101.5.3: Industrial, electronic, and manufacturing equipment. Buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing equipment shall be exempt from the provisions of this code. Such buildings or portions thereof shall be separated from connected conditioned space by building thermal envelope assemblies complying with this code. ( )

**b.** Delete the values contained in Table R402.1.1 (Table N1102.1.1) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following: (3-20-14)

| TABLE R402.1.1<br>INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT |                        |                   |                          |                 |                         |                   |               |                       |              |                         |
|---|------------------------|-------------------|--------------------------|-----------------|-------------------------|-------------------|---------------|-----------------------|--------------|-------------------------|
| Climate Zone  | Fenestration U- Factor | Skylight U-factor | Glazed Fenestration SHGC | Ceiling R-Value | Wood Frame Wall R-Value | Mass Wall R-Value | Floor R-Value | Basement Wall R-Value | Slab R-Value | Crawlspace Wall R-Value |
| 5 and Marine 4  | 0.35                   | 0.60              | NR                       | 38              | 20 or 13+5h             | 13/17             | 30g           | 10/13                 | 10, 2 ft     | 10/13                   |
| 6   | 0.35                   | 0.60              | NR                       | 49              | 20 or 13+5h             | 15/19             | 30g           | 15/19                 | 10, 4 ft     | 10/13                   |

(3-20-14)

**c.** Add the following footnote to the title of Table R402.1.1 - Insulation and Fenestration Requirements by Component: <sup>k</sup> For residential log home building thermal envelope construction requirements see section R402.6. (4-7-11)( )

**d.** Delete the values contained in Table R402.1.3 (Table N1102.1.3) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:

| TABLE R402.1.3<br>EQUIVALENT U-FACTORS |                       |                   |                 |                         |                   |               |                       |                         |
|--|-----------------------|-------------------|-----------------|-------------------------|-------------------|---------------|-----------------------|-------------------------|
| Climate Zone                           | Fenestration U-factor | Skylight U-factor | Ceiling R-Value | Wood Frame Wall R-Value | Mass Wall R-Value | Floor R-Value | Basement Wall R-Value | Crawlspace Wall R-Value |
| 5 and Marine 4                         | 0.35                  | 0.60              | 0.030           | 0.057                   | 0.082             | 0.033         | 0.059                 | 0.065                   |
| 6                                      | 0.35                  | 0.60              | 0.026           | 0.057                   | 0.060             | 0.033         | 0.050                 | 0.065                   |

(3-20-14)

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

| <b>TABLE R402.2.6<br/>STEEL-FRAME CEILING, WALL AND FLOOR INSULATION<br/>(R-VALUE)</b>  |   |
|---|---|
| <b>Wood Frame<br/>R-value Requirement</b>   | <b>Cold-formed Steel Equivalent R-value<sup>a</sup></b> |
| <b>Steel Truss Ceilings<sup>b</sup></b>   |   |
| R-30  | R-38 or R-30 + 3 or R-26 + 5                            |
| R-38  | R-49 or R-38 + 3  |
| R-49  | R-38 + 5  |
| <b>Steel Joist Ceilings<sup>b</sup></b>   |   |
| R-30  | R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing     |
| R-38  | R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10               |
| <b>Steel-Framed Wall</b>  |   |
| R-13  | R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10            |
| R-19  | R-13 + 9 or R-19 + 8 or R-25 + 7                        |
| R-21  | R-13 + 10 or R-19 + 9 or R-25 + 8                       |
| <b>Steel Joist Floor</b>  |   |
| R-13  | R-19 in 2 x 6<br>R-19 + 6 in 2 x 8 or 2 x 10            |
| R-19  | R-19 + 6 in 2 x 6<br>R-19 + 12 in 2 x 8 or 2 x 10       |
| <p>a. Cavity insulation R-value is listed first, followed by continuous insulation R-value.<br/>                     b. Insulation exceeding the height of the framing shall cover the framing.</p> |   |

(3-20-14)( )

**ef.** Delete section R402.4.1 (N1102.4.1) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (3-20-14)( )

**fg.** Delete section R402.4.1.1 (N1102.4.1.1) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer’s instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (3-20-14)( )

**gh.** Delete the criteria requirement for the “Fireplace” component of Table R402.4.1.1 (Table N1102.4.1.1) - Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. (3-20-14)

**hi.** Delete section R402.4.1.2 (N1102.4.1.2) and replace with the following: Testing option, Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven (7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: (3-20-14)( )



- i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed; (3-20-14)
- ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers; (3-20-14)
- iii. Interior doors shall be open; (3-20-14)
- iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed; (3-20-14)
- v. Heating and cooling system(s) shall be turned off; (3-20-14)
- vi. HVAC ducts shall not be sealed; and (3-20-14)
- vii. Supply and return registers shall not be sealed. (3-20-14)

**ii.** Add the following as section R402.4.1.3 (N1102.4.1.3): Visual inspection option. Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. ~~(3-20-14)~~( )

~~**j.** Delete section 402.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight fitting flue dampers and outdoor combustion air. (4-4-13)~~

**k.** Add the following section: R402.6 (N1102.6) Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections R401 (General), R402.4 (Air Leakage), R402.5 (Maximum Fenestration U-Factor and SHGC), R403.1 (Controls), R403.2.2 (Sealing), R403.2.3 (Building Cavities), sections R403.3 through R403.9 (referred to as the mandatory provisions), Section R404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b. i., ii., or iii. as follows: ~~(3-20-14)~~( )

- i. Sections R402.2 through R402.3, R403.2.1, R404.1 and Table R402.6; ~~(4-7-11)~~( )
- ii. Section R405 Simulated Performance Alternative (Performance); or ~~(4-7-11)~~( )
- iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

**l.** Add Table R402.6 (Table N1102.6) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b. item i. of section R402.6 above to appear as follows:

**TABLE R402.6**  
**LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT**

For SI: 1 foot = 304.8 mm.

| Climate Zone                           | Fenestration U-factor <sup>a</sup> | Skylight U-factor | Glazed Fenestration Shgc | Ceiling R-value | Min. Average Log Size In Inches | Floor R-value | Basement Wall R-value <sup>d</sup> | Slab R-value & Depth <sup>b</sup> | Crawl Space Wall R-value <sup>d</sup> |
|--|------------------------------------|-------------------|--------------------------|-----------------|---------------------------------|---------------|------------------------------------|-----------------------------------|---------------------------------------|
| 5, 6 - High efficiency equipment pathc | 0.32                               | 0.60              | NR                       | 49              | 5                               | 30            | 15/19                              | 10, 4 ft.                         | 10/13                                 |
| 5                                      | 0.32                               | 0.60              | NR                       | 49              | 8                               | 30            | 10/13                              | 10, 2 ft.                         | 10/13                                 |
| 6                                      | 0.30                               | 0.60              | NR                       | 49              | 8                               | 30            | 15/19                              | 10, 4 ft.                         | 10/13                                 |

- a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- b. R-5 shall be added to the required slab edge R-values for heated slabs.
- c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).
- d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

~~(3-20-14)~~ ( )

**m.** Delete section R404.1 (N1104.1) and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. (3-20-14)

**05. References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.01 - RULES OF BUILDING SAFETY**

#### **DOCKET NO. 07-0301-1502 (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 39-4103, and 39-4107, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking would allow state entities who perform minor alterations on their own buildings, structures, or premises with their own regularly employed qualified trade persons or maintenance staffs to obtain a single annual permit from the Division of Building Safety (DBS) for such minor alterations. The ability to issue a single annual permit will alleviate the need for such state entities to continually obtain permits throughout the year from the DBS for each individual minor alteration or equivalent remodeling project that may be performed on buildings or structures on their premises.

The rulemaking allows a state agency or organization which regularly employs qualified trade person(s) to secure an annual permit from the DBS to perform minor alterations in buildings, structures or on the premises or campus owned or operated by the applicant for the permit in lieu of obtaining individual permits for each such minor alteration. The rulemaking requires such state entity to maintain records of such minor alterations, and allow DBS access thereto, as well as for such alterations to be inspected by the DBS upon completion in the same manner as is already established. The rulemaking also defines what constitutes a "minor alteration" for which an annual permit may be issued, and establishes the fee for inspections of such work.

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

A fee for inspections performed on annual permits will be charged at the rate of one hundred dollars (\$100) per hour. This fee is authorized pursuant to Section 39-4107, 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:

A slight decrease in dedicated fund revenue is expected as permit fees are aggregated at a lower composite rate than would be realized through individual permits.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and only affects a few larger state entities which obtain building permits from the Division of Building Safety and which additionally regularly employ qualified trade persons who perform minor building alterations on their own buildings or premises for which a permit is necessary. Additionally, the topic was addressed and discussed at several Building Code Board meetings and no opposition to an annual permit was expressed.

**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: NA

**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 28, 2015.

DATED this 18th Day of August, 2015.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 07-0301-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**026. DEFINITIONS.**

The terms defined in this section shall have the following meaning for all parts of this chapter, unless the context clearly indicates another meaning: (3-30-06)

**01. Act.** The Idaho Building Code Act, Title 39, Chapter 41, Idaho Code. (3-30-06)

**02. Administrator.** The administrator of the Division of Building Safety for the state of Idaho. (3-30-06)

**03. Alterations or Conversions of Modular Buildings.** Any change from the approved plans or installation instructions which would affect the structural, mechanical, electrical or plumbing systems of modular buildings bearing a Division insignia of approval and shall include the replacement, addition, modification or removal of any structural member, plumbing, heat-producing or electrical equipment, or installation which may affect such systems prior to first occupancy. Any such alteration or conversion shall first be approved by testing and inspection in the same manner as original systems or component parts. The following shall not constitute alteration or conversion: (3-30-06)

**a.** Repairs with approved replacement parts; (3-30-06)

**b.** Conversion of listed fuel-burning appliances in accordance with the terms of their listing;(3-30-06)

**c.** Replacement of equipment and appliances in kind; (3-30-06)

**d.** Adjustment and maintenance of equipment. (3-30-06)

**04. Alterations to Manufactured Homes.** The replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in a manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance “plug-in” to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring “plug-in” to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected. (3-30-06)

**05. Alterations or Conversions of Commercial Coaches.** Any change from the approved plans or installation instructions which would affect the structural, mechanical, electrical or plumbing systems of commercial coaches bearing a Division insignia of approval and shall include the replacement, addition, modification or removal of any structural member; plumbing, heat-producing or electrical equipment; or installation which may affect such systems prior to first occupancy. Any such alteration or conversion shall first be approved by testing and inspection in the same manner as original systems or component parts. The following shall not constitute alteration or conversion: (3-30-06)

- a. Repairs with approved replacement parts; (3-30-06)
- b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing;(3-30-06)
- c. Replacement of equipment and appliances in kind; (3-30-06)
- d. Adjustment and maintenance of equipment. (3-30-06)

**06. Board.** The Idaho Building Code Board created under the provisions of Title 39, Chapter 41, Idaho Code. (3-30-06)

**07. Bureau.** The Building Bureau of the Division of Building Safety. (3-30-06)

**08. Commercial Coach.** In order to further clarify the definition of “commercial coach” as cited in Section 39-4105(5), Idaho Code, the phrase “made so as to be readily movable as a unit on its own running gear” shall mean that the running gear shall be a permanent part of the unit and not intended to be removed or replaced, and such modular structure is used for commercial purposes. (3-30-06)

**09. Division.** The Division of Building Safety of the state of Idaho. (3-30-06)

**10. Equipment.** All equipment, materials, appliances, devices, fixtures, fittings or accessories installed in the manufacture and assembly of modular buildings. (3-30-06)

**11. Field Technical Service.** Interpretation and clarification of the technical data relating to the application of these rules, but not including inspection. (3-30-06)

**12. First Purchaser.** The first purchaser of a commercial coach for other than resale. (3-30-06)

**13. Insignia.** A label, tab or tag issued by the Division to indicate compliance with the codes, standards, rules and regulations established for manufactured building systems, subsystems, or building elements, modular buildings, and commercial coaches. (3-30-06)

**14. Labeled.** Equipment or other building components bearing a label or other approved marking authorized or issued for use by a recognized testing/listing or evaluation agency. (3-30-06)

**15. Listed.** Equipment or other building components included within a current list published by a recognized testing/listing agency that maintains periodic inspection on current production of listed equipment or other building components and whose listing states either that the equipment or component complies with recognized standards or has been tested and determined to be suitable for the use intended. (3-30-06)

**16. Listing Agency.** A person, firm, association, partnership or corporation which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed materials, and which makes available, not less frequently than annually, a published report of such listing in which specific information is included that the product has been tested to nationally approved standards and found safe for use in a specified manner. (3-30-06)

**17. Minor Alteration.** The following definition shall be used for the purpose of administering annual permits. ( )

a. Minor alterations shall include, but are not limited to, the following: partition walls constructed within a defined room; relocation of or existing openings or installation of new doors and windows in non-load bearing walls and not in construction meant to compartmentalize fire; window replacement in unaltered existing openings; roof repairs involving installation of less than one hundred (100) square feet of new roof covering; and new suspended ceilings that are not part of a required fire resistive assembly. ( )

b. Minor alterations shall not include: work that alters the fire resistive characteristics of the building or fire suppression systems; work that creates new openings in construction meant to compartmentalize fire such as fire walls, fire barriers, fire partitions, smoke barriers, smoke partitions, horizontal assemblies, shaft enclosures, stair enclosures; work that increases the floor area or height of the building; work that changes the structural load path of the building for gravity or horizontal loads; work that reduces the thermal resistant capacity of the building envelop; changes in the occupancy classification of the building or space; increases in the floor loads. ( )

**178. Model.** As referred to in Section 39-4113(3), Idaho Code, for modular buildings and commercial coaches shall mean a specific outside dimension and floor plan with specific structural, plumbing, electrical, and mechanical systems as designated by the manufacturer to be the standard for imitation reproduction. (3-30-06)

**189. Testing/Listing Agency.** A person, firm, association, partnership or corporation which is: (3-30-06)

- a. In the business of testing equipment or other building components; and (3-30-06)
- b. Recognized by the Division as being qualified and equipped to conduct experimental testing in accordance with recognized standards; and (3-30-06)
- c. Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry; and (3-30-06)
- d. Making available, not less frequently than annually, a published report in which specific information is included stating that the equipment and systems have been tested and found safe for use in a specified manner. (3-30-06)

**190. Transit Damage.** Application to manufactured home means that damage encountered en route from the place of manufacture to the dealer or first owner involving structural integrity or any repair that does not result in return to the same construction or assembly as specified in the manufacturer's design approval without additional reinforcement or change. (3-30-06)

**201. State Buildings.** All buildings to be constructed, altered, or repaired by or for any state of Idaho agency or entity, without regard to purpose, occupancy, or the source of funding for such construction, alteration, or repair. (3-30-06)

**242. Running Gear.** Springs, spring hangers, axles, bearings, wheels, brakes, rims and tires and their related hardware. (3-30-06)

**223. Substantially Prefabricated or Assembled.** The module or major portion of modular buildings assembled in such manner that all portions may not be inspected without disassembly or destruction of the part. (3-30-06)

**234. Substantially Prefabricated or Assembled.** The module or major portion of commercial coaches is assembled in such manner that all portions may not be inspected without disassembly or destruction of the part. (3-30-06)

**245. Systems Plan.** A design plan concept that allows the interchanging of various approved construction systems to include structural, electrical, plumbing, and mechanical aspects of the system. (3-30-06)

**256. Technical Service.** Conducting research, evaluation, consultation, model and systems plan

reviews, interpretation and clarification by the Division of technical data relating to the application of these rules, and shall also include special field inspections that are not covered in other portions of these rules. (3-30-06)

**027. PERMITS.**

**01. Building Permits.** Building permits shall be obtained from the Division prior to the construction of structures governed by the act or rules promulgated by the Board. (~~3-30-06~~) ( )

**02. Annual Permit.** In lieu of an individual permit for each minor alteration to an already approved building, the Division may issue an annual permit upon application therefor to any state agency or state governmental organization regularly employing one (1) or more qualified trade persons in the building, structure or on the premises or campus owned or operated by the applicant for the permit. The agency to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The Division shall be allowed access to such records at all times or such records shall be filed with the Division as designated. The permit holder shall request inspections and make the work accessible for inspection as required by the adopted codes and this rule. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**029. FEES.**

The following fee schedule shall be applicable for the functions cited: (3-30-06)

**01. Document Fees.** (3-30-06)

**a.** The administrator shall charge such reasonable and suitable fees necessary for copies of any record, plan approval, permit, map, sketch, drawing or other instrument. (3-30-06)

**b.** Charges for copies of separate published documents shall be actual cost to the Division plus postage. (3-30-06)

**02. Technical Service Fee.** One hundred dollars (\$100) per hour. (4-7-11)

**03. Modular Building Fees.** Other than as herein specified in this Section, the fee schedule for modular buildings shall be as provided herein in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. (3-30-06)

**04. Insignia Tag Fee.** In instances where building permit fees are not charged for modular buildings, a one hundred dollar (\$100) fee will be charged for an insignia. (3-30-06)

**05. Payment of Fees.** Fees shall be paid to and collected by the Division. (3-30-06)

**06. Commercial Coaches.** Other than as herein specified in this Section, the fee schedule for commercial coaches shall be as provided in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. (3-30-06)

**07. Building Permit Fees.** The building permit fee for each permit shall be as set forth in the following table. The determination of value or valuation shall be made by the administrator and shall be the total value of all construction work for which a permit is issued. (4-7-11)

| TABLE 1-A - BUILDING PERMIT FEES |           |
|----------------------------------|-----------|
| Total Valuation                  | Fee       |
| \$1 to \$500                     | = \$23.50 |

| <b>TABLE 1-A - BUILDING PERMIT FEES</b> |   |
|---|---|
| <b>Total Valuation</b>                  | <b>Fee</b>  |
| \$501 to \$2,000                        | = \$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000                  |
| \$2,001 to \$25,000                     | = \$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000               |
| \$25,001 to \$50,000                    | = \$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000          |
| \$50,001 to \$100,000                   | = \$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000             |
| \$100,001 to \$500,000                  | = \$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000         |
| \$500,001 to \$1,000,000                | = \$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000     |
| \$1,000,001 to \$5,000,000              | = \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof, to and including \$5,000,000   |
| \$5,000,001 to \$10,000,000             | = \$20,208.75 for the first \$5,000,000 plus \$2.75 for each additional \$1,000, or fraction thereof, to and including \$10,000,000 |
| \$10,000,001 and up                     | = \$33,958.75 for the first \$10,000,000 plus \$2 for each additional \$1,000, or fraction thereof                                  |

(4-7-11)

**08.** Fees for Annual Permits. A fee for inspections performed on annual permits shall be charged at the rate of one hundred dollars (\$100) per hour. The Division shall bill the applicant for annual permits and failure of the applicant to pay the fee within sixty (60) days may result in cancellation of the annual permit. ( )

**09.** **Plan Review Fees.** Plan review fees shall be charged at an hourly rate of one hundred dollars (\$100) per hour up to a maximum of sixty-five percent (65%) of the calculated building permit fee with a minimum required fee of forty percent (40%) of the calculated building permit fee. All requests for plan review services shall at such time be accompanied by a payment in the amount of at least forty percent (40%) of the calculated building permit fee. Upon completion of the plan review, any additional fees, above the minimum required, shall be due to the Division by the requesting party. (4-7-11)

**10.** **Refund of Plan Review Fees.** There shall be no refund of plan review fees. (3-30-06)

**11.** **Refund of Permit Fees.** The Administrator may authorize a refund of any permit fee paid which was erroneously paid or collected. The Administrator may authorize a refund of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with these rules. The Administrator shall not authorize a refund of any permit fee paid except upon written application filed by the original applicant not later than one hundred eighty (180) days after the date of permit issuance. (4-7-11)



## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

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

#### **DOCKET NO. 07-0501-1501 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2015.

**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 54-1904, 54-1907, and 54-1912, Idaho Code.

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

The Public Works Contractors License Fund balance is currently growing at a rate beyond what is being utilized for the administration of the program. The Board and administrator desire to assess the effects of the fee reduction and the needs of the program before making a permanent fee change. The rulemaking reduces all classes of public works contractor license renewal fees by twenty percent (20%).

**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 rulemaking reduces all current public works contractor license renewal fees by twenty percent (20%), and is therefore advantageous to the affected licensees. Additionally, the topic was addressed and discussed by the Public Works Contractors License Board at several board meetings and no opposition to the fee reduction was expressed.

**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:

Public works contractor licensing fees are authorized pursuant to Section 54-1904, Idaho Code. The fees for renewal of a public works contractor license are being reduced by twenty percent (20%) across all license classes, which is advantageous to public works contractor licensees. The rule is temporary in nature in order that the Division and Public Works Contractors License Board may assess the impact of the fee reduction on the Public Works Contractors License Fund before making the fee reductions permanent.

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

DATED this 18th Day of August, 2015.

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

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY FEE RULE FOR DOCKET NO. 07-0501-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**201. FEES.**

**01. Public Works Contractor Initial Licensing Fees.** Initial licensing ~~and renewal~~ fees for each class of public works contractor licenses shall be, in accordance with Section 54-1904, Idaho Code, as follows:

~~(4-9-09)~~(9-1-15)T

- a. The fee for a Class Unlimited license shall be five hundred fifty dollars (\$550). (4-9-09)
- b. The fee for a Class A license shall be two hundred fifty dollars (\$250). (3-19-07)
- c. The fee for a Class AA license shall be three hundred fifty dollars (\$350). (3-19-07)
- d. The fee for a Class AAA license shall be four hundred fifty dollars (\$450). (3-19-07)
- e. The fee for a Class B license shall be one hundred fifty dollars (\$150). (3-19-07)
- f. The fee for a Class CC license shall be one hundred twenty-five dollars (\$125). (3-27-13)
- g. The fee for a Class C license shall be one hundred dollars (\$100). (3-19-07)
- h. The fee for a Class D license shall be fifty dollars (\$50). (3-19-07)

**02. Public Works Contractor Renewal Licensing Fees.** Renewal licensing fees for each class of public works contractor licenses shall be, in accordance with Section 54-1904, Idaho Code, as follows: (9-1-15)T

- a. The fee for a Class Unlimited license shall be four hundred forty dollars (\$440). (9-1-15)T
- b. The fee for a Class A license shall be one hundred sixty dollars (\$160). (9-1-15)T
- c. The fee for a Class AA license shall be two hundred eighty dollars (\$280). (9-1-15)T
- d. The fee for a Class AAA license shall be three hundred sixty dollars (\$360). (9-1-15)T
- e. The fee for a Class B license shall be one hundred twenty dollars (\$120). (9-1-15)T
- f. The fee for a Class CC license shall be one hundred dollars (\$100). (9-1-15)T
- g. The fee for a Class C license shall be eighty dollars (\$80). (9-1-15)T
- h. The fee for a Class D license shall be forty dollars (\$40). (9-1-15)T

**023. Construction Manager Licensing Fees.** Initial licensing and renewal fees for construction manager licenses shall be, in accordance with Section 54-4510, Idaho Code, as follows: (4-9-09)

- a. The fee for initial examination and licensing shall be two hundred dollars (\$200). (3-19-99)
- b. The fee for license renewal shall be two hundred dollars (\$200). (3-19-99)
- c. The fee for an inactive license shall be fifty dollars (\$50). (3-19-99)
- d. The fee for license reinstatement shall be two hundred dollars (\$200). (3-19-99)

e. The fee for administering the examination shall be the standard fee established for taking that examination. (3-19-99)

f. The fee for issuing and for reinstating a certificate of authority shall be one hundred dollars (\$100). (3-19-99)

~~034.~~ **Payment of Fees.** Fees shall be payable to “Division of Building Safety -- Public Works Contractors.” (3-20-04)

~~045.~~ **Application Filed With Fees.** Required fees shall accompany all applications. An application filed without the required fees shall be deemed incomplete and returned to the applicant. (3-20-04)

## IDAPA 08 - STATE BOARD OF EDUCATION

### 08.01.09 - RULES GOVERNING THE GEAR UP IDAHO SCHOLARSHIP PROGRAM

DOCKET NO. 08-0109-1501

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 amendment to IDAPA 08.01.09 will allow applications to be submitted after March 1, and specify that applications received after that date may not receive an award until the following year, expand the scholarship award renewal period from eight continuous semester to 10, reduce the number of days prior to the first day of the academic term for students who have an interruption in their enrollment required for notification, and provide additional clarity to the initial application process, the selection of recipients, and continuing eligibility requirements and would make technical corrections. The GEAR UP Idaho Scholarship is a federal program and subject to the federal regulations for the 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Volume 15-6, page 17](#).

**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: NA

**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 28, 2015.

DATED the 4th Day of September, 2015.

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  
Tel: (208)332-1582 / Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0109-1501  
(Only Those Sections With Amendments Are Shown.)

**500. CONTINUING ELIGIBILITY.**

To remain eligible for renewal of a GEAR UP Idaho scholarship, the recipient must comply with all of the provisions of the GEAR UP Idaho Program and these rules, in addition to the following requirements: (3-29-12)

**01. Renewal Application.** A scholarship recipient must complete and submit a renewal application in order to be considered for a continuing scholarship for each succeeding year. A completed application for the renewal of a GEAR UP Idaho scholarship must be submitted to the Board electronically by the date established on the application, but not later than March 1 ~~to be eligible to receive the award for the next academic year.~~ An applicant without electronic capabilities may submit an application on the form established by the GEAR UP Idaho Program administrator through the United States Postal Service, which must be postmarked no later than March 1. In addition, a scholarship recipient must update and submit the FAFSA on or prior to March 1 ~~to be eligible to receive the award for the next academic year. Applications received after this date may be considered for awards for the next academic year contingent on availability of funds, continued eligibility, and attending institution deadlines.~~ (3-20-14)( )

**02. Credit Hours.** To remain eligible for renewal of a scholarship award, the scholarship recipient must be enrolled as a full-time student and have completed a minimum of twenty-four (24) credit hours or its equivalent for the academic year in which the student received a scholarship award. (3-20-14)

**03. Satisfactory Academic Progress.** To remain eligible for renewal of a scholarship, the scholarship recipient must have maintained a minimum cumulative grade point average of two point zero (2.0) on a scale of four point zero (4.0) during the time that the recipient received an award, and must be maintaining satisfactory academic progress, consistent within federal financial regulations as implemented at the eligible Idaho postsecondary educational institution at which the scholarship recipient was enrolled. (3-20-14)

**04. Transfer Students.** Scholarship recipients who transfer to another eligible institution remain eligible for scholarship renewal and must inform the administrator no later than ~~March 1~~ ~~the end of the next academic period~~ following the transfer. (3-20-14)( )

**05. Maximum Scholarship Award.** The award of a GEAR UP Idaho scholarship shall not exceed the equivalent of ~~eight ten~~ (810) continuous semesters or the equivalent of ~~four five~~ (45) continuous academic years. (3-29-12)( )

**501.— 599. (RESERVED)**

**600. MISCELLANEOUS PROVISIONS.**

A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to interrupt continuous enrollment no later than ~~sixty thirty~~ (6030) days prior to the first day of the academic term of the discontinued attendance. Failure to do so may result in forfeiture of the scholarship. The Board will review each request for interruption and notify the individual of approval or denial of the request. In addition, the individual must file a statement with the Board declaring his intent to re-enroll as a full-time undergraduate student in an academic or professional-technical program in an eligible Idaho postsecondary educational institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll. An extension of interruption of continuous enrollment period may be granted for eligible students due to military service in the United States armed forces, medical circumstances, or other circumstances approved by the state board of education's executive director. All requests for extension must be made ~~sixty thirty~~ (6030) days prior to the start of the succeeding academic year. (3-20-14)( )

## IDAPA 08 - STATE BOARD OF EDUCATION

### 08.01.13 - RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM

DOCKET NO. 08-0113-1501

#### 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, 33-107, and 33-4303 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 21, 2015.

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

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

Proposed changes to IDAPA 08.01.13 would make technical corrections and clarify the eligibility and application requirements for the scholarship applicants. Technical corrections include: specifying the grade point average used is the cumulative, unweighted grade point average; authorization for the Board's Executive Director to establish the application form; and clarification that after the initial awards are made, if based on the student acceptance rate, there are additional funds available to be awarded, those awards may be made after the June 1 initial award date deadline.

Additional changes allow the executive director to approve extensions of the award for those students who have earned over one hundred (100) credits and will not be able to complete their program of study within two (2) semesters if there are extenuating circumstances. Further, the credit hour requirements have been amended to twenty-four (24) credits in an academic year rather than twelve (12) credits in each semester.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Volume 15-6, page 18](#).

**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: NA

**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 28, 2015.

DATED the 4th Day of September, 2015.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0113-1501  
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. **Grade Point Average (GPA).** Means the cumulative, unweighted grade point average grade earned by a student, figured by dividing the grade points earned by the number of credits attempted. ~~(3-20-14)~~( )

011. -- 100. (RESERVED)

101. ELIGIBILITY.

01. **Undergraduate Student.** An eligible student must be pursuing their first undergraduate certificate or degree. A student may have received multiple certificates or degrees as part of the natural progression towards a recognized baccalaureate degree program. A student who is enrolled in a graduate program, but who has not yet earned a baccalaureate degree, is not eligible for an opportunity scholarship. A student enrolled in an undergraduate program is eligible for consideration for an opportunity scholarship, even if some of the student's courses are at the graduate level. (3-20-14)

02. **Academic Eligibility.** (4-2-08)

a. Applicants for the opportunity scholarship are selected as recipients, in part, on the basis of their cumulative unweighted GPA. ~~(3-20-14)~~( )

b. To be eligible for an opportunity scholarship, an applicant must meet minimum academic eligibility criteria, as follows: (3-20-14)

i. A student who has not yet graduated from secondary school or its equivalent in the state of Idaho must have an un-weighted minimum cumulative grade point of average of three point zero (3.0) or better on a scale of four point zero (4.0) to be eligible to apply for an opportunity scholarship. Home schooled students must provide a transcript of subjects taught and grades received signed by the parent or guardian of the student: ~~or (3-20-14)~~( )

ii. A student who has obtained a general equivalency diploma must have taken the ACT assessment and received a minimum composite score of twenty (20) or better, or the equivalent SAT assessment and received a nine hundred fifty (950) or better, to be academically eligible to apply for an opportunity scholarship: ~~or (3-20-14)~~( )

iii. A student currently enrolled in an eligible Idaho postsecondary educational institution must have a minimum cumulative grade point average of three point zero (3.0) or better on a scale of four point zero (4.0) at such institution in order to be academically eligible to apply for an opportunity scholarship. (3-20-14)

03. **Financial Eligibility.** Applicants for the opportunity scholarship are selected as recipients, in part, on the basis of demonstrated financial need. The tool used to determine financial need will be the Free Application for Federal Student Aid (FAFSA), used by the United States Department of Education. The financial need of an applicant for an opportunity scholarship will be based upon the validated expected family contribution, as identified by the FAFSA Student Aid report. The Student Aid report used to calculate financial need will be the report generated on the March 1 application deadline. (3-20-14)

04. **Additional Eligibility Requirements.** (4-2-08)

a. A student must not be in default on a student educational loan, or owe a repayment on a federal grant, and must be in good financial standing with the opportunity scholarship program. (3-20-14)

b. If a student has attempted or completed more than one hundred (100) postsecondary academic credits, then such student must identify his or her major, the required number of credits necessary for graduation in such major, and shall submit an academic transcript that contains all courses taken and all postsecondary academic credit received to the Board office. A student shall not be eligible for an opportunity scholarship if: (3-20-14)

i. The student is not meeting satisfactory academic progress at the eligible Idaho postsecondary educational institution the student is attending at the time he or she applies for an opportunity scholarship; (4-2-08)

ii. The student has completed more than one hundred fifty percent (150%) of the courses and academic credit necessary to graduate in such major; or (4-2-08)

iii. Upon review of the student's academic transcript(s), the student cannot complete their degree/certificate in the major they have identified within two (2) semesters based on normal academic course load unless a determination by the executive director has been made that there are extenuating circumstances and the student has a plan approved by the executive director outlining the courses that will be taken and the completion date of the degree or certificate. (3-20-14)(    )

102. -- 201. (RESERVED)

## 202. APPLICATION PROCESS.

01. **Initial Applications.** An eligible student must complete and submit the opportunity scholarship program application to the Board electronically on or before the date specified in the application, but not later than March 1. An applicant without electronic capabilities may submit an application on the form established by the Board through the United States Postal Service, which must be postmarked not later than March 1. All applicants must complete and submit the FAFSA on or prior to March 1 of his last year of secondary school. An applicant without electronic capabilities may submit an application on the form established by the Board executive director through the United States Postal Service, which must be postmarked by March 1. (3-20-14)(    )

02. **Announcement of Award.** Announcement of the award of initial scholarships will be made no later than June 1 of each year, with awards to be effective at the beginning of the first full term following July 1 of that year. Announcements must clearly state the award is part of the state's scholarship program and is funded through state appropriated funds. Additional award announcement may be made after this date based on the availability of funds and the acceptance rate of the initial awards. (3-20-14)(    )

03. **Communication with State Officials.** Applicants must respond by the date specified to any communication from officials of the opportunity scholarship program. Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved and approved by the state board of education executive director or designee. (3-20-14)

### (BREAK IN CONTINUITY OF SECTIONS)

## 302. CONTINUING ELIGIBILITY.

To remain eligible for renewal of an opportunity scholarship, the recipient must comply with all of the provisions of the Opportunity Scholarship Program and these rules, in addition to the following requirements: (4-2-08)

01. **Renewal Application.** A scholarship recipient must complete and submit a renewal application in order to be considered for a continuing scholarship for each succeeding year and update and submit the FAFSA on or prior to March 1. (3-20-14)

02. **Credit Hours.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient attending a four (4) year eligible postsecondary institution must have completed a minimum of twelve twenty-four (+24) credit hours or its equivalent each semester academic year that the student received an opportunity scholarship award. A scholarship recipient attending a two (2) year eligible postsecondary institution must have completed a minimum of nine eighteen (918) credit hours or its equivalent each semester academic year that the



student received an opportunity scholarship award.

~~(3-20-14)~~( )

**03. Satisfactory Academic Progress.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have maintained a minimum cumulative grade point average of three point zero (3.0) on a scale of four point zero (4.0) during the time that the recipient received an opportunity scholarship award, and must be maintaining satisfactory academic progress, consistent within federal financial regulations as implemented at the eligible Idaho postsecondary educational institution at which the scholarship recipient was enrolled. (3-20-14)

**04. Maximum Duration of Scholarship Award.** The award of an opportunity scholarship shall not exceed the equivalent of eight (8) semesters or the equivalent of four (4) academic years. (3-20-14)

**05. Eligibility Following Interruption of Continuous Enrollment.** A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months but less than two (2) years for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to withdraw no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance to the Office of the State Board of Education. Failure to do so may result in forfeiture of the scholarship. The Board's Executive Director or designee will review each request for interruption and notify the individual of approval or denial of the request. In addition, the individual must file a statement with the Board declaring his intent to re-enroll as a full-time undergraduate student in an academic or professional-technical program in an eligible Idaho postsecondary educational institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll within two (2) years of the approval of the request to withdraw. Failure to do so will result in forfeiture of the scholarship unless an extension has been granted. An extension of interruption of continuous enrollment period may be granted for eligible students due to military service in the United States armed forces, medical circumstances, or other circumstances approved by the state board of education's executive director. All requests for extension must be made sixty (60) days prior to the start of the succeeding academic year. ~~(3-20-14)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. RESPONSIBILITIES OF ELIGIBLE IDAHO POSTSECONDARY EDUCATIONAL INSTITUTIONS.**

**01. Statements of Continuing Eligibility.** An eligible Idaho postsecondary educational institution participating in this Opportunity Scholarship Program must submit statements of continuing student eligibility to the Board by the 30th day after the end of each academic ~~term~~ year. Such statements must include verification that the scholarship recipient is still enrolled, attending full time, maintaining satisfactory academic progress, and has not exceeded the award eligibility terms. ~~(3-20-14)~~( )

**02. Other Requirements.** An eligible Idaho postsecondary educational institution must: (4-2-08)

**a.** Be eligible to participate in Federal Title IV financial aid programs, and must supply documentation to the Board verifying this eligibility, and prompt notification regarding any changes in this status; (4-2-08)

**b.** Have the necessary administrative computing capability to administer the Opportunity Scholarship Program on its campus, and electronically report student data records to the Board; (4-2-08)

**c.** Provide data on student enrollment and federal, state, and private financial aid for students to the Board, and (4-2-08)

**d.** Agree to permit periodic Opportunity Scholarship Program audits to verify compliance with Idaho law and these rules related to the program. (4-2-08)

**IDAPA 08 - STATE BOARD OF EDUCATION**

**08.02.01 - RULES GOVERNING ADMINISTRATION**

**DOCKET NO. 08-0201-1501**

**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 21, 2015.

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

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

The proposed changes will amend language specifying that the High School Equivalency Certificate requests go to the Division of Professional Technical Education, which has been the case since the GED was moved to the Division in 2008, additionally, the “cut scores” are being removed allowing the scoring rubric and passing requirement established by the GED Testing Service to be used for the high school equivalency certificate. With the changes to the exam in 2014 the existing scores in the rule are not aligned with the new assessment, the new exam focus on college and career readiness and passing scores develop by the GED testing service are in alignment with what would be considered by the Division of Professional Technical Education as “passing” scores. Additional edits address how test takers obtain records or copies of transcripts to show successful completion. Currently all Idaho GED records and transcription services have been consolidated through a third-party vendor.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Volume 15-6, page 19](#).

**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: NA

**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 28, 2015.

DATED the 4th Day of September, 2015.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0201-1501  
(Only Those Sections With Amendments 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. Candidates must make the minimum score for passing the GED test as established by the GED Testing service. (3-20-14)

**02. 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, 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. (3-20-14)

**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. (3-20-14)

**04. Idaho High School Equivalency Certificate.** The State Department of Education will issue an Idaho High School Equivalency Certificate (HSEC) 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 to receive an HSEC, an applicant must submit the following documents to the State Department of Education Division of Professional-Technical Education: (4-1-97)(    )

**a.** An official report of GED test results showing successful completion of all requirements applicable to the version of the GED test taken by the applicant. Test scores are accepted as official only when reported directly by official GED Testing Centers the State's approved vendor for transcripts and records management, the Transcript Service of the Defense Activity for Non-Traditional Education Support (DANTES), Veterans Administration hospitals and or, in special cases, the GED Testing Service. Effective for all individuals taking the exam on or after January 1, 2014, individuals must receive a score of at least one hundred fifty (150) on a scale of one hundred through two hundred (100-200) on each of the four (4) content modules for the 2014 GED® exam and have a combined score of six hundred (600). (3-20-14)(    )

**b.** For those individuals who take took the exam prior to January 1, 2014, 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 or 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~~ must also furnish documentation that they met the American Government requirement of the State of Idaho. 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.

~~(3-20-14)~~( )

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.~~ Applicants should submit their request using the form furnished by the Division of Professional-Technical Education, along with the ten dollar (\$10) processing fee and appropriate documentation of above requirements. 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 EDUCATION**

### **08.02.02 - RULES GOVERNING UNIFORMITY**

#### **DOCKET NO. 08-0202-1501**

#### **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 33-101, 33-116, and 33-1201, 33-1202, 33-1203, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 amendments would make technical corrections, add clarifying language to existing requirements and restructure the sections pertaining to certification by moving existing language into a logical order by grouping the certificates together, the endorsement together, and reordering sections by the order processes typically take for obtaining certification. Additional changes would amend the alternate route to certification for the content specialist allowing for some of the existing requirements to be completed within the first year of serving under the alternate authorization rather than prior to entering the classroom. This change is necessary to allow for districts and charter schools who are unable to find qualified candidates in content areas with a full Idaho credential to fill the position with a candidate with content knowledge who is completing an alternate route to certification. Previously this was accomplished through provisional certificates and the alternate authorizations was used for individuals with content knowledge that may not have completed a teacher preparation program but wished to transition from the business/industry workforce to the teaching workforce. The provisional certificates as granted by the Department of Education in the recent past are not authorized under Idaho code and have been discontinued. Further changes add the renewal requirement for administrator certification pursuant to Section 33-1204, Idaho Code and clarify that approved alternate authorization programs must be in aligned with the Idaho Standards for Initial Certification and be reviewed under the same timeline as approved traditional postsecondary teacher preparation 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 resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Volume 15-6, page 20](#).

**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: NA

**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 28, 2015.

DATED the 4th Day of September, 2015.

Tracie Bent  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1501  
(Only Those Sections With Amendments Are Shown.)**

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

The principal place of business of the State Board of Education (SBOE) and State Department of Education (SDE) is in Boise, Idaho. Both offices are located at 650 W. State, Boise Idaho 83702. The SDE is on the 2nd Floor, the SBOE is found in Room 307. Both offices are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address for the SBOE is PO Box 83720, Boise, ID 83720-0037. The mailing address for the SDE is PO Box 83720, Boise, ID 83720-0027. The SBOE phone numbers is (208) 334-2270 and the SDE phone number is (208) 332-6800. (7-1-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. DEFINITIONS.**

**01. Active Teacher.** K-12 teacher with a valid Idaho certificate who is currently teaching in an Idaho K-12 classroom/school. (3-16-04)

**02. Alternative Routes.** Routes to teacher certification designed for candidates who want to enter the teaching profession from non-education professions or the para-educator profession, or for teachers lacking certification in a specific area defined as an emergency district need. (3-16-04)

**03. Credential.** The general term used to denote the document on which all of a person's educational certificates and endorsements are listed. The holder is entitled to provide educational services in any and/or all areas listed on the credential. (3-16-04)

**04. Endorsement.** Term used to refer to the content area or specific area of expertise in which a holder is granted permission to provide services. (3-16-04)

**05. Idaho Student Achievement Standards.** Standards of achievement for Idaho's K-12 students. See IDAPA 08.02.03, "Rules Governing Thoroughness." (3-16-04)

**06. Individualized Professional Learning Plan.** An individualized plan based on the Idaho framework for teacher as outlined in Section 120 of these rules to include interventions based on the individual's strengths and areas of needed growth. ( )

**067. Institutional Recommendation.** Signed form or written verification from an accredited institution with an approved teacher preparation program stating that an individual has completed the program, received a basic or higher rating in all twenty-two (22) components of the Idaho framework for teaching evaluation, has an individualized professional learning plan, has demonstrated measurable student achievement and the ability to create student learning objectives, and is now being recommended for state certification. (3-16-04)( )

08. Local Education Agency (LEA). An Idaho public school district or charter school pursuant to Section 33-5203(7), Idaho Code. ( )

~~07~~9. **Orientation.** School district/school process used to acquaint teachers new to district/school on its policies, procedures and processes. (3-16-04)

10~~8.~~ **Para-Educator.** Aides and assistants employed by school districts to supplement instruction and provide additional assistance to students. (3-16-04)

~~09~~11. **Pedagogy.** Teaching knowledge and skills. (3-16-04)

12. Student Learning Objective (SLO). A measurable, long-term academic growth target that a teacher sets at the beginning of the year for all student or for subgroups of students. SLOs demonstrate a teacher's impact on student learning within a given interval of instruction based upon baseline data gathered at the beginning of the course. ( )

~~10~~3. **Teacher Leader.** A ~~master~~ teacher who facilitates the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. (~~4-4-13~~)( )

(BREAK IN CONTINUITY OF SECTIONS)

*[Codified Section 015 is being moved and renumbered to proposed Section 016]*

**0165. 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.e. 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: (3-20-14)

~~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) who is employed in an elementary classroom (multi-subject classroom K-8); (3-20-14)

~~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 who is employed in an elementary classroom (multi-subject classroom K-8); (3-20-14)

~~d.~~ Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed in an elementary classroom (multi-subject classroom K-8); and (3-20-14)

~~e.~~ Each school administrator holding an Administrator Certificate (Pre-K-12) who is employed in an

~~elementary classroom (multi-subject classroom K-8), including all school district and charter administrators. (3-20-14)~~

~~**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 living outside of the state of Idaho 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. (3-20-14)~~

~~**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.e. 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) who is employed in an elementary classroom (K-8); and (3-20-14)~~

~~**c.** Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed in a K-12 classroom. (3-20-14)~~

~~**05. Out-of-State Applicants—Idaho Comprehensive Literacy Course. (3-20-14)**~~

~~**a.** Out-of-state applicants shall take a state approved Idaho Comprehensive Literacy Course as a certification requirement. (3-20-14)~~

~~**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. (3-20-14)~~

**01. 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: ( )

**a.** Completion of the general education requirements at an accredited college or university is required. ( )

**b.** Meets the following professional education requirements: ( )

**i.** A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, methodological foundations, instructional technology, 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. ( )

ii. The required minimum credit hours must include at least six (6) semester credit hours, or nine (9) quarter credit hours, of student teaching or two (2) years of satisfactory experience as a teacher in grades K-8. ( )

c. 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). ( )

d. 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 eight (8) or a K-12 endorsement shall be added to the Standard Elementary Certificate. ( )

e. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must meet or exceed the state qualifying score on approved elementary or secondary content area and pedagogy assessments. ( )

**02. Standard Secondary Certificate.** A Standard Secondary Certificate makes an individual eligible to teach in grades six (6) through twelve (12). A Secondary Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements: ( )

a. Completion of the general education requirements at an accredited college or university is required. ( )

b. Professional Education Requirements: ( )

i. A minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, and methodological foundations, instructional technology, and in the professional subject matter of secondary education, which must include at least three (3) semester credit hours, or four (4) quarter credit hours, of reading in the content area. ( )

ii. The required twenty (20) semester credit hours, or thirty (30) quarter credit hours, must also include at least six (6) semester credit hours, or nine (9) quarter credit hours, of secondary student teaching or two (2) years of satisfactory experience as a teacher in grades six (6) through twelve (12). ( )

c. Preparation in at least two (2) fields of secondary teaching: a first teaching field of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, and a second teaching field of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the first teaching field or second teaching field requirements. ( )

d. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades six (6) through twelve (12). ( )

e. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must have a qualifying score on an approved content area assessment in any area(s) for which the certificate or endorsement(s) will be applied. ( )

**03. Blended Early Childhood Education / Early Childhood Special Blended Certificate.** A Blended Early Childhood Education / Early Childhood Special Education Certificate makes an individual eligible to teach in any early childhood educational setting for youth from birth to grade three (3), including those who are at-risk or have developmental delays. This certificate may be issued to any person with a baccalaureate degree from an accredited college or university and who meets the following minimum requirements: ( )

a. Completion of the general education requirements at an accredited college or university is required. ( )

**b.** Meets the following professional education requirements. ( )

**i.** A minimum of thirty (30) semester credit hours, or forty-five (45) quarter credit hours, in the philosophical, psychological, and methodological foundations, in instructional technology, and in the professional subject matter of early childhood and early childhood-special education. The professional subject matter of early childhood and early childhood-special education shall include course work specific to the young child from birth through grade three (3) in the areas of child development and learning; curriculum development and implementation; family and community relationships; assessment and evaluation; professionalism; and, application of technologies. ( )

**ii.** The required thirty (30) semester credit hours, or forty-five (45) quarter credit hours, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading. ( )

**c.** An institutional recommendation from an accredited college or university. ( )

**d.** 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 early-childhood assessments. ( )

**04.** Exceptional Child Certificate. Holders of this certificate are authorized to work with children who have been identified as having an educational impairment. ( )

**a.** Completion of the general education requirements at an accredited college or university is required and six (6) or more semester credit hours, or nine (9) or more quarter credit hours of student teaching in a special education setting. ( )

**b.** Exceptional Child Generalist Endorsement (K-12). The Exceptional Child Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed, with field work to include student teaching in an elementary or secondary special education setting. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: ( )

**i.** Completion of a baccalaureate degree from an accredited college or university. ( )

**ii.** Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. ( )

**iii.** Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. ( )

**iv.** Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. ( )

**c.** Early Childhood Special Education Endorsement (Pre-K-3). The Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Standard Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: ( )

**i.** Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: Child development and behavior with

emphasis in cognitive-language, physical, social and emotional areas, birth through age eight (8); Curriculum and program development for young children ages three to eight (3-8); Methodology: planning, implementing and evaluating environments and materials for young children ages three to eight (3-8); Guiding young children's behavior: observing, assessing and individualizing ages three to eight (3-8); Identifying and working with atypical young children ages three to eight (3-8) Parent-teacher relations; and, Field work to include an internship and student teaching at the Pre-K - 3 grades. ( )

d. Deaf/Hard of Hearing Endorsement (K-12). Completion of a minimum of thirty-three (33) semester credit hours in the area of deaf/hard of hearing with an emphasis on instruction for students who use sign language or completion of a minimum thirty-three (33) semester credit hours in the area of deaf/hard of hearing with an emphasis on instruction for students who use listening and spoken language. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Deaf/Hard of Hearing endorsement, a candidate must have satisfied the following requirements: ( )

- i. Completion of a baccalaureate degree from an accredited college or university; ( )
- ii. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or ( )
- iii. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; ( )
- iv. Completion of a program of a minimum of thirty-three (33) semester credit hours in the area of Deaf/Hard of Hearing. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. ( )

e. Visual Impairment Endorsement (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impaired endorsement, a candidate must have satisfied the following requirements: ( )

- i. Completion of a baccalaureate degree from an accredited college or university; ( )
- ii. Completion in an Idaho college or university of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion in an out-of-state college or university of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. ( )
- iii. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. ( )
- iv. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. ( )

05. Pupil Personnel Services Certificate. Persons who serve as school counselors, school psychologists, speech-language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify. ( )

a. Counselor Endorsement (K-12). To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. ( )

- i. Hold a master's degree and provide verification of completion of an approved program of graduate

study in school counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, seventy-five percent (75%) of which must be in a K-12 school setting. This K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement. ( )

ii. An institutional recommendation is required for a Counselor K-12 Endorsement. ( )

**b.** School Psychologist Endorsement. This endorsement is valid for five (5) years. In order to renew the endorsement, six (6) professional development credits are required every five (5) years. The renewal credit requirement may be waived if the applicant holds a current valid National Certification for School Psychologists (NCSP) offered through the National Association of School Psychologists (NASP). To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: ( )

i. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. ( )

ii. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. ( )

iii. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. ( )

iv. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). ( )

**c.** School Nurse Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through completion of either requirements in Subsections 015.04.c.i. or 015.04.c.ii. in addition to the requirement of Subsection 015.04.c.iii. ( )

i. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health-related field from an accredited institution. ( )

ii. The candidate must possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing and have completed nine (9) semester credit hours from a university or college in at least three (3) of the following areas: ( )

(1) Health program management; ( )

(2) Child and adolescent health issues; ( )

(3) Counseling, psychology, or social work; or ( )

(4) Methods of instruction. ( )

iii. Additionally, each candidate must have two (2) years' full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. ( )

d. Interim Endorsement - School Nurse. This certificate will be granted for those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. An Interim Certificate - will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. ( )

e. Speech-Language Pathologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. ( )

f. Audiology Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. ( )

g. School Social Worker Endorsement. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options: ( )

i. A master's degree in social work from a postsecondary institution accredited by an organization recognized by the State Board of Education. The program must be currently approved by the state educational agency of the state in which the program was completed. ( )

ii. A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas: understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. ( )

h. Interim Endorsement-Speech Language Pathologist. This certificate will be granted for those who do not meet the educational requirements but who hold a bachelor's degree in speech language pathology and are pursuing a master's degree in order to obtain the pupil personnel services certificate endorsed in speech language pathology. An interim certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. ( )

06. 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: School Climate, Collaborative Leadership, and Instructional Leadership. ( )

a. 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: ( )

- i. Hold a master's degree from an accredited college or university. ( )
- ii. Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in an accredited school setting. ( )
- iii. 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. ( )
- iv. 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: School Climate, Collaborative Leadership, and Instructional Leadership. ( )
- v. An institutional recommendation is required for a School Principal Pre-K-12 Endorsement. ( )
- b. Superintendent Endorsement. To be eligible for an Administrator Certificate with a Superintendent endorsement, a candidate must have satisfied the following requirements: ( )
  - i. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. ( )
  - ii. Have four (4) years of full-time certificated/licensed experience working with Pre-K-12 students while under contract in an accredited school setting. ( )
  - iii. 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. ( )
  - iv. 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: School Climate, Collaborative Leadership, and Instructional Leadership. ( )
  - v. An institutional recommendation is required for a School Superintendent Endorsement. ( )
- c. 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: ( )
  - i. Hold a master's degree from an accredited college or university. ( )
  - ii. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting. ( )
  - iii. Obtain college or university verification of demonstrated the competencies of the Idaho Foundation Standards for School Administrators: School Climate, Collaborative Leadership, and Instructional Leadership. ( )
  - iv. 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. ( )

v. Have completed an administrative internship/practicum in the area of administration of special education and related services. ( )

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

**07. Certification Standards For Professional-Technical Educators.** Teachers of professional-technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a Teaching Certificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Professional-Technical Education, and application processes are managed by the Division of Professional-Technical Education. ( )

**08. Degree Based Professional-Technical Certification.** ( )

a. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural Science and Technology; Business Technology Education; Family and Consumer Sciences; Marketing Technology Education; and Technology Education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated four-thousand (4,000) clock hours of related work experience or shall have completed an approved practicum in their respective field of specialization. ( )

b. The Professional-Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of professional-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Professional-Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Professional-Technical Education. ( )

i. Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on teaching credential; ( )

ii. Provide evidence of a minimum of three (3) years' teaching in an occupational discipline; ( )

iii. Hold a master's degree; and ( )

iv. Complete at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of professional-technical education; administration of personnel; and legal aspects of professional-technical education. Additional course work can be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. ( )

v. To renew the Professional-Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for professional-technical teachers. ( )

c. Work-Based Learning Coordinator Endorsement. Educators assigned to coordinate approved work-based experiences must hold the Work-Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Secondary Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. ( )

d. Career Counselor Endorsement. The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Personnel Services Certificate endorsed Counselor K-12 and who have satisfied the following professional technical requirement: Career Pathways and Professional Technical Guidance; Principles/ Foundations of Professional-Technical Education; and Theories of Occupational Choice. ( )

09. Occupational Specialist Certificate. The Occupational Specialist Certificate is an industry based professional-technical certifications. Persons who need to hold the Occupational Specialist Certificate include: secondary educators assigned to Health Professions Education and Technical Sciences; those in specialized occupational areas where specific degree-granting professional technical teacher education programs do not exist; and postsecondary professional-technical educators who teach courses with nine (9) - to twelve (12) students per class. ( )

a. Applicants must: be eighteen (18) years of age; document full-time, successful, recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options: ( )

i. Have sixteen-thousand (16,000) hours of full-time, successful, recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit can be counted toward the eight (8) years on a month-to-month basis for journeyman training and/or postsecondary training successfully completed as a full-time student in an approved/approvable, postsecondary, professional-technical education program. ( )

ii. Have a bachelor's degree in the specific occupation or related area, plus six-thousand (6,000) hours of full-time, successful, recent, gainful employment in the occupation. ( )

iii. Meet one (1) of the following: ( )

(1) Have at least journeyman level plus two (2) years of recent, full-time, gainful, related work experience. A person who has completed a formal apprenticeship program in the occupation or related area for which certification is requested. The apprenticeship must be under the direction of an employer and the Bureau of Apprenticeship and Training or an approved State Apprenticeship Agency; ( )

(2) Pass approved state or national certification/certification examination plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis); or ( )

(3) Pass approved industry related certification for skill level requirements (vendor and industry specific) plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis). If no competency test exists, a written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required to verify occupational competence. ( )

b. Limited Occupational Specialist Certificate. This certificate is issued to individuals who are new to teaching trades and health occupations professions in public schools. The certificate is valid for three (3) years and is non-renewable. ( )

i. Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Professional-Technical Education and an approved course in professional technical methods and student assessment. ( )

ii. Complete a new-teacher induction workshop at the state or district level. ( )

iii. File a professional development plan with the State Division of Professional-Technical Education. ( )



iv. Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete course work which includes competencies in four (4) of the following: Principles/ Foundations of Occupational Education; Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; Measurement and Evaluation; and Methods of Teaching Occupational Education. ( )

c. Standard Occupational Specialist Certificate. This certificate is issued to individuals who have completed course work equivalent to that required of the Limited Occupational Specialist Certificate. The certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or verification of two hundred-forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a professional development plan for the next certification period. ( )

d. Advanced Occupational Specialist Certificate. This certificate is issued to individuals who meet all the requirements outlined below: ( )

i. Meet the requirements for the Standard Occupational Specialist Certificate: ( )

ii. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and ( )

iii. File a new professional development plan for the next certification period. ( )

iv. This certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or submit verification of two hundred-forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new professional development plan for the next certification period. ( )

10. Postsecondary Specialist. A Postsecondary Specialist certificate will be granted to a current faculty member whose primary employment is with any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state-issued certificate will be for distance education, virtual classroom programs, and for public and postsecondary partnerships. ( )

a. Renewal. This certificate is good for five (5) years and is renewable. To renew the certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution (faculty's college dean level or higher). ( )

b. Fees. The fee is the same as currently in effect for an initial or renewal certificate as established in Section 066 of these rules. ( )

c. The candidate must meet the following qualifications: ( )

i. Hold a master's degree or higher in the content area being taught; ( )

ii. Be currently employed by the post secondary institution in the content area to be taught; and( )

iii. Complete and pass a criminal history background check as required according to Section 33-130, Idaho Code. ( )

11. American Indian Language. Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language in accordance with Section 33-1280, Idaho Code. Individuals identified by the tribe(s) may apply for an Idaho American Indian Certificate as American Indian languages teachers. ( )

a. The Office of Indian Education at the State Department of Education will process an application that has met the requirements of the Tribe(s) for an American Indian languages teacher. ( )

b. Once an application with Tribal approval has been received, it will be reviewed and, if approved, it will be forwarded to the Office of Certification for a criminal history background check as required in Section 33-130, Idaho Code. The application must include a ten finger fingerprint card or scan and a forty dollar (\$40) fee for undergoing a criminal history check pursuant to Section 33-130, Idaho Code. ( )

c. The Office of Certification will review the application and verify the applicant is eligible for an Idaho American Indian Certificate. The State Department of Education shall authorize an eligible applicant as an American Indian languages teacher. An Idaho American Indian Certificate is valid for not more than five (5) years. Individuals may apply for a renewal certificate. ( )

**12. Junior Reserved Officer Training Corps (Junior ROTC) Instructors.** ( )

a. Each school district with a Junior ROTC program shall provide the State Department of Education with a list of the names of those individuals who have completed an official armed forces training program to qualify as Junior ROTC instructors in high schools. ( )

b. Each school district with a Junior ROTC program shall provide the State Department of Education with a notarized copy of their certificate(s) of completion. ( )

c. Authorization Letter. Upon receiving the items identified in Subsections 015.12.a. and b., the State Department of Education shall issue a letter authorizing these individuals as Junior ROTC instructors. ( )

**13. Additional Renewal Requirements. In addition to specific certificate or endorsement renewal requirements, applicants must meet the following renewal requirements as applicable:** ( )

a. 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 must take one (1) of the three (3) courses developed that is 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 a 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 must successfully complete the "Mathematical Thinking for Instruction" course in order to recertify: ( )

i. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed by a school district or charter school; ( )

ii. Each teacher holding a Standard Elementary Certificate (K-8) who is employed by a school district or charter school; ( )

iii. 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 who is employed by a school district or charter school; ( )

iv. Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed by a school district or charter school; and ( )

v. Each school administrator holding an Administrator Certificate (Pre K-12) who is employed by a school district or charter school. ( )

**b.** 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 living outside of the state of Idaho 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. ( )

**c.** 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 must successfully complete an Idaho Comprehensive Literacy course in order to recertify: ( )

i. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed by a school district or charter school; ( )

ii. Each teacher holding a Standard Elementary Certificate (K-8) who is employed by a school district or charter school; and ( )

iii. Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed by a school district or charter school. ( )

**d.** Administrator certificate renewal. In order to recertify, holders of an administrator certificate must complete a course consisting of a minimum of three (3) semester credits in the Idaho framework for teachers' evaluation pursuant to Section 33-1204, Idaho Code. Credits must be earned through an approved teacher preparation program and include a laboratory component. ( )

**[Codified Section 016 is being moved and renumbered to proposed Section 015]**

**01.56. IDAHO INTERIM CERTIFICATE.**

~~01. Issuance of Interim Certificate.~~ The State Department of Education is authorized to issue a three-year (3) interim certificate to those applicants who hold a valid certificate/license from another state or other entity that participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement or engaged in an alternate route to authorization as prescribed herein. An interim certificate is nonrenewable except under extenuating circumstances approved by the State Department of Education. (4-2-08)( )

**01. Interim Certificate Not Renewable.** Interim certification is only available on a one-time basis per individual. It will be the responsibility of the individual to meet the requirements of the applicable alternate authorization route and to obtain a full Idaho Educator Credential during the three (3) year interim certification term. ( )

~~02.~~ **Idaho Comprehensive Literacy Course.** For all Idaho teachers working on interim certificates, alternate routes or coming from out of the state, completion of a state approved ~~reading instruction~~ Idaho Comprehensive Literacy course shall be a one-time requirement for full certification. (4-7-11)( )

**a.** 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. ( )

**03. Mathematical Thinking for Instruction.** 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). 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. ( )

~~04.~~ **Technology.** Out-of-state applicants will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. (4-7-11)

**025. Reinstatement of Expired Certificate.** An individual holding an expired Idaho certificate may be issued a nonrenewable three-year interim certificate. During the validity period of the interim certificate, the applicant must meet all current requirements listed for the specific certificate and endorsement(s) including the appropriate content, pedagogy, and performance assessments. (3-29-12)

~~036.~~ **Foreign Institutions.** An educator having graduated from a foreign institution that is listed in the Accredited Degree-Granting Institutions section of the “Accredited Institutions of Postsecondary Education” and having a valid/current teaching certificate/license from the country or province in which the foreign institution is located, may be issued a non-renewable, three-year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (4-2-08)

*[Codified Section 017 is being moved and renumbered to proposed Section 018]*

~~09017.~~ **INTERSTATE CERTIFICATION COMPACT.**

Idaho participates in the Interstate Agreement of Qualification of Education Personnel. This agreement applies equally to teachers entering Idaho from another compact-member state and to teachers entering another compact-member state from Idaho. The compact applies to classroom teachers only. Trades and industries teachers are not covered by the agreement. (Section 33-4104, Idaho Code) (4-1-97)

~~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.~~ (3-12-14)

~~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)

~~0178.~~ **CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.**

**01. Assessments.** State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. (4-2-08)

**02. Out-of-State Waivers.** An out-of-state applicant for Idaho certification holding a current certificate may request a waiver from the above requirement. The applicant shall provide evidence of passing a state approved content, pedagogy and performance area assessment(s) or hold current National Board for Professional Standards Teaching Certificate. (4-2-08)

**03. Idaho Comprehensive Literacy Assessment.** All applicants for initial Idaho certification (Kindergarten through grade twelve (12)) from an Idaho approved teacher education program must demonstrate competency in comprehensive literacy. Areas to be included as parts of the assessment are: phonological awareness, phonics, fluency, vocabulary, comprehension, writing, and assessments and intervention strategies. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure teaching skills and knowledge congruent with current research on best literacy practices for elementary students or secondary students (adolescent literacy) dependent upon level of certification and English Language Learners. In addition the assessment must measure understanding and the ability to apply strategies and beliefs about language, literacy instruction, and assessments based on current research and best practices congruent with International Reading Association/National Council of Teachers of English standards, National English Language Learner's Association professional teaching standards, National Council for Accreditation of Teacher Education standards, and state accreditation standards. (4-7-11)

**04. Technology Assessment.** All applicants for initial Idaho certification (Kindergarten through grade twelve (12)) from an Idaho approved teacher education program must demonstrate proficiency in relevant technology skills and practices to enhance classroom management and instruction. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure understanding and the ability to apply strategies and beliefs about the integration of technology based on current research and best practices congruent with the International Society for Technology in Education professional teaching standards, the National Council for Accreditation of Teacher Education standards, and state accreditation standards. (4-7-11)

~~**019. EARLY CHILDHOOD / EARLY CHILDHOOD SPECIAL EDUCATION BLENDED CERTIFICATE.** An Early Childhood / Early Childhood Special Education Blended Certificate is non categorical and makes an individual eligible to teach in any educational setting for youth from birth to grade three (3), including those who are at-risk or have developmental delays. The Early Childhood / Early Childhood Special Education Blended Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum 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.** (3-16-04)~~

~~**a.** A minimum of thirty (30) semester credit hours, or forty-five (45) quarter credit hours, in the philosophical, psychological, and methodological foundations, in instructional technology, and in the professional subject matter of early childhood and early childhood special education. The professional subject matter of early childhood and early childhood special education shall include course work specific to the young child from birth through grade three (3) in the areas of child development and learning; curriculum development and implementation; family and community relationships; assessment and evaluation; professionalism; and, application of technologies. (3-16-04)~~

~~**b.** The required thirty (30) semester credit hours, or forty-five (45) quarter credit hours, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading. (3-16-04)~~

~~03. **Additional Requirements.** An institutional recommendation from an accredited college or university; and passage of the Idaho Comprehensive Literacy Exam. (3-16-04)~~

~~04. **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 early childhood assessments. (3-16-04)~~

~~020. **STANDARD SECONDARY CERTIFICATE.**~~

~~A Standard Secondary Certificate makes an individual eligible to teach in grades six (6) through twelve (12). A Secondary Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum 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 (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, and methodological foundations, instructional technology, and in the professional subject matter of secondary education, which must include at least three (3) semester credit hours, or four (4) quarter credit hours, of reading in the content area. (3-16-04)~~

~~b. The required twenty (20) semester credit hours, or thirty (30) quarter credit hours, must also include at least six (6) semester credit hours, or nine (9) quarter credit hours, of secondary student teaching or two (2) years of satisfactory experience as a teacher in grades six (6) through twelve (12). (3-16-04)~~

~~03. **Teaching Field Requirements.** Preparation in at least two (2) fields of secondary teaching: a first teaching field of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, and a second teaching field of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the first teaching field or second teaching field requirements. (3-30-07)~~

~~04. **Additional Requirements.** An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades six (6) through twelve (12). (3-16-04)~~

~~05. **Proficiency.** Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must have a qualifying score on an approved content area assessment in any area(s) for which the certificate or endorsement(s) will be applied. (3-16-04)~~

**019. -- 020. (RESERVED)**

**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. (3-12-14)

**02. Alternate Authorization Preparation Program.** Candidates shall meet all requirements for the endorsement as provided herein. ( )

**a. Option I - National Board.** By earning National Board Certification in content specific areas, teachers may gain endorsement in a corresponding subject area. ( )

**b. Option II - Master's degree or higher.** By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid certificate. ( )

**c. Option III - Testing and/or Assessment.** Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. ( )

**i. Pathway 1 - Endorsements may be added through state-approved testing and a mentoring component.** The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally requires the successful completion of a one (1)-year state-approved mentoring component. ( )

**ii. Pathway 2 - Endorsements may be added through state-approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced.** The appropriate test must be successfully completed within the first year of the authorization. Additionally requires the successful completion of a one (1)-year state-approved mentoring component and passing a final pedagogy assessment. ( )

**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)
- 09. Computer Science (6-12). Twenty (20) semester credit hours of course work in Computer Science, including course work in the following areas: data representation and abstraction; design, development, and testing algorithms; software development process; digital devices systems network; and the role of computer science and its impact on the modern world.** ( )
- 10. Consulting Teacher/Teacher Leader Endorsement. Consulting teachers provide technical assistance to teachers and other staff in the school district with regard to the selection and implementation of appropriate teaching materials, instructional strategies, and procedures to improve the educational outcomes for students. Candidates who hold this endorsement are teacher leaders who will facilitate the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. This endorsement is valid for five (5) years and is renewable based upon successful completion and verification of an additional four (4) semester credits beyond those required for standard certification renewal. The additional credits shall be taken for university or college credit consistent with the Individual Professional Learning Plan (IPLP).** ( )
- a. Special Education Consulting Teacher - Eligibility for Endorsement. To be eligible for a Special Education Consulting Teacher endorsement on the Standard Exceptional Child Certificate, the Early Childhood / Early Childhood Special Education Blended Certificate (Birth-Grade 3), the Standard Elementary Certificate or the Standard Secondary Teaching Certificate, a candidate must have satisfied the following requirements:** ( )
- i. Education Requirements. Qualify for or hold a Standard Exceptional Child Certificate and qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), and hold a master's degree or an approved fifth year program as defined by the Idaho State Board of Education, and have demonstrated content competencies in the following areas:** ( )
- (1) Assessment of learning behaviors;** ( )
  - (2) Individualization of instructional programs based on educational diagnosis;** ( )
  - (3) Behavioral and/or classroom management techniques;** ( )
  - (4) Program implementation and supervision;** ( )



(5) Knowledge in use of current methods, materials and resources available and management and operation of media centers: ( )

(6) Ability in identifying and utilizing community or agency resources and support services; and ( )

(7) Counseling skills and guidance of professional staff. ( )

ii. Experience. Completion of a minimum of three (3) years' teaching experience, at least two (2) years of which must be in a special education classroom setting. ( )

iii. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state-approved equivalent. Program shall include: ( )

(1) Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and ( )

(2) The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows: ( )

(a) Understanding Adults As Learners to Support Professional Learning Communities; ( )

(b) Accessing and Using Research to Improve Practice and Student Achievement; ( )

(c) Promoting Professional Learning for Continuous Improvement; ( )

(d) Facilitating Improvements in Instruction and Student Learning; ( )

(e) Using Assessments and Data for School and District Improvement; ( )

(f) Improving Outreach and Collaboration with Families and Community; and ( )

(g) Advocating for Student Learning and the Profession. ( )

iv. Not less than one (1) semester of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools. ( )

b. Mathematics Consulting Teacher - Eligibility for Endorsement. To be eligible for a Mathematics Consulting Teacher endorsement on the Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), a candidate must have satisfied the following requirements: ( )

i. Education Requirements. Qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3) and have demonstrated content competencies. Coursework and content domains required include the full series of Mathematics Thinking for Instruction (MTI), Number and Operation, Geometry, Algebraic Reasoning, Measurement and Data Analysis, and Statistics and Probability which are centered on the following emphases: ( )

(1) Structural Components of Mathematics; ( )

(2) Modeling, Justification, Proof and Generalization; ( )

(3) Mathematical Knowledge for Teaching (Ball, Thames, & Phelps, 2008). ( )

- ii. Experience. Completion of a minimum of three (3) years' teaching experience. ( )
- iii. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state-approved equivalent. Program shall include: ( )
  - (1) Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and ( )
  - (2) The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows: ( )
    - (a) Understanding Adults As Learners to Support Professional Learning Communities; ( )
    - (b) Accessing and Using Research to Improve Practice and Student Achievement; ( )
    - (c) Promoting Professional Learning for Continuous Improvement; ( )
    - (d) Facilitating Improvements in Instruction and Student Learning; ( )
    - (e) Using Assessments and Data for School and District Improvement; ( )
    - (f) Improving Outreach and Collaboration with Families and Community; and ( )
    - (g) Advocating for Student Learning and the Profession. ( )
- iv. Not less than one (1) semester of successful experience as a mathematics teacher working with classroom teachers in elementary or secondary schools. ( )

~~101.~~ **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)

**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. Engineering (6-12).** Twenty (20) semester credit hours of engineering course work. ( )

~~034.~~ **English (6-12).** Twenty (20) semester credit hours, including three (3) semester credit hours in Linguistics/Grammar, three (3) semester credit hours in American Literature, three (3) semester credit hours in English Literature, six (6) semester credit hours in Advanced Composition, excluding the introductory sequence designed to meet general education requirements. Remaining credits must be completed in the English Department, and must include some course work in Writing Methods for Teachers of Secondary Students. (3-16-04)

~~045.~~ **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)

**056. 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)

**067. 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)

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

**089. 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 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, 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. (3-12-14)

**0910. 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)

**101. 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)

**142. 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)

**123. 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)

**134. Literacy (K-12).** Twenty-one (21) semester credit hours leading toward competency as defined by Idaho Standards for Literacy Teachers to include the following areas: Foundations of Literacy (including reading,

writing, and New Literacies); Development and Diversity of Literacy Learners; Literacy in the Content Area; Literature for Youth; Language Development; Corrective/Diagnostic/Remedial Reading; and Writing Instruction. To obtain a Literacy endorsement, applicants must complete the Idaho Comprehensive Literacy Course or the Idaho Comprehensive Literacy Assessment. (3-12-14)

**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. Online-Teacher Endorsement (Pre-K-12). To be eligible for an Online-Teacher Endorsement (Pre-K-12), a candidate must have satisfied the following requirements: ( )**

a. Meets the states' professional teaching and/or licensure standards and is qualified to teach in his/her field of study. ( )

b. Provides evidence of online experience or course time both as a student and as a learner, and demonstrates online learning and teaching proficiency. ( )

c. Has completed an eight (8) week online teaching internship in a Pre-K-12 program, or has one (1) year of verifiable and successful experience as a teacher delivering curriculum online in grades Pre-K-12 within the past three (3) years. ( )

d. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study in online teaching and learning at an accredited college or university or a state-approved equivalent. ( )

e. Demonstrates proficiency in the Idaho Standards for Online Teachers including the following competencies: ( )

i. Knowledge of Online Education and Human Development; ( )

ii. Facilitate and Inspire Student Learning and Creativity; ( )

iii. Design and Develop Digital-Age Learning Experiences and Assessments Standards; ( )

iv. Model Digital-Age Work and Learning; Promote and Model Digital Citizenship and Responsibility Standards; and ( )

v. Engage in Professional Growth and Leadership. ( )

~~067.~~ **Physics (6-12).** Twenty (20) semester credit hours in the area of Physics. (3-16-04)

~~078.~~ **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)

~~089.~~ **Physical Education/Health.** Must have an endorsement in both physical education and health. (3-30-07)

~~0910.~~ **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)

~~101.~~ **Psychology.** Twenty (20) semester credit hours in the area of Psychology. (3-16-04)

~~112.~~ **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)

~~123.~~ **Sociology (6-12).** Twenty (20) semester credit hours in the area of Sociology. (3-16-04)

~~134.~~ **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)

~~145.~~ **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. (3-12-14)

**156. 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 Subsections ~~034~~ 015.07 through ~~038~~ 015.09. (~~4-4-13~~)(    )

**167. 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)

~~**025. AMERICAN INDIAN LANGUAGE (SECTION 33-1280, IDAHO CODE).**~~

~~Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language in accordance with Section 33-1280, Idaho Code. Individuals identified by the tribe(s) may apply for an Idaho American Indian Certificate as American Indian languages teachers. (4-9-09)~~

~~**01. Process the Application.** The Office of Indian Education at the State Department of Education will process an application that has met the requirements of the Tribe(s) for an American Indian languages teacher. (4-9-09)~~

~~**02. Approval Has Been Received.** Once an application with Tribal approval has been received, it will be reviewed and, if approved, it will be forwarded to the Office of Certification for a criminal history background check as required in Section 33-130, Idaho Code. The application must include a ten finger fingerprint card or scan and a forty dollar (\$40) fee for undergoing a criminal history check pursuant to Section 33-130, Idaho Code. (4-9-09)~~

~~**03. Office of Certification.** The Office of Certification will review the application and verify the applicant is eligible for an Idaho American Indian Certificate. The State Department of Education shall authorize an eligible applicant as an American Indian languages teacher. An Idaho American Indian Certificate is valid for not more than five (5) years. Individuals may apply for a renewal certificate. (4-9-09)~~

~~**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: School Climate, Collaborative Leadership, and Instructional Leadership. (3-12-14)~~

~~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: School Climate, Collaborative Leadership, and Instructional Leadership. (3-12-14)~~
- ~~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: School Climate, Collaborative Leadership, and Instructional Leadership. (3-12-14)~~
- ~~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: School Climate, Collaborative Leadership, and Instructional Leadership. (3-12-14)~~
- ~~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)

**~~027. PUPIL PERSONNEL SERVICES CERTIFICATE.~~**

~~Persons who serve as school counselors, school psychologists, speech language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify.~~ (3-16-04)

~~01. Counselor Endorsement (K-12). To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement.~~ (5-8-09)

~~a. Hold a master's degree and provide verification of completion of an approved program of graduate study in school counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, seventy-five percent (75%) of which must be in a K-12 school setting. This K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement.~~ (4-11-15)

~~b. An institutional recommendation is required for a Counselor K-12 Endorsement.~~ (5-8-09)

~~02. School Psychologist Endorsement. This endorsement is valid for five (5) years. In order to renew the endorsement, six (6) professional development credits are required every five (5) years. The renewal credit requirement may be waived if the applicant holds a current valid National Certification for School Psychologists (NCSP) offered through the National Association of School Psychologists (NASP). To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options:~~ (3-29-12)

~~a. Completion of an approved thirty (30) semester credit hour, or forty five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist.~~ (4-7-11)

~~b. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist.~~ (4-7-11)

~~e. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum twelve hundred (1,200) clock hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist.~~ (5-8-09)



~~d. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-29-12)~~

~~03. **School Nurse Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through completion of either requirements in Subsections 027.03.a. or 027.03.b. in addition to the requirement of Subsection 027.03.c. (3-29-10)~~

~~a. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health related field from an accredited institution. (5-8-09)~~

~~b. The candidate must possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing and have completed nine (9) semester credit hours from a university or college in at least three (3) of the following areas: (5-8-09)~~

~~i. Health program management; (5-8-09)~~

~~ii. Child and adolescent health issues; (5-8-09)~~

~~iii. Counseling, psychology, or social work; or (5-8-09)~~

~~iv. Methods of instruction. (5-8-09)~~

~~e. Additionally, each candidate must have two (2) years' full time (or part time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (5-8-09)~~

~~04. **Interim Endorsement - School Nurse.** This certificate will be granted for those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. An Interim Certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)~~

~~05. **Speech Language Pathologist Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)~~

~~06. **Audiology Endorsement.** This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)~~

~~07. **School Social Worker Endorsement.** This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options: (3-16-04)~~

~~a. A master's degree in social work from an Idaho college or university approved by the State Board of Education, or a master's degree in social work from an out-of-state college or university. The program must be currently approved by the state educational agency of the state in which the program was completed. (3-16-04)~~

~~b. A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas: understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. (3-16-04)~~

~~08. **Interim Endorsement Speech Language Pathologist.** This certificate will be granted for those who do not meet the educational requirements but who hold a bachelor's degree in Speech language pathology and are pursuing a master's degree in order to obtain the pupil personnel services certificate endorsed in speech language pathology. An Interim Certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)~~

~~028. **EXCEPTIONAL CHILD CERTIFICATE.**~~

~~Holders of this certificate work with children who have been identified as having an educational impairment. (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. **Generalist Endorsement (K-12).** The Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed, with field work to include an internship and student teaching in a special education setting. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: (4-4-13)~~

~~a. Completion of a baccalaureate degree from an accredited college or university: (3-16-04)~~

~~b. Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out of state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. (3-16-04)~~

~~c. Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. (3-16-04)~~

~~d. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (3-16-04)~~

~~03. **Early Childhood Special Education Endorsement (Pre-K-3).** The Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Standard Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: (4-7-11)~~

~~a. Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: Child development and behavior with emphasis in cognitive language, physical, social and emotional areas, birth through age eight (8); Curriculum and program development for young children ages three to eight (3-8); Methodology: planning, implementing and evaluating environments and materials for young children ages three to eight (3-8); Guiding young children's behavior: observing, assessing and individualizing ages three to eight (3-8); Identifying and working with atypical young children ages three to eight (3-8) Parent-teacher relations; and, Field work to include an internship and student teaching at the Pre-K-3 grades. (4-7-11)~~

~~04. **Deaf/Hard of Hearing Endorsement (K-12).** Completion of a minimum of thirty-three (33) semester credit hours in the area of deaf/hard of hearing with an emphasis on instruction for students who use sign language or completion of a minimum thirty-three (33) semester credit hours in the area of deaf/hard of hearing with an emphasis on instruction for students who use listening and spoken language. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Deaf/Hard of Hearing endorsement, a candidate must have satisfied the following requirements: (4-11-15)~~

- ~~a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)~~
- ~~b. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or (4-11-06)~~
- ~~c. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; (4-11-06)~~
- ~~d. Completion of a program of a minimum of thirty-three (33) semester credit hours in the area of Deaf/Hard of Hearing. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-15)~~

~~05. **Visual Impairment Endorsement (K-12).** Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impaired endorsement, a candidate must have satisfied the following requirements: (4-11-06)~~

- ~~a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)~~
- ~~b. Completion in an Idaho college or university of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion in an out-of-state college or university of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. (4-11-15)~~
- ~~c. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-06)~~
- ~~d. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (4-11-15)~~

~~029. **CONSULTING TEACHER/TEACHER LEADER ENDORSEMENT.**~~

~~Consulting teachers provide technical assistance to teachers and other staff in the school district with regard to the selection and implementation of appropriate teaching materials, instructional strategies, and procedures to improve the educational outcomes for students. Candidates who hold this endorsement are teacher leaders who will facilitate the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. This endorsement is valid for five (5) years and is renewable based upon successful completion and verification of an additional four (4) semester credits beyond those required for standard certification renewal. The additional credits shall be taken for university or college credit consistent with the Individual Professional Learning Plan (IPLP). (4-4-13)~~

~~01. **Special Education Consulting Teacher—Eligibility for Endorsement.** To be eligible for a Special Education Consulting Teacher endorsement on the Standard Exceptional Child Certificate, the Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), the Standard Elementary Certificate or the Standard Secondary Teaching Certificate, a candidate must have satisfied the following requirements: (3-29-10)~~

- ~~a. **Education Requirements.** Qualify for or hold a Standard Exceptional Child Certificate and qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), and hold a master's degree or an approved fifth year program as defined by the Idaho State Board of Education, and have demonstrated content competencies in the following areas: (4-4-13)~~
  - ~~i. Assessment of learning behaviors; (4-4-13)~~
  - ~~ii. Individualization of instructional programs based on educational diagnosis; (4-4-13)~~

- ~~iii. Behavioral and/or classroom management techniques; (4-4-13)~~
- ~~iv. Program implementation and supervision; (4-4-13)~~
- ~~v. Knowledge in use of current methods, materials and resources available and management and operation of media centers; (4-4-13)~~
- ~~vi. Ability in identifying and utilizing community or agency resources and support services; and (4-4-13)~~
- ~~vii. Counseling skills and guidance of professional staff. (4-4-13)~~
- ~~**b.** Experience. Completion of a minimum of three (3) years' teaching experience, at least two (2) years of which must be in a special education classroom setting. (3-16-04)~~
- ~~**e.** Provides verification of completion of a state approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state approved equivalent. Program shall include: (4-4-13)~~
  - ~~i. Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and (4-4-13)~~
  - ~~ii. The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows: (4-4-13)~~
    - ~~(1) Understanding Adults As Learners to Support Professional Learning Communities; (4-4-13)~~
    - ~~(2) Accessing and Using Research to Improve Practice and Student Achievement; (4-4-13)~~
    - ~~(3) Promoting Professional Learning for Continuous Improvement; (4-4-13)~~
    - ~~(4) Facilitating Improvements in Instruction and Student Learning; (4-4-13)~~
    - ~~(5) Using Assessments and Data for School and District Improvement; (4-4-13)~~
    - ~~(6) Improving Outreach and Collaboration with Families and Community; and (4-4-13)~~
    - ~~(7) Advocating for Student Learning and the Profession. (4-4-13)~~
- ~~**d.** Not less than one (1) semester of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools. (4-4-13)~~
- ~~**02. Mathematics Consulting Teacher Eligibility for Endorsement.** To be eligible for a Mathematics Consulting Teacher endorsement on the Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), a candidate must have satisfied the following requirements: (3-29-10)~~
  - ~~**a.** Education Requirements. Qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3) and have demonstrated content competencies. Coursework and content domains required include the full series of Mathematics Thinking for Instruction (MTI), Number and Operation, Geometry, Algebraic Reasoning, Measurement and Data Analysis, and Statistics and Probability which are centered on the following emphases: (4-4-13)~~
    - ~~i. Structural Components of Mathematics; (4-4-13)~~

- ~~ii. Modeling, Justification, Proof and Generalization; (4-4-13)~~
- ~~iii. Mathematical Knowledge for Teaching (Ball, Thames, & Phelps, 2008). (4-4-13)~~
- ~~b. Experience. Completion of a minimum of three (3) years' teaching experience. (3-29-10)~~
- ~~e. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state-approved equivalent. Program shall include: (4-4-13)~~
  - ~~i. Ninety (90) contact hours to include a combination of face to face and field-based professional development activities; and (4-4-13)~~
  - ~~ii. The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows: (4-4-13)~~
    - ~~(1) Understanding Adults As Learners to Support Professional Learning Communities; (4-4-13)~~
    - ~~(2) Accessing and Using Research to Improve Practice and Student Achievement; (4-4-13)~~
    - ~~(3) Promoting Professional Learning for Continuous Improvement; (4-4-13)~~
    - ~~(4) Facilitating Improvements in Instruction and Student Learning; (4-4-13)~~
    - ~~(5) Using Assessments and Data for School and District Improvement; (4-4-13)~~
    - ~~(6) Improving Outreach and Collaboration with Families and Community; and (4-4-13)~~
    - ~~(7) Advocating for Student Learning and the Profession. (4-4-13)~~
- ~~d. Not less than one (1) semester of successful experience as a mathematics teacher working with classroom teachers in elementary or secondary schools. (4-4-13)~~

**030. (RESERVED)**

**031. JUNIOR RESERVED OFFICER TRAINING CORPS (JUNIOR ROTC) INSTRUCTORS.**

~~01. List of Names. Each school district with a Junior ROTC program shall provide the State Department of Education with a list of the names of those individuals who have completed an official armed forces training program to qualify as Junior ROTC instructors in high schools. (4-11-06)~~

~~02. Notarized Copy. Each school district with a Junior ROTC program shall provide the State Department of Education with a notarized copy of their certificate(s) of completion. (4-11-06)~~

~~03. Authorization Letter. Upon receiving the items identified in Subsections 031.01 and 031.02, the State Department of Education shall issue a letter authorizing these individuals as Junior ROTC instructors. (4-11-06)~~

**032. POSTSECONDARY SPECIALIST.**

~~A Postsecondary Specialist certificate will be granted to a current faculty member whose primary employment is with any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state issued certificate will be for distance education, virtual classroom programs, and for public and postsecondary partnerships. (3-26-08)~~

~~01. Renewal. This certificate is good for five (5) years and is renewable. To renew the certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution~~

~~(faculty's college dean level or higher). (3-26-08)~~

~~02. Fees. The fee is the same as currently in effect for an initial or renewal certificate as established in Section 066 of these rules. (3-26-08)~~

~~03. Qualifications. The candidate must: (3-26-08)~~

~~a. Hold a masters degree or higher in the content area being taught; (3-26-08)~~

~~b. Be currently employed by the post secondary institution in the content area to be taught; and (3-26-08)~~

~~e. Complete and pass a criminal history check as required according to Section 33-130, Idaho Code. (3-26-08)~~

~~033. ONLINE TEACHER ENDORSEMENT (PRE-K-12).~~

~~01. Online Teacher Endorsement. To be eligible for an Online Teacher Endorsement (Pre-K-12), a candidate must have satisfied the following requirements: (4-7-11)~~

~~a. Meets states' professional teaching and/or licensure standards and is qualified to teach in his/her field of study. (4-7-11)~~

~~b. Provides evidence of online experience or course time both as a student and as a learner, and demonstrates online learning and teaching proficiency. (4-7-11)~~

~~e. Has completed (completes) an eight (8) week online teaching internship in a Pre-K-12 program, or have one (1) year of verifiable and successful experience as a teacher delivering curriculum online in grades Pre-K-12 within the past three (3) years. (4-7-11)~~

~~d. Provides verification of completion of a state approved program of at least twenty (20) semester credit hours of study in online teaching and learning at an accredited college or university or a state approved equivalent. (4-7-11)~~

~~02. Proficiency in Idaho Standards for Online Teachers. Demonstrates proficiency in the Idaho Standards for Online Teachers including the following competencies: (4-7-11)~~

~~a. Knowledge of Online Education and Human Development; (4-7-11)~~

~~b. Facilitate and Inspire Student Learning and Creativity; (4-7-11)~~

~~e. Design and Develop Digital Age Learning Experiences and Assessments Standards; (4-7-11)~~

~~d. Model Digital Age Work and Learning; Promote and Model Digital Citizenship and Responsibility Standards; and (4-7-11)~~

~~e. Engage in Professional Growth and Leadership. (4-7-11)~~

~~034. CERTIFICATION STANDARDS FOR PROFESSIONAL TECHNICAL EDUCATORS.~~

~~Teachers of professional technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a Secondary Teaching Certificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Professional Technical Education, and application processes are managed by the Division of Professional Technical Education. (3-16-04)~~

~~035. DEGREE BASED PROFESSIONAL TECHNICAL CERTIFICATION.~~

~~01. **Teacher Preparation Through Degree Program.** Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural Science & Technology; Business Technology Education; Family & Consumer Science; Marketing Technology Education; and Technology Education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated four thousand (4,000) clock hours of related work experience or shall have completed an approved practicum in their respective field of specialization. (3-16-04)~~

~~02. **Professional Technical Administrator Certificate.** The Professional Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of professional-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Professional Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Professional Technical Education. (3-16-04)~~

~~a. Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on the secondary teaching credential; (3-16-04)~~

~~b. Provide evidence of a minimum of three (3) years' teaching in an occupational discipline; (3-16-04)~~

~~c. Hold a masters degree; and, (3-16-04)~~

~~d. Completed at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of professional technical education; administration of personnel; and legal aspects of professional technical education. Additional course work can be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. (3-16-04)~~

~~e. To renew the Professional Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for professional technical teachers. (3-16-04)~~

~~03. **Work Based Learning Coordinator Endorsement.** Educators assigned to coordinate approved work based experiences must hold the Work Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Secondary Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. (3-16-04)~~

~~04. **Career Counselor Endorsement.** The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Personnel Services Certificate endorsed Counselor K-12 and who have satisfied the following professional technical requirement: Career Pathways and Professional Technical Guidance; Principles/Foundations of Professional Technical Education; and Theories of Occupational Choice. (3-16-04)~~

~~**036. INDUSTRY BASED PROFESSIONAL TECHNICAL CERTIFICATION:**~~

~~Persons who need to hold the Occupational Specialist Certificate include: secondary educators assigned to Health Occupations Education and to Trades & Industry Education; specialized occupational areas where specific degree-granting professional technical teacher education programs do not exist; and postsecondary professional technical educators who teach courses to 9-12 students. (3-16-04)~~

~~01. **General Requirements.** Applicants must: be eighteen (18) years of age; document full time, successful, recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary;~~

~~applicants may be determined highly qualified under any one (1) of the following three (3) options: (3-16-04)~~

~~a. Have sixteen thousand (16,000) hours of full-time, successful, recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit can be counted toward the eight (8) years on a month to month basis for journeyman training and/or postsecondary training successfully completed as a full-time student in an approved/approvable, postsecondary, professional-technical education program. (3-16-04)~~

~~b. Have a bachelor's degree in the specific occupation or related area, plus six thousand (6,000) hours of full-time, successful, recent, gainful employment in the occupation. (3-16-04)~~

~~e. Meet one (1) of the following: (3-16-04)~~

~~i. Have at least journeyman level plus two (2) years of recent, full time, gainful, related work experience. A person who has completed a formal apprenticeship program in the occupation or related area for which certification is requested. The apprenticeship must be under the direction of an employer and the Bureau of Apprenticeship and Training or an approved State Apprenticeship Agency; (3-16-04)~~

~~ii. Pass approved state or national certification/certification examination plus three (3) years of recent, full time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis); or (3-16-04)~~

~~iii. Pass approved industry related certification for skill level requirements (vendor and industry specific) plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis). If no competency test exists, a written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required to verify occupational competence. (3-16-04)~~

~~**02. Limited Occupational Specialist Certificate.** This certificate is issued to individuals who are new to teaching trades and health occupations in public schools. The certificate is valid for three (3) years. (3-16-04)~~

~~a. Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Professional-Technical Education and an approved course in professional technical methods and student assessment. (3-16-04)~~

~~b. Complete a new-teacher induction workshop at the state or district level. (3-16-04)~~

~~c. File a Professional Development Plan with the State Division of Professional Technical Education. (3-16-04)~~

~~d. Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete course work which includes competencies in four (4) of the following: Principles/Foundations of Occupational Education; Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; Measurement and Evaluation; and Methods of Teaching Occupational Education. (3-16-04)~~

~~**03. Standard Occupational Specialist Certificate.** This certificate is issued to individuals who have completed course work equivalent to that required of the Limited Occupational Specialist Certificate. The certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a Professional Development Plan for the next certification period. (3-16-04)~~

~~**04. Advanced Occupational Specialist Certificate.** This certificate is issued to individuals who meet all the requirements outlined below: (3-16-04)~~

~~a. Meet the requirements for the Standard Occupational Specialist Certificate; (3-16-04)~~



~~b. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and (3-16-04)~~

~~e. File a new Professional Development Plan for the next certification period. (3-16-04)~~

~~d. This certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or submit verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new Professional Development Plan for the next certification period. (3-16-04)~~

~~03725.~~ -- 041. (RESERVED)

042. ALTERNATE ROUTES TO CERTIFICATION.

The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard teacher education program. Alternative Routes to Certification shall allow individuals to serve as the teacher of record prior to having earned full certification status. The teacher of record is defined as the person who is primarily responsible for planning instruction, delivering instruction, assessing students formatively and summatively, and designating the final grade. Individuals who are currently employed as Para-Educators, ~~individuals who are currently certificated to teach but who are in need of emergency certification in another area,~~ and individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. Individuals who are currently certificated to teach but who are in need of emergency certification in another area may obtain an endorsement through an alternate route as described in subsection 021.02 of these rules. (4-4-13)(\_\_\_\_)

*[Codified Section 043 is being moved and renumbered to proposed Subsection 042.01]*

~~04301.~~ **Alternative Authorization -- Teacher To New Certification.** The purpose of this alternative authorization is to allow Idaho school districts to request endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification. Alternative authorization in this area is valid for ~~up to three (3) years and is nonrenewable one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total.~~ (5-8-09)(\_\_\_\_)

~~01a.~~ **Initial Qualifications.** Prior to application, a candidate must hold a Bachelor's degree, and a valid Idaho teacher certificate without full endorsement in content area of need. The school district must provide supportive information attesting to the ability of the candidate to fill the position. (5-8-09)(\_\_\_\_)

~~02b.~~ **Alternative Route Preparation Program.** A candidate must participate in an approved alternative route preparation program. (3-20-04)(\_\_\_\_)

~~a.~~ **Option I -- Teacher to New Certification/Endorsement.** (5-8-09)

i. ~~The~~ The candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. ~~The~~ The candidate must complete a minimum of nine (9) semester credits annually to ~~be eligible for extension of up to a total of three (3) years~~ maintain eligibility. (3-20-04)(\_\_\_\_)

ii. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

~~iii.~~ Candidate shall meet all requirements for the endorsement/certificate as provided herein. (3-20-04)

~~b.~~ **Option II -- National Board (endorsement only).** By earning National Board certification in content specific areas teachers may gain endorsement in a corresponding subject area. (5-8-09)

- ~~e. Option III—Master's degree or higher (endorsement only). By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid certificate. (5-8-09)~~
- ~~d. Option IV—Testing and/or Assessment (endorsement only). Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. (5-8-09)~~
- ~~i. Pathway 1—Endorsements may be added through state approved testing and a mentoring component. The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally requires the successful completion of a one (1) year state approved mentoring component. (5-8-09)~~
- ~~ii. Pathway 2—Endorsements may be added through state approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced. The appropriate test must be successfully completed within the first year of the authorization. Additionally requires the successful completion of a one (1) year state approved mentoring component and passing a final pedagogy assessment. (5-8-09)~~

**[Codified Section 044 is being moved and renumbered to proposed Subsection 042.02]**

**04402. Alternative Authorization -- Content Specialist.** The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. Alternative authorization in this area is valid for ~~three (3) years and is not renewable~~ one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-20-04)(    )

~~01a.~~ Initial Qualifications. (3-20-04)

~~a.i.~~ ~~Prior to application, a~~Δ candidate must hold a Bachelor's degree or have completed all of the requirements of a Bachelor's degree except the student teaching or practicum portion. (4-4-13)(    )

~~b.i.~~ ~~The candidate shall meet enrollment qualifications of the alternative route preparation program. The hiring district shall ensure the candidate is highly and uniquely qualified to teach in the area of identified need through demonstrated content knowledge. This may be accomplished through a combination of employment experience and education.~~ (3-20-04)(    )

~~02b.~~ Alternative Route Preparation Program -- College/University Preparation or Other State Board Approved Certification Program. (3-20-04)(    )

~~a.i.~~ At the time of authorization a consortium comprised of a designee from the college/university to be attended or other state board approved certification program, and a representative from the school district, and the candidate shall determine the preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. This preparation plan must include mentoring and a minimum of one (1) classroom observation per month until certified while teaching under the alternative authorization. The plan must include annual progress goals that must be met for annual renewal. (3-20-04)(    )

~~b.i.~~ ~~Prior to entering the classroom,~~†The candidate must complete s eight (8) to sixteen (16) weeks of accelerated study in education pedagogy prior to the end of the first year of authorization. The number of required weeks will be specified in the consortium developed plan. (3-20-04)(    )

~~e.iii.~~ At the time of authorization the ~~€~~candidate will must enroll in and work toward completion of the alternative route preparation program through a participating college/university or other state board approved certification program, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions for annual renewal and to receive a recommendation for full certification. (3-20-04)(    )

~~iv.~~ The participating college/university or other state board approved certification program shall provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences. ~~(3-20-04)~~( )

~~ev.~~ Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. (3-20-04)

***[Codified Section 045 is being moved and renumbered to proposed Subsection 042.03]***

~~045.03.~~ **Non-Traditional Route to Teacher Certification.** An individual may acquire interim certification as found in Section 01~~56~~ of these rules through an approved non-traditional route certification program. ~~(3-20-14)~~( )

~~01.~~ **Approval of the Program.** ~~The State Board of Education must approve any non-traditional route to teacher certification. The program must include, at a minimum, the following components:~~ ~~(3-20-14)~~

~~a.~~ *Preassessment of teaching and content knowledge;* (4-6-05)

~~b.~~ *An academic advisor with knowledge of the prescribed instruction area; and* (4-6-05)

~~c.~~ *Exams of pedagogy and content knowledge.* (4-6-05)

~~02a.~~ **Eligibility.** Individuals who possess a bachelor's degree or higher from an accredited institution of higher education may utilize this non-traditional route to an interim Idaho Teacher Certification. ~~(3-20-14)~~( )

~~03b.~~ **Requirements for Completion.** To complete this non-traditional route, the individual must: (3-20-14)

~~i.~~ Complete a Board approved program; (4-6-05)

~~ii.~~ Pass the Board approved pedagogy and content knowledge exams; and (4-6-05)

~~iii.~~ Complete the Idaho Department of Education Criminal History Check. (4-6-05)

~~04c.~~ **Interim Certificate.** Upon completion of the certification process described herein, the individual will be awarded an interim certificate from the State Department of Education's Bureau of Certification and Professional Standards. ~~The term of the interim certification shall be three (3) years.~~ During the term of the interim certificate, teaching by the individual must be done in conjunction with a two (2) year ~~a~~ teacher mentoring program approved by the Board. The individual must complete the mentoring program during the term of the interim certificate. In the case where teachers start their mentoring program in the third year of their interim certificate, they must apply to the State Department of Education Teacher Certification Department for a waiver to complete the final year of their mentoring program for full certification. All laws and rules governing the fully certificated teachers with respect to conduct, discipline and professional standards shall apply to individuals teaching under any Idaho certificate including an interim certificate. ~~(3-20-14)~~( )

~~05d.~~ **Interim Certificate Not Renewable.** Interim certification hereunder is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain a full Idaho Teacher Certification Educator Credential during the three (3) year interim certification term. ~~(4-6-05)~~( )

~~06e.~~ **Types of Certificates and Endorsements.** The non-traditional route may be used for first-time certification, subsequent certificates, and additional endorsements. (3-20-14)

~~046.~~ **(RESERVED)**

*[Codified Section 047 is being moved and renumbered to proposed Subsection 042.04]*

~~047~~**04.** **Alternative Authorization - Pupil Personnel Services.** The purpose of this alternative authorization is to allow Idaho school districts to request endorsement/certification when a position requiring the Pupil Personnel Services certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the Interim School Nurse endorsement and the Interim Speech Language Pathologist endorsement. The requirements for these endorsements are ~~already~~ defined in Subsections ~~027.04 and 027.08 respectively;~~ 015.04 of these rules. The alternate authorization is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. ~~(4-11-15)( )~~

~~01. **Term of Validity.** Alternative authorization in this area is valid for three (3) years and will be reviewed annually and is nonrenewable.~~ ~~(4-2-08)~~

~~02~~**a.** Initial Qualifications. The applicant must complete the following: (4-2-08)

~~a~~**i.** Prior to application, a candidate must hold a ~~Master's~~ degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and ~~(4-2-08)( )~~

~~b~~**ii.** The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (4-2-08)

~~03~~**b.** Alternative Route Preparation Program. (4-2-08)

~~a~~**i.** The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. The alternative route preparation program must include annual progress goals. ~~(4-2-08)( )~~

~~b~~**ii.** The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (4-2-08)

~~e~~**iii.** The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (4-2-08)

~~f~~**iv.** The candidate must meet all requirements for the endorsement/certificate as provided herein. (4-2-08)

**05. Alternate Authorization Renewal.** Interim certification based on alternate route as provide for in these rules is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain a full Idaho Educator Credential during the three (3) year interim certification term. Annual renewal will be based on the school year and satisfactory progress toward completion of the applicable alternate authorization requirements. ~~( )~~

~~048~~**3. -- 059. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

~~078. -- 089. (RESERVED)~~

*[Codified Section 090 is being moved and renumbered to proposed Section 017]*

~~091. -- 099. (RESERVED)~~

**100. OFFICIAL VEHICLE FOR APPROVING TEACHER EDUCATION PROGRAMS.**

(Section 33-114, Idaho Code)

(4-1-97)

**01. The Official Vehicle for the Approval of Teacher Education Programs.** The official vehicle for the approval of teacher education programs ~~will be~~ is the Council for the Accreditation of Educator Preparation (CAEP) and the 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. ~~(3-12-14)~~ ( )

**02. Non-Traditional Teacher Preparation Program.** The State Board of Education must approve all non-traditional route to teacher certification programs. The programs must include, at a minimum, the following components: ( )

- a. Pre-assessment of teaching and content knowledge; ( )
- b. An academic advisor with knowledge of the prescribed instruction area; ( )
- c. Exams of pedagogy and content knowledge; and ( )
- d. Be aligned to the Idaho Standards for the Initial Certification of Professional School Personnel. ( )

**023. 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)

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

a. The state of Idaho will follow the ~~National~~ Council for Accreditation of ~~Teacher Education (NCATE)~~ Educator Preparation (CAEP) 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)

c. All approved non-traditional teacher preparation programs will be reviewed for continued approval on the same schedule as traditional teacher preparation programs. Reviews will include determination of continued alignment with the approved Idaho Standards for the Initial Certification of Professional School Personnel and effectiveness of program completers. ( )

**045. 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 review team expenses for on-site teacher preparation reviews from its budget. ~~(4-6-05)~~ ( )

b. Requesting institutions pay for all ~~out-of-state~~ other expenses related to on-site teacher preparation program reviews, including the standards review. ~~(4-6-05)~~ ( )

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

## **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1504**

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

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5226, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-105 Idaho Code.

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

**Tuesday, October 13th, 2015 - 9:00 a.m.**

**State Department of Education  
2nd Floor - Barbara Morgan Room  
650 W. State Street  
Boise, ID**

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

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

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. The following endorsements were reviewed by committees of content experts and are ready for submission: Blended Early Childhood Education, Blind and Visually Impaired, Communication Arts Foundation, Deaf/Hard of Hearing, Economics, Geography, Government/Civics, Health, History, Journalism, Physical Education, School Psychologist, School Social Worker, Social Studies Foundation, and Speech and Debate. All standards and endorsements were revised to better align with national standards and best practices and then presented to the Professional Standards Commission for consideration. The Professional Standards Commission has recommended approval of all of the proposed revisions.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes were made through the Professional Standards Commission Membership.

**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:

These changes are replacing a current incorporation by reference document because of annually reviewing 20% of the Idaho Standards for Initial Certification of Professional School Personnel.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Annette Schwab, Program Specialist, PSC (208) 332-6864.

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 28, 2015.

DATED this 31st Day of August, 2015

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street  
2nd Floor  
Boise ID 83720-0027

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1504**  
**(Only Those Sections With Amendments 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 1~~3~~, 201~~4~~<sup>5</sup>.** Copies of this document can be found on the Office of the State Board of Education website at <http://www.boardofed.idaho.gov>. (~~3-27-15~~)(    )

**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 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). (3-20-14)

**IDAPA 08 - STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1505**

**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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 amendments would bring the definition of Advanced Opportunities into alignment with the programs the Idaho public postsecondary institutions offer pursuant to Board of Education Governing Policies and Procedures. This includes replacing “Tech Prep” with “Technical Competency Credit” and updating the existing definition of “Tech Prep” to come into alignment with the Board’s definition of “Technical Competency Credit.”

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Volume 15-6, page 29](#).

**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: NA

**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 28, 2015.

DATED the 4th Day of September, 2015.

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  
Tel: (208)332-1582  
Fax: (208)334-2632



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1505  
(Only Those Sections With Amendments Are Shown.)

007. DEFINITIONS A - G.

**01. Achievement Standards.** Define “below basic,” “basic,” “proficient,” and “advanced” achievement levels on the Idaho Standards Achievement Tests (ISAT) and “beginning,” “advanced beginning,” “intermediate,” “early fluent” and “fluent” on the Idaho English Language Assessment (IELA) by setting scale score cut points. These cut scores are paired with descriptions of how well students are mastering the material in the content standards. These descriptions are called performance level descriptors or PLDs, and are provided by performance level, by content area, and by grade. (4-2-08)

**02. Advanced Opportunities.** Are defined as Advanced Placement courses, Dual Credit courses, ~~Teach~~ *Prep* Technical Competency Credit, or International Baccalaureate programs. (4-11-06)(    )

**03. Advanced Placement® (AP) - College Board.** The Advanced Placement Program is administered by the College Board at <http://www.collegeboard.com>. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. (4-11-06)

**04. All Students.** All students means all public school students, grades K-12. (4-11-06)

**05. Alternative Assessment (Other Ways of Testing).** Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)

**06. Assessment.** The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)

**07. Assessment Standards.** Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing.” (4-5-00)

**08. Asynchronous Course.** An online course in which an online platform is used to deliver all curricula. The majority of communication exchanges occur in elapsed time and allow students and teachers to participate according to their schedule. Asynchronous courses do not prohibit the use of a paraprofessional, certificated staff or other staff member being present at the physical location during instructional periods where instruction takes place, such as a school computer lab. (4-4-13)

**09. Authentic.** Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)

**10. Basic Educational Skills Training.** Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)

**11. Classic Texts.** Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)

**12. Content Standards.** Describe the knowledge, concepts, and skills that students are expected to acquire at each grade level in each content area. (4-2-08)

**13. Context (of a Performance Assessment).** The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)

**14. Cooperative Work Experience.** Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)

**15. Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)

**16. Cues.** Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)

**17. "C" Average.** A combined average of courses taken on a four (4) point scale with "C" equal to two (2) points. (4-11-06)

**18. Decode.** (4-5-00)

**a.** To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)

**b.** To change communication signals into messages, as to decode body language. (4-5-00)

**19. Dual Credit.** Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student's permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. (4-11-06)

**20. Emergent Literacy.** Development of the association of print with meaning that begins early in a child's life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

**21. Employability Skills.** Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

**22. Entry-Level Skills.** The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

**23. Evaluation (Student).** Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

**24. Experiential Education (Application).** Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

**25. Exploratory Experience (Similar to a Job Shadow).** An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is

a school-based activity that simulates the workplace. (4-5-00)

**26. Fluency.** The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

**27. Genre (Types of Literature).** A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

**28. Graphophonic/Graphophonemic.** One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. DEFINITIONS T - Z.**

**01. ~~Tech-Prep~~ Technical Competency Credit.** ~~Tech-Prep~~ Technical competency credit is a sequenced program of study that ~~combines at least two (2) years of secondary and two (2) years of postsecondary education. It is designed to help students gain academic knowledge and technical skills, and often earn college credit for their secondary coursework. Programs are intended to lead to an associate's degree or a certificate in a specific career field, and ultimately, to high wage, high skill employment or advanced postsecondary training.~~ allows secondary students to document proficiency in the skills and abilities they develop in approved high school professional-technical programs to be evaluated for postsecondary transcription at a later date. Technical Competency Credits are awarded for skills and competencies identified as eligible through an agreement with at least one Idaho postsecondary institution. Eligible skills and competencies are included as part of a high school professional-technical program and approved by the postsecondary institution through the agreement in advance to student participation. Credits are granted by the postsecondary institution for which the agreement is with and are transcribed at the time the student enrolls at the postsecondary institution. (4-11-06)(\_\_\_\_)

**02. Technology Education.** A curriculum for elementary, middle, and senior high schools that integrates learning about technology (e.g., transportation, materials, communication, manufacturing, power and energy, and biotechnology) with problem-solving projects that require students to work in teams. Many technology education classrooms and laboratories are well equipped with computers, basic hand tools, simple robots, electronic devices, and other resources found in most communities today. (4-5-00)

**03. Total Quality Management.** A systematic approach to standardizing and increasing the efficiency of internal systems and processes, whether in a business or a school, using statistical and management tools for continuous improvement. Emphasis is on documenting effective processes, committing to meet customers' needs and sharing decision making. (3-15-02)

**04. Transferable Skills.** Skills that are inter-changeable among different jobs and workplaces. For example, the ability to handle cash is a skill one could use as both a restaurant cashier and a bank teller. The ability to problem solve or work as a team member is transferable among most jobs and workplaces. (4-11-06)

**05. 2+2 or 4+2.** A planned, streamlined sequence of academic and professional-technical courses which eliminates redundancies between high school and community college curricula; 2+2 is high school years eleven (11) and twelve (12) and community college years thirteen (13) and fourteen (14); 4+2 is high school years nine (9), ten (10), eleven (11), and twelve (12) and community college years thirteen (13) and fourteen (14). (4-11-06)

**06. Unique Student Identifier.** A number issued and assigned by the State Department of Education to each student currently enrolled or who will be enrolled in an Idaho local education agency to obtain data. (5-8-09)

**07. Writing Process.** The many aspects of the complex act of producing written communication; specifically, planning, drafting, revising, editing, and publishing. (4-5-00)

**08. Word Recognition.** (4-5-00)

**a.** The quick and easy identification of the form, pronunciation, and appropriate meaning of a work previously met in print or writing; (4-5-00)

**b.** The process of determining the pronunciation and some degree of meaning of a word in written or printed form. (4-5-00)

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

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1506**

**NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD**

**AUTHORITY:** In compliance with Sections 67-5221(1) Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Section 33-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**October 13, 2015 6pm Lakeland High School Commons, Kootenai County**

**October 14, 2015 6pm Sandpoint High School Auditorium, Bonner County**

**October 14, 2015 6pm CWI Micron Center for PTE (Former Sam's Club), Canyon County**

**October 14, 2015 6pm Blackfoot High Auditorium, Bingham County**

**October 19, 2015 6pm Eastern Idaho Technical College, Room 545, Bonneville County**

**October 20, 2015 6pm Timberline High School Auditorium, Ada County**

**October 20, 2015, 6pm Madison High School Library, Madison County**

**October 21, 2015 6pm Council High School Gymnasium, Adams County**

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 summary of this action is found in Idaho Administrative Bulletin [Vol. 15-8, dated August 5, 2015, pages 24-26.](#)

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Nancy Thomas Price (208) 332-6988, [nthomasprice@sde.idaho.gov](mailto:nthomasprice@sde.idaho.gov).

**SUBMISSION OF WRITTEN COMMENTS:** The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking during this comment period or a written comment may be submitted at the public hearing in lieu of giving an oral presentation. Any written comments submitted at a public hearing carry the same weight as oral testimony and will be considered as such.

All written comments must be directed to the undersigned and must be delivered on or before October 23, 2015.

DATED this 4th Day of September, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
State Department of Education  
650 W State St, 2nd Floor  
PO Box 83720  
Boise ID 83720-0027  
TEL: (208) 332-6815  
FAX: (208) 334-2228

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

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1508**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 13, 2015.

**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 33-105, Idaho Code.

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

**Tuesday, October 13th, 2015 - 9:00 a.m.**

**State Department of Education  
2nd Floor - Barbara Morgan Room  
650 W. State Street  
Boise, ID**

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

**DESCRIPTIVE SUMMARY:** The following is 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 total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days.

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

The rule will bring IDAPA into compliance with IDEA (Individuals with Disabilities Act).

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there have been two (2) thirty (30) day comment periods.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dr Charlie Silva, Director Special Education/Exceptional Children, [csilva@sde.idaho.gov](mailto:csilva@sde.idaho.gov), (208) 332-6806.

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 28, 2015.

DATED this 31st Day of August, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street  
2nd Floor  
Boise ID 83720-0027

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0203-1508  
(Only Those Sections With Amendments Are Shown.)**

**109. SPECIAL EDUCATION.**

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (4-5-00)
- a.** Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)
  - b.** Department. State Department of Education. (4-5-00)
  - c.** Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (3-29-10)
    - i.** Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-29-10)
    - ii.** For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-29-10)
  - d.** Education Agency. Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)
  - e.** Governing Special Education Requirements. Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act (IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); Idaho Special Education Manual; and special education case law that sets precedence in Idaho. (3-29-10)
  - f.** Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements. (3-29-10)
  - g.** Special Education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student. (4-5-00)
- 02. Legal Compliance.** The State Department of Education and education agencies shall comply with all governing special education requirements. (4-5-00)
- a.** The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements.

Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (4-5-00)

**b.** The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (4-5-00)

**c.** Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (4-5-00)

**d.** Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it: (4-5-00)

- i. Is an accredited school or a licensed rehabilitation center; and (4-5-00)
- ii. Meets minimum health, fire and safety standards; and (4-5-00)
- iii. Is nonsectarian; and (4-5-00)
- iv. Provides special education services consistent with governing special education requirements. (4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (4-5-00)

**e.** Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the Bureau of Occupational Licensing. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years. (4-5-00)

**f.** Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education. (4-5-00)

**g.** Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (4-5-00)

**h.** Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (4-5-00)

**03. Eligibility for Special Education.** The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho



Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. (4-7-11)

**04. Individualized Education Programs.** Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days; ~~excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension.~~ A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. ~~(4-7-11)~~(8-13-15)T

**a.** IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (4-5-00)

**b.** Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (4-5-00)

**c.** The IEP team shall determine the student's placement in the least restrictive environment. (5-3-03)

**d.** At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (4-5-00)

**i.** The child is ages three (3) through five (5), and (4-5-00)

**ii.** The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (4-5-00)

**iii.** The child's parents provide written consent to use the IFSP, and (4-5-00)

**iv.** The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-29-10)

**v.** Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year old nor to implement more than the educational components of the IFSP. (4-5-00)

**e.** When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (4-5-00)

**f.** If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (4-5-00)

**05. Procedural Safeguards.** Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (8-4-99)

**a.** If a parent or adult student disagrees with an individualized education program change or placement change proposed by the district, the parent or adult student may file a written objection to all or parts of the proposed change. If the written objection is postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed change, the proposed change cannot be implemented. Informal methods such as additional IEP team meetings or voluntary mediation may be used to resolve the disagreement. If these methods fail, the education agency may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures. (4-5-00)

**b.** Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department shall be responsible for compensating the mediator. All mediation participants shall be required to sign a confidentiality pledge. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (3-29-10)

**c.** The State Department of Education shall administer a single-tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (3-29-10)

**d.** The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (4-5-00)

**e.** Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act (IDEA) requirements, and the Idaho Special Education Manual. In case of any conflict between the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. (3-29-10)

**f.** The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty-five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty-five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (4-5-00)

**g.** The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision. (4-5-00)

**h.** During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (4-5-00)

**i.** During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (4-5-00)

**j.** A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (4-5-00)

**k.** Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (4-5-00)

**06. Assistive Technology Devices.** Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (4-5-00)

**07. Diplomas and Graduation.** School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty-one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (4-5-00)

**08. Special Education Advisory Panel.** The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice-chair followed by a one (1) year term as chair. (4-5-00)

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

## **08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1509**

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

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5226 Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section, 33-105 Idaho Code.

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

**Tuesday, October 13th, 2015 - 9:00 a.m.**

**State Department of Education  
2nd Floor, Barbara Morgan Room  
650 W. State Street  
Boise, ID**

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

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

Groups of stakeholders from across the state included classroom teachers, university professors, arts and humanities community members, and administrators from Idaho school districts. The seven committees represented the following disciplines: dance, media arts, music, theatre, visual arts, interdisciplinary humanities, and world languages. The fine arts expanded to include media arts during this review.

A group of Idaho Science Educators were invited to meet at the Idaho State Department of Education in March and May of 2015 to review the current K-12 Idaho Science Standards and revise the standards in the interest of students and the public education system of Idaho.

The Science Committee's reviews and revisions allow Idaho Schools to select best-suited science standards as per local control. A cross-walk evaluation was conducted by the Idaho Science Standards Committee to determine the links between the current Idaho Standards and the National Science Foundation's Frameworks of Science. The committee determined the old standards lacked depth, rigor, inquiry, problem solving, and hands-on laboratory experiences, and thus made the revisions needed to respond to a changing set of requirements for science literacy.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there were approximately 50 people who were involved in the review of the Humanities and fifteen who were involved in the science standards review.

**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 was a stakeholder group who thoroughly reviewed the current standards and made extensive changes.

These new standards are the result of that review and are replacing the current standards. These new materials are over 400 pages in length.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott Cook, Director of Academic Services, Support and Professional Development. [scook@sde.idaho.gov](mailto:scook@sde.idaho.gov). (208) 332-6927.

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 28, 2015.

DATED this 31st Day of August, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
650 West State Street  
2nd Floor  
Boise ID 83720-0027

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1509  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-10)

- a. Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b. Health, as revised and adopted on April 17, 2009. (3-29-10)
- c. Humanities Categories: (3-29-10)
  - i. Art, as revised and adopted on ~~April 17, 2009~~ August 13, 2015; ~~(3-29-10)~~( )
  - ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
  - iii. ~~Drama~~Theatre, as revised and adopted on ~~April 17, 2009~~ August 13, 2015; ~~(3-29-10)~~( )
  - iv. Interdisciplinary, as revised and adopted on ~~April 17, 2009~~ August 13, 2015; ~~(3-29-10)~~( )
  - v. Music, as revised and adopted on April 17, 2009; (3-29-10)
  - vi. World languages, as revised and adopted on April 17, 2009; (3-29-10)
  - vii. Media Arts, as revised and adopted on August 13, 2015. ( )
- d. English Language Arts, as revised and adopted on August 11, 2010. (4-7-11)
- e. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- f. Mathematics, as revised and adopted on August 11, 2010. (4-7-11)

- g. Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- h. Science, as revised and adopted on ~~April 17, 2009~~ August 13, 2015. (~~3-29-10~~)( )
- i. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
- j. Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)

**02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)

**03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)

**04. The Idaho English Language Assessment (IELA) Achievement Standards.** The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)

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

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

**07. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on May 18, 2011. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-12)

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**008. DEFINITIONS H - S.**

**01. ~~Interdisciplinary or~~ Integrated Assessment.** Assessment based on tasks that measures a student's ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or problem. (~~4-5-00~~)( )

**02. International Baccalaureate (IB) -** Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of

high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. (4-11-06)

**03. Interdisciplinary Study.** An approach to learning in two (2) or more disciplines that enables students to identify and apply authentic connections and integrate essential concepts that transcend individual disciplines. ( )

**034. Laboratory.** A laboratory science course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts. (4-11-06)

**045. Learning Plan.** The plan that outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals. (4-11-06)

**056. Narrative.** Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

**067. Norm-Referenced Assessment.** Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

**078. On-Demand Assessment.** Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

**089. Performance Assessment.** Direct observation of student performance or student work and professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

**109. Performance-Based Assessment.** The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

**101. Performance Criteria.** A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

**142. Phonics.** Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

**123. Portfolio.** A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

**134. Professional Development.** A comprehensive, sustained, timely, and intensive process to improve effectiveness of teachers and administrators in raising student achievement, which: (4-4-13)

a. Aligns with rigorous state academic achievement standards, local educational agency goals, school improvement goals, effective technology integration, and Common Core standards. (4-4-13)

b. Utilizes data driven instruction using a thorough review and continual evaluation of data on teacher and student performance to define clear goals and distinct outcomes. (4-4-13)

c. Provides opportunities that are individualized enough to meet distinct and diverse levels of need for

teachers and administrators. (4-4-13)

**d.** Is facilitated by well-prepared school administrators, coaches, mentors, master teachers, lead teachers, or third-party providers under contract with the State Department of Education, school district, or charter school, and supported by external research, expertise, or resources. (4-4-13)

**e.** Fosters a collective responsibility by educators within the school for improved student performance and develops a professional learning community. (4-4-13)

**15.** **Project Based Learning.** A hands-on approach to learning that encourages students to create/interpret/communicate an original work or project and assesses quality and success of learning through performance/presentation/production of that work or project. ( )

**146.** **Print Awareness.** In emergent literacy, a learner's growing awareness of print as a system of meaning, distinct from speech and visual modes of representation. (4-5-00)

**157.** **Professional-Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

**168.** **Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

**179.** **School-to-Work Transition.** A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

**1820.** **Service Learning.** Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

**219.** **Skill Certificate.** Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

**242.** **Standards.** Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and achievement standards. (4-2-08)

**243.** **Standardization.** A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

**224.** **Standards-Based Education.** Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

**235.** **Structured Work Experience.** A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid



or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

**246. Student Learning Goals (Outcomes).** Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

**257. Synchronous Course.** A course in which the teacher and students interact at the same time. May be applied to both traditional and technology based courses. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-12-14)

**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.** Six (6) 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. 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. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

**i. Students must complete secondary mathematics in the following areas:** (3-12-14)

(1) 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)

(2) 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)

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

ii. 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. (3-12-14)

iii. 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. High School math credits completed in middle school shall count for the purposes of this section. (3-12-14)

e. Science. Six (6) credits are required, four (4) 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. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. 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. Arts and Humanities. Two (2) credits are required. Arts and Humanities courses include instruction in visual arts, music, theatre, dance, media arts, or world language aligned to the Idaho content standards for those subjects. ~~Other courses such as literature, history, philosophy, architecture, or comparative world religions~~ A course in Interdisciplinary Humanities 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 grade nine (9) 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 the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-12-14)

i. Students participating in 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 may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the content standards for Physical Education in a format provided by the school district. (4-1-15)

**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 grade nine (9) in Fall 2012 or later.) (3-12-14)

**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: SAT, ACT, or Compass. A student who misses the statewide administration of the college exam during the student's grade eleven (11) for one (1) of the following reasons, may take the examination during their grade twelve (12) to meet this requirement: (3-12-14)

- i. Transferred to an Idaho school district during grade eleven (11); (3-12-14)
- ii. Was homeschooled during grade eleven (11); or (3-12-14)
- iii. Missed the spring statewide administration of the college entrance exam dates for documented medical reasons. (3-12-14)

**b.** A student may elect an exemption in grade eleven (11) from the college entrance exam requirement if the student is: (3-12-14)

- 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; (3-12-14)
- ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-12-14)
- iii. Enrolled for the first time in grade twelve (12) at an Idaho high school after the fall statewide administration of the college entrance exam. (4-1-15)

**04. Senior Project.** 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. (3-12-14)

**05. Middle School.** A student will have met the high school content and credit area requirement for any high school course if: (4-1-15)

- a.** The student completes such course with a grade of C or higher before entering grade nine (9); (3-12-14)
- b.** The course meets the same content standards that are required in high school; and (3-12-14)
- c.** The course is taught by a properly certificated teacher who meets the federal definition of highly qualified for the course being taught. (3-12-14)
- d.** 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. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. 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. except as provided in 105.01.d.iii. (3-12-14)

**06. Proficiency.** Each student must achieve a proficient or advanced score on the grade ten (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 ten (10) ISAT while in grade nine (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. (3-12-14)

- 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. Those students who will graduate in 2016 and have not received a proficient or advanced score on the ISAT in grade nine (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. and may enter the alternate path prior to the fall of their senior year. (3-12-14)
- 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. 08-0203-1510**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5226 Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-105, Idaho Code.

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

**Tuesday, October 13th, 2015 - 9:00 a.m.**

**State Department of Education  
2nd Floor - Barbara Morgan Room  
650 W. State Street  
Boise, ID**

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

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

The Idaho State Department of Education conducts scheduled reviews of curriculum for adoption based on approved state standards in the curricular area being reviewed. Physical Education has been a part of that review over the past decade. Physical Education is a required curricular subject K-8, and 80% of Idaho's districts require Physical Education for graduation.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature. It added physical education back into the rule for curricular review.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rhonda Heggen, Coordinator Physical Education [rheggen@sde.idaho.gov](mailto:rheggen@sde.idaho.gov) (208) 332-6950.

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 28, 2015.

DATED this 31st Day of August, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street, 2nd Floor  
PO Box 83720  
Boise ID 83720-0027

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1510  
(Only Those Sections With Amendments Are Shown.)

**128. CURRICULAR MATERIALS SELECTION AND ONLINE COURSE APPROVAL (SECTIONS 33-118; 33-118A, IDAHO CODE).**

The State Board of Education will appoint a committee to select curriculum materials. Committee appointments will be for a period of five (5) years. Committee appointments shall consist of not less than ten (10) total members from the following stakeholder groups: certified Idaho classroom teachers, Idaho public school administrators, Idaho higher education officials, parents, trustees, local board of education members, members of the Division of Professional Technical Education, and State Department of Education personnel. The Executive Secretary will be an employee of the State Department of Education and will be a voting member of the committee. The State Department of Education shall charge publishers submission fees of sixty dollars (\$60) or equal to the retail price of each, whichever is greater, to defray the costs incurred in the curricular material review and adoption process. (3-27-13)

**01. Subject Areas.** Curricular materials are adopted by the State Board of Education for a period of six (6) years in the following subject areas: reading, English, spelling, speech, journalism, languages other than English, art, drama, social studies, music, mathematics, business education, career education and counseling, vocational/technical education, science, health, physical education, handwriting, literature, driver education, limited English proficiency. ~~(3-20-14)~~( )

**02. Multiple Adoptions.** Multiple adoptions are Made in Each Subject Area. (4-5-00)

**03. Bids.** Each publisher must deliver, according to the committee schedule, a sealed bid on all curricular materials presented for adoption. (4-5-00)

**04. Depository.** The State Board will appoint a depository for the state-adopted curricular materials. Resource materials are a local option. (4-5-00)

**05. Local Policies.** School districts will follow their own policies for adoption in subject areas offered by a school district for which materials are not covered by the state curriculum materials committee. (4-5-00)

**06. Online Course Review and Approval Process.** The State Department of Education shall administer the review and approval of online course providers and courses. Reviewers shall be certified Idaho classroom teachers. Online course providers are approved for a period of four (4) years. The State Department of Education shall charge online course providers submission fees based on the number of courses offered, not to exceed the actual costs incurred in the online course and course provider review and approval process. (3-20-14)

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

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1511**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5226 Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-105, Idaho Code.

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

**Tuesday, October 13th, 2015 - 9:00 a.m.**

**State Department of Education  
2nd Floor, Barbara Morgan Room  
650 W. State Street  
Boise, ID**

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

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

Idaho English Language Assessment Achievement Standards were replaced by IDAPA 08.02.03.004.02 on April 4, 2013. This rule should have been removed at that time.

Achievement Standards listed in this rule for the Idaho English Language Assessment (IELA) are not accurate and must be updated to establish consistency with IDAPA 08.02.03.005.04.

Testing Population must be updated to accurately reflect the assessment administered to LEP students and to eliminate the use of an acronym.

IELA Language Proficiency Levels must be updated to coordinate with revised language in IDAPA 08.02.03.008.01. In addition, the IELA Language Proficiency Levels are not incorporated by reference in subsection 08.02.03.004.04.

Annual Measurable Achievement Objectives (AMAOs) must be updated to accurately reflect the type of assessment used to measure progress and proficiency of Limited English Proficient students.

**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: NA

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Christina Nava, Director, Title III, Limited English Proficiency, [cnava@sde.idaho.gov](mailto:cnava@sde.idaho.gov) (208) 332-6876.

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 28, 2015.

DATED this 1st Day of September, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street, 2nd Floor  
PO Box 83720  
Boise ID 83720-0027  
(208) 332-6800

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1511**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-10)

- a.** Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b.** Health, as revised and adopted on April 17, 2009. (3-29-10)
- c.** Humanities Categories: (3-29-10)
  - i.** Art, as revised and adopted on April 17, 2009; (3-29-10)
  - ii.** Dance, as revised and adopted on April 17, 2009; (3-29-10)
  - iii.** Drama, as revised and adopted on April 17, 2009; (3-29-10)
  - iv.** Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
  - v.** Music, as revised and adopted on April 17, 2009; (3-29-10)
  - vi.** World languages, as revised and adopted on April 17, 2009. (3-29-10)
- d.** English Language Arts, as revised and adopted on August 11, 2010. (4-7-11)
- e.** Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- f.** Mathematics, as revised and adopted on August 11, 2010. (4-7-11)
- g.** Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- h.** Science, as revised and adopted on April 17, 2009. (3-29-10)



- i. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
- j. Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)
- 02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)
- 03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- ~~**04. The Idaho English Language Assessment (IELA) Achievement Standards.** The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)~~
- ~~**054. The Idaho Standards Achievement Tests (ISAT) Achievement Standards.** Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)~~
- ~~**065. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (5-8-09)~~
- ~~**076. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on May 18, 2011. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-12)~~
- ~~**087. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)~~
- ~~**098. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. DEFINITIONS A - G.**

- 01. Achievement Standards.** Define “below basic,” “basic,” “proficient,” and “advanced” achievement levels on the Idaho Standards Achievement Tests (ISAT) and ~~“beginning,” “advanced beginning,” “intermediate,” “early fluent” and “fluent”~~ “Level 1 through Level 5” on the Idaho English Language Assessment (IELA) by setting scale score cut points. These cut scores are paired with descriptions of how well students are mastering the material in the content standards. These descriptions are called performance level descriptors or PLDs, and are provided by performance level, by content area, and by grade. ~~(4-2-08)( )~~
- 02. Advanced Opportunities.** Are defined as Advanced Placement courses, Dual Credit courses, Tech Prep, or International Baccalaureate programs. (4-11-06)

**03. Advanced Placement® (AP) - College Board.** The Advanced Placement Program is administered by the College Board at <http://www.collegeboard.com>. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. (4-11-06)

**04. All Students.** All students means all public school students, grades K-12. (4-11-06)

**05. Alternative Assessment (Other Ways of Testing).** Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)

**06. Assessment.** The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)

**07. Assessment Standards.** Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing.” (4-5-00)

**08. Asynchronous Course.** An online course in which an online platform is used to deliver all curricula. The majority of communication exchanges occur in elapsed time and allow students and teachers to participate according to their schedule. Asynchronous courses do not prohibit the use of a paraprofessional, certificated staff or other staff member being present at the physical location during instructional periods where instruction takes place, such as a school computer lab. (4-4-13)

**09. Authentic.** Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)

**10. Basic Educational Skills Training.** Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)

**11. Classic Texts.** Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)

**12. Content Standards.** Describe the knowledge, concepts, and skills that students are expected to acquire at each grade level in each content area. (4-2-00)

**13. Context (of a Performance Assessment).** The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)

**14. Cooperative Work Experience.** Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)

**15. Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)

**16. Cues.** Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as

prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)

17. **“C” Average.** A combined average of courses taken on a four (4) point scale with “C” equal to two (2) points. (4-11-06)

18. **Decode.** (4-5-00)

a. To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)

b. To change communication signals into messages, as to decode body language. (4-5-00)

19. **Dual Credit.** Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student’s permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. (4-11-06)

20. **Emergent Literacy.** Development of the association of print with meaning that begins early in a child’s life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

21. **Employability Skills.** Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

22. **Entry-Level Skills.** The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

23. **Evaluation (Student).** Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

24. **Experiential Education (Application).** Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

25. **Exploratory Experience (Similar to a Job Shadow).** An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is a school-based activity that simulates the workplace. (4-5-00)

26. **Fluency.** The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

27. **Genre (Types of Literature).** A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

28. **Graphophonic/Graphophonemic.** One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**112. ACCOUNTABILITY.**

The provisions in this section apply for the purposes of meeting the “No Child Left Behind” Act and the state of Idaho accountability requirements. (3-20-04)

**01. ISAT Student Achievement Levels.** There are four (4) levels of student achievement for the ISAT: Below Basic, Basic, Proficient, and Advanced. Definitions for these levels of student achievement are adopted by reference in Subsection 004.05. (4-2-08)

**02. IELA Language Proficiency Levels.** There are five (5) levels of language proficiency for students testing on ~~the~~ Idaho's English Language Assessment: ~~beginning, advanced beginning, intermediate, early fluent, and fluent~~ Level 1, Level 2, Level 3, Level 4, and Level 5. Definitions for these levels of language proficiency are adopted by reference in Subsections 004.02 and 004.04. (4-2-08)(    )

**03. Adequate Yearly Progress (AYP).** (3-20-04)

**a.** Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. (3-20-04)

**b.** The State Department of Education will make AYP determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (4-7-11)

**c.** The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-20-04)

**04. Adequate Yearly Progress (AYP) Definitions.** For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. (3-20-04)

**a.** Full Academic Year (continuous enrollment). (3-20-04)

**i.** A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved AYP in proficiency. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (4-7-11)

**ii.** A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (4-2-08)

**iii.** A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved AYP. (4-2-08)

**b.** Participation Rate. (3-20-04)

**i.** Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-20-04)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (4-6-05)

(2) Students who are absent for the entire state-approved testing window because of medical reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (4-7-11)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-20-04)

c. Schools. (3-20-04)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-20-04)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (4-6-05)

iii. A high school is any school that contains grade twelve (12). (3-20-04)

iv. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-20-04)

v. A “new school” for purposes of accountability is a wholly new entity receiving AYP determinations for the first time, or a school with a significant student population change as a result of schools being combined or geographic boundaries changing, or a result of successful school restructuring sanctioned by the Office of the State Board of Education. (4-7-11)

d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-20-04)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-20-04)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-20-04)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-20-04)

iv. Limited English Proficient - individuals who do not score proficient on the state-approved language proficiency test and meet one (1) of the following criteria: (4-11-15)

(1) Individuals whose native language is a language other than English; or (4-6-05)

(2) Individuals who come from environments where a language other than English is dominant; or (4-6-05)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (4-6-05)

e. Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must meet the target or make sufficient progress toward the target each year, as determined by the State Board of Education. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.04.d. in the event the “safe harbor” is invoked by the school/district. (4-7-11)

f. Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.04.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

**05. Annual Measurable Achievement Objectives (AMAOs).** Local school districts are responsible for ensuring district progress of Limited English Proficient (LEP) students in their acquisition of English. Progress and proficiency are measured by ~~the~~ [Idaho's English Language Assessment \(IELA\)](#) and determined based on three (3) AMAOs: ~~(4-2-08)~~(    )

**a.** Annual increases in the percent or number of LEP students making progress in acquiring English language proficiency; (4-2-08)

**b.** Annual increases in the percent or number of LEP students attaining English language proficiency by the end of the school year; and (4-2-08)

**c.** Each school district must make Adequate Yearly Progress for LEP students on the spring ISAT. (4-2-08)

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

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1512**

**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 3, 2015.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 33-116 and 33-20020, Idaho Code.

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

Idaho adopted a new alternate assessment for special education students with the most significant cognitive disabilities which was administered to students in the spring of 2015. This rule is necessary to finalize individual score reports for students and for inclusion of student results to meet our federal reporting requirements.

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

This rule is necessary for the 2015-2016 school year and to be in compliance with the Individuals with Disabilities Education Act (IDEA) and Idaho's Elementary Secondary Education Act (ESEA) Accountability Waiver approved by the US Department of Education, August, 2015.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**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 assessment data and associated documents include the Performance Level Descriptors, the overview of the standard setting process and other supporting documents. Together, this material is more than 35 pages in length.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Dr. Charlie Silva, [csilva@sde.idaho.gov](mailto:csilva@sde.idaho.gov), (208) 332-6806).

DATED this 1st Day of September, 2015.

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street, 2nd Floor  
Boise ID 83720-0027  
(208) 332-6800

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-1512  
(Only Those Sections With Amendments Are Shown.)

**004. INCORPORATION BY REFERENCE.**

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

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-10)

- a. Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b. Health, as revised and adopted on April 17, 2009. (3-29-10)
- c. Humanities Categories: (3-29-10)
  - i. Art, as revised and adopted on April 17, 2009; (3-29-10)
  - ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
  - iii. Drama, as revised and adopted on April 17, 2009; (3-29-10)
  - iv. Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
  - v. Music, as revised and adopted on April 17, 2009; (3-29-10)
  - vi. World languages, as revised and adopted on April 17, 2009. (3-29-10)
- d. English Language Arts, as revised and adopted on August 11, 2010. (4-7-11)
- e. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- f. Mathematics, as revised and adopted on August 11, 2010. (4-7-11)
- g. Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- h. Science, as revised and adopted on April 17, 2009. (3-29-10)
- i. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
- j. Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)

**02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)

**03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)



- 04. The Idaho English Language Assessment (IELA) Achievement Standards.** The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- 05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards.** Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)
- 06. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (5-8-09)
- 07. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on ~~May 18, 2011~~ September 3, 2015. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). ~~(3-29-12)~~ (9-3-15)T
- 08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)
- 09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)

**IDAPA 08 - STATE BOARD OF EDUCATION**  
**08.05.01 - RULES GOVERNING SEED AND PLANT CERTIFICATION**  
**DOCKET NO. 08-0501-1501**  
**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 22-1504, 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 21, 2015.

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

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

During the 2014 calendar year the University of Idaho and the Board took action to address compliance within statutory requirements related to certification of seeds, tubers, plants and plant parts in the state of Idaho, as contained in the Seed and Plant Certification Act of 1959 (Idaho Code, Title 22, Chapter 15). The Board's action entailed incorporating into Board rules, by reference, the existing published Standards for Certification of the Idaho Crop Improvement Association, Inc. (ICIA). These existing published standards were created through the ICIA's established process involving the ICIA Board working in conjunction with committees for the various seed crops, composed of individuals representing the seed growers and processors, to create and then continuously update the standards. Standards and any revisions to existing standards are then presented to the Foundation Seed Stock Committee within the Agriculture Experiment Station at the University of Idaho for approval and then presented for approval by the University's Director of the Agriculture Experiment Station.

In 2014, the ICIA standards were incorporated into Board rule as they were published by the ICIA in 2014 and available to the public through the ICIA web-site. This action brought the standards into compliance with Sections 22-1504 and 22-1505, Idaho Code, (which require promulgation of the seed certification standards under the Idaho Administrative Procedure Act (IDAPA) process), and did so in a fashion that did not disrupt the crop seed industry which had been operating under the existing standards for over 50 years.

Following the incorporation of the standards into Administrative Rule in 2014, the ICIA reviewed its published standards and determined that a significant portion of the materials incorporated by reference into the rule and published on the ICIA website fall outside of the standards and are more accurately defined as processes. To address this, ICIA has created separate documents each for the actual standards and for the processes that are used for establishing whether the standards are met for a particular crop. These revisions make the standards more concise and easier to read and incorporate testing requirement necessary to re-open a 5,000 metric ton market in South Korea, which has imposed a quarantine on US potatoes until seed testing includes testing for the causal agent of zebra chip, *Candidatus liberibacte*. The Board approved the amended standards at the April 15-16, 2015 Board meeting and approved a temporary rule at the May 20, 2015 Special Board meeting.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No changes are being made to the existing fee schedule.

**FISCAL IMPACT:** The following is a specific 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Vol. 15-6, page 30](#).

**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 seed and crop standards are incorporated by reference into administrative rule pursuant to Idaho Code Title 22 Chapter 15. The proposed changes to the standards remove procedures of the ICIA that are not necessary to have incorporated into the Administrative Rule.

**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 28, 2015.

DATED the 4th Day of September, 2015.

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  
Tel: (208)332-1582 / Fax: (208)334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0501-1501  
(Only Those Sections With Amendments Are Shown.)**

**005. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into this rule. The Idaho Seed and Plant Certification Standards are adopted by the Idaho Crop Improvement Association. Copies of the following documents may be obtained from the Idaho Crop Improvement Association, Inc. website at <http://www.idahocrop.com/index.aspx>, or from the Idaho Crop Improvement Association, Inc. office. (4-6-15)

**01.** ~~General Seed Certification Standards~~ **Prohibited Noxious Seed in Idaho Certified Seed.** The ~~General Seed Certification Standards~~ **standard Prohibited Noxious Seed in Idaho Certified Seed** of the Idaho Crop Improvement Association, Inc., as last modified and approved on ~~February 25, 2014~~ **March 17, 2015.** (4-6-15)(    )

**02. Seed Certification Fee & Application Schedule.** The Seed Certification Fee and Application Schedule of the Idaho Crop Improvement Association, Inc., as last modified and approved on July 11, 2014. (4-6-15)

~~03. Interagency Certification Regulations and Procedures. The Interagency Certification Regulations and Procedures of the Idaho Crop Improvement Association, Inc., as last modified and approved on April 6, 2006.~~ (4-6-15)

**043. Idaho Alfalfa Certification Regulations in Idaho Standards.** The **Idaho** Alfalfa Certification ~~Regulations~~ **Standards** adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on ~~April 6, 2006~~ **March 17, 2015.** (4-6-15)(    )

**054. Idaho Beans Certification Regulations in Idaho Standards.** The **Idaho** Beans Certification ~~Regulations~~ **Standards** adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on ~~December 12, 2009~~ **March 17, 2015.** (4-6-15)(    )

**065. Idaho Red Clover Certification Regulations in Idaho Standards.** The **Idaho** Red Clover Certification ~~Regulations~~ **Standards** adopted by the Idaho Crop Improvement Association, Inc., as amended and

approved on ~~April 6, 2006~~ March 17, 2015. (4-6-15)( )

**076.** Idaho Chickpea (~~Garbanzo Beans~~) Certification ~~Regulations in Idaho~~ Standards. The Idaho Chickpea (~~Garbanzo Beans~~) Certification ~~Regulations~~ Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~April 6, 2006~~ March 17, 2015. (4-6-15)( )

**087.** Idaho Grain Certification ~~Regulations in Idaho~~ Standards. The Idaho Grain Certification ~~Regulations~~ Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~March 10, 2014~~ March 17, 2015. (4-6-15)( )

**098.** Idaho Grass ~~Seed~~ Certification ~~Regulations in Idaho~~ Standards. The Idaho Grass Certification ~~Regulations~~ Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~March 10, 2014~~ March 17, 2015. (4-6-15)( )

**109.** ~~Canola, Mustard and~~ Idaho Rapeseed/Canola/Mustard Certification ~~Regulations in Idaho~~ Standards. The Idaho Rapeseed/Canola/~~Mustard and Rapeseed~~ Certification ~~Regulations~~ Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~January 29, 2014~~ March 17, 2015. (4-6-15)( )

**110.** ~~Rules of Certification for Seed~~ Idaho Potatoes ~~in Idaho~~ Certification Standards. The ~~Rules of Certification for Seed~~ Idaho Potatoes Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~April 21, 2014~~ March 17, 2015. (4-6-15)( )

**121.** Pre-Variety Germplasm Certification Regulations in Idaho. The Pre-variety Germplasm Certification Regulations adopted by the Idaho Crop Improvement Association, Inc., as amended and approved ~~April 11, 2014~~ March 17, 2015. (4-6-15)( )

**132.** ~~Miscellaneous Crop~~ Idaho Lentil Certification ~~Regulations in Idaho~~ Standards. The ~~Miscellaneous Crop~~ Idaho Lentil Certification ~~Regulations~~ Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved ~~April 6, 2006~~ March 17, 2015. (4-6-15)( )

**13.** Idaho Blue Flax Certification Standards. The Idaho Blue Flax Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**14.** Idaho Milkvech Certification Standards. The Idaho Milkvech Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**15.** Idaho Pea Certification Standards. The Idaho Pea Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**16.** Idaho Sanfoin Certification Standards. The Idaho Sanfoin Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**17.** Idaho Birdsfoot Trefoil Certification Standards. The Idaho Birdsfoot Trefoil Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**18.** Idaho White Clover Certification Standards. The Idaho White Clover Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**19.** Idaho Penstemon Certification Standards. The Idaho Penstemon Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. ( )

**IDAPA 11 - IDAHO STATE POLICE  
IDAHO STATE RACING COMMISSION**

**11.04.11 - RULES GOVERNING EQUINE VETERINARY PRACTICES, PERMITTED MEDICATIONS,  
BANNED SUBSTANCES AND DRUG TESTING OF HORSES**

**DOCKET NO. 11-0411-1502**

**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 54-2506, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 defines "Board Approved Primary Laboratory," "Primary Laboratory," and "Referee Laboratory"; clarifies the exact process for split sample testing and allows for additional time for samples to be sent to a referee laboratory. The rule is modeled after processes for testing used in other states.

**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 negative impact on the state general fund. The fiscal impact to dedicated funds will be minimal, if any.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because input was sought from stakeholders.

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

No materials were incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Idaho State Racing Commission at 208-884-7080.

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 28, 2015.

DATED this 26th Day of August, 2015.

Paul J. Schneider, Chairman  
Idaho Racing Commission  
700 S Stratford Dr.  
Meridian, ID 83642  
Phone: 208-884-7080  
Fax: 208-884-7098

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0411-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- 01. Bleeder List.** A list maintained by the commission veterinarian with all horses that have demonstrated external evidence of exercise induced pulmonary hemorrhage from one (1) or both nostrils during or after a race or workout. (3-29-10)
- 02. Calendar Year.** A calendar year beginning January 1 and ending December 31. (3-29-10)
- 03. Colt.** An intact male horse under five (5) years of age. (3-29-10)
- 04. Commission Veterinarian.** A Racing Commission appointed veterinarian having authority to enforce the Racing Commission's rules relating to veterinary practices. (3-29-10)
- 05. Filly.** A female horse that has not reached five (5) years of age. (3-29-10)
- 06. Gelding.** An altered male horse of any age. (3-29-10)
- 07. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, a horse is an intact male five (5) years old or older. (3-29-10)
- 08. Hypodermics.** Any hypodermic instrument, hypodermic syringe or hypodermic hollow needle used for injection of substances into the body of a horse. (3-29-10)
- 09. Inspection of Horses.** A veterinarian inspection to assess the racing condition of every horse entered in an official race. (3-29-10)
- 10. Mare.** A female horse that has reached the age of five (5) years. (3-29-10)
- 11. Medication Report Form.** A form signed by the treating veterinarian disclosing the identity of the horse, the permitted drug being used with dosage or procedure administered, the time administered and the name of the trainer. (3-29-10)
- 12. Mitigating Circumstances.** An event that constitutes detail to support a penalty to be waived or less harsh. (3-29-10)
- 13. Needle and Syringe.** See Hypodermics - Subsection 010.08 of these rules. (3-29-10)
- 14. Owner.** The person that has legal title to, or has financial control of, a horse utilized for racing in Idaho. However, an interest in the winnings of a horse does not itself constitute ownership. (3-29-10)
- 15. Paddock.** An enclosure in which horses scheduled to compete in a contest are saddled prior to racing. (3-29-10)
- 16. Penalties.** For this chapter, a penalty issued against an individual(s) found guilty of medication and drug violations. (3-29-10)
- 17. Primary Laboratory.** A laboratory approved by the Racing Commission to conduct testing and official analysis of post-race samples. ( )
- 1-78. Prohibited Substances.** Medication and drugs that should not be administered to a horse. (3-29-10)

~~189.~~ **Racing Association.** Any person licensed by the Racing Commission to conduct live or simulcast pari-mutuel wagering. (3-29-10)

~~190.~~ **Racing Commission.** Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (3-29-10)

~~201.~~ **Racing Condition.** The physical ability to race of a horse determined by the commission veterinarian. (3-29-10)

~~22.~~ **Referee Laboratory.** Laboratory approved by the Racing Commission to conduct split sample testing. ( )

~~243.~~ **Sample.** A blood or urine sample taken from a horse at the direction of the commission veterinarian. (3-29-10)

~~224.~~ **Split Sample.** A blood or urine sample taken from a horse that is greater than the minimum sample requirement. (3-29-10)

~~235.~~ **Suspension.** Punishment for violation of the Racing Commission rules. The offender is denied privileges of the racing facilities for a specified period of time. (3-29-10)

~~246.~~ **Test Area.** A barn provided by a racing association used for taking specimens of urine, blood or other bodily substances or tissues for testing. (3-29-10)

~~257.~~ **Trainer.** The person who conditions and prepares a race horse for racing, with the absolute responsibility to ensure the physical condition and eligibility of the race horse. (3-29-10)

~~268.~~ **Veterinarian's List.** A list of all horses which are ineligible to be entered in any race due to a physical condition. (3-29-10)

~~279.~~ **Veterinarians' Reports.** The Medication Report Form completed by every veterinarian who treats a racehorse at any location under the jurisdiction of the Racing Commission. (3-29-10)

~~2830.~~ **Veterinarian.** Practicing Private practitioner employed by owners and trainers on an individual case or contract basis. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. TRAINER PRESENT.**

**01. Present During Testing.** The Trainer, or his authorized representative, must be present in the testing area when a urine or other specimen is taken from a horse. (~~3-29-10~~) ( )

**02. Tag Signed.** The sample tag must be signed by the Trainer or his representative, as witness to the taking of the specimen. (3-29-10)

**03. Refusal.** Willful failure to be present at or a refusal to allow the taking of such specimen, or any act or threat to impede or prevent or otherwise interfere therewith, subjects the person or persons doing so to immediate suspension by the Stewards and the matter will be referred to the Racing Commission for such further penalty as may be determined. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. TESTING SPLIT SAMPLES.**

After having been notified that a written report from a primary laboratory ~~states~~ stating that a prohibited substance has been ~~found~~ identified in a specimen obtained pursuant to these rules, a trainer or owner of a horse may request that a split sample, corresponding to the portion of the specimen tested by the primary laboratory, be sent to another laboratory approved by the Racing Commission. ( )

**01. Submission of Testing Request.** ~~The~~ A formal request for split sample testing must be made in writing and delivered to the Stewards not later than three (3) business days after the trainer of the horse receives written notice of the findings of the primary laboratory. ~~Any split sample so requested must be shipped within an additional forty-eight (48) hours. The request must include the requesting trainer or owner's top three (3) referee laboratory choices. Any request for split sample testing not received by the specified deadline, and/or without all the required information, shall be considered invalid.~~ (3-29-10) ( )

**02. Lab's Willingness to Test.** Upon receipt of the written request for split sample testing, the Racing Commission shall confirm the referee laboratory has agreed to accommodate the request and provide official test results to the Racing Commission. The Racing Commission shall identify the confirmed referee laboratory to the requesting owner or trainer to arrange for payment of shipping costs and testing services costs. ( )

**03. Shipping and Testing Fees.** The requesting owner or trainer is entirely responsible for all costs and fees associated with sample shipment and testing services. Payment for sample shipment must be made to the Commission Veterinarian, or his authorized designee, prior to shipment of the split sample. Once the Racing Commission has received confirmation of payment of necessary fees required for split sample testing, the requested split samples shall be shipped to the referee laboratory within ten (10) business days. Shipments are mailed only on Monday, Tuesday or Wednesday to avoid the samples sitting in a warehouse unrefrigerated over a weekend if there is a problem in transit. ( )

**04. Unforeseen Circumstances.** ( )

**a.** If the Racing Commission is unable to secure the services of a referee laboratory, the Racing Commission shall have the option to request the primary laboratory to conduct the split sample testing. The owner and trainer affected will be notified by the Racing Commission. ( )

**b.** If the Racing Commission is unable to contact the affected trainer or owner by telephone or last known location, the Racing Commission may proceed with split sample testing by the primary laboratory. ( )

**c.** If an Act of God, power failure, accident, strike, or other action that is beyond the control of the Racing Commission prevents a split sample from being tested, the test results of the primary laboratory shall be accepted as prima facie evidence. ( )

**05. Split Sample Test Results.** The referee laboratory shall send the results of the split sample test to the Racing Commission and the Racing Commission shall forward those results simultaneously to the requesting owner or trainer as quickly as possible. ( )

**a.** If the split sample testing confirms the findings of the primary laboratory, it shall be considered a prima facie violation of the applicable provisions of this chapter. ( )

**b.** If the split sample testing does not substantially confirm the findings of the primary laboratory, it shall not constitute a prima facie violation of this chapter and no penalty will be imposed by the Racing Commission. ( )

~~161.—169. (RESERVED)~~

~~170. REQUEST FOR TEST PROCEDURE.~~

~~01- Requester Responsible for Costs. The owner or trainer requesting testing of a split sample is responsible for any and all costs of shipping and testing. (3-29-10)~~



~~02. **Failure to Appear.** Failure of the owner, trainer or designee to appear at the time and place designated by the Commission Veterinarian constitutes a waiver of all rights to split sample testing. (3-29-10)~~

~~03. **Lab's Willingness to Test.** Prior to shipment, the Racing Commission must confirm the split sample laboratory's willingness to: (3-29-10)~~

~~a. Simultaneously provide the testing requested; (3-29-10)~~

~~b. The laboratory's willingness to send results to both the person requesting the testing and the Racing Commission; and (3-29-10)~~

~~c. Arrangements for payment satisfactory to the split sample laboratory. (3-29-10)~~

~~176~~1. -- 179. (RESERVED)

**IDAPA 11 - IDAHO STATE POLICE  
ALCOHOL BEVERAGE CONTROL BUREAU**

**11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL**

**DOCKET NO. 11-0501-1501 (FEE RULE)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2015.

**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 23-932, 23-946(b), 23-1330 and 23-1408, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 creates a “growler” endorsement for retail alcohol licenses. A “growler” is a refillable container used to transport beer or wine that is sold to a consumer at retail and does not have a factory seal. This temporary rule defines “growler” and provides the procedures for the sale and transportation of “growlers” within the state of Idaho. Without a seal, growlers are open containers and, as such, are a violation of Section 23-505(2), Idaho Code.

This rule provides for a tamper-proof tape to be affixed to the growler at the time of the refill purchase. The tape will be available from Idaho State Police Alcohol Beverage Control, it will be tamper-proof and will be consistent for all licensees.

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

A fee will be charged to alcohol licensees that wish to sell growlers to purchase tamper-proof tape to seal a growler at the time it is filled and before it leaves the licensed premise. The tamper-proof tape will be provided by ISP Alcohol Beverage Control for twenty dollars (\$20) per box. This twenty dollar (\$20) fee will cover all expenses of ABC in procuring the tamper-proof tape and shipping it to licensees.

Licensees that choose to engage in the sale of growlers will bear the costs as a user fee as it is tied to the number of growlers that are sold by each licensee.

Each box of tamper-proof tape will contain approximately 210 three inch strips. Each growler will only require one strip of tamper-proof tape to secure the seal. Each strip of tape will cost an alcohol retailer approximately nine cents (\$.09) per growler refill.

**FISCAL IMPACT:** The following is a specific 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:

Adoption of this rule with the fee for licensees to purchase tamper-proof tape will be revenue neutral. The fee is expected to cover the cost of the tape and shipping to licensees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the stakeholders in the industry were consulted in the drafting of this 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or [abc@isp.idaho.gov](mailto:abc@isp.idaho.gov) and reference Docket Number 11-0501-1501.

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 28, 2015.

DATED this 28th Day of August, 2015.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr., Meridian, ID 83642  
Phone: (208) 884-7003/ Fax: (208) 884-7090

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF FEE DOCKET NO. 11-0501-1501  
(Only Those Sections With Amendments Are Shown.)**

**015. GROWLERS.**

**01. Growler Defined.** A growler is a refillable container, securely-covered, between seven hundred fifty (750) ml/twenty-five point three (25.3) ounces and one (1) gallon/one hundred twenty-eight (128) ounces, used to transport beer or wine that has been sold to a consumer at retail. (10-1-15)T

**02. Filling of Growlers.** A growler may be filled by a retailer licensed for the sale of beer or wine pursuant to Section 23-1010 or 23-1307, Idaho Code, a winery licensed pursuant to Section 23-1307, Idaho Code, or brewery licensed pursuant to Section 23-1003(d), or 23-1003(e), Idaho Code, that has obtained a growler endorsement on the face of the license issued by the Director. A growler must be filled by an employee of a licensed retailer, winery, or brewery pursuant to Section 23-943, Idaho Code, and shall not be filled by members of the public. A violation of this rule, federal or state law, or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037, and 23-1331, Idaho Code. (10-1-15)T

**03. Sales and Consumption of Growlers.** Growler sales are for consumption off the premises of a retailer, winery, or brewery pursuant to Sections 23-1010, 23-1307, 23-1003(d), and 23-1003(e), Idaho Code. Consumption of the content of a growler on a licensed premises is unlawful. (10-1-15)T

**04. Security of Growler Contents.** A growler is not a factory sealed container. A growler must be sealed at the point of sale with tamper-proof tape. Tamper-proof tape shall be in the form of a label prescribed and supplied by the Director for a fee of twenty dollars (\$20) per box. This seal must be affixed to the growler and overlap at least one (1) side of the cap or seal of the growler. A growler that has an opening other than what can be sealed with a cap and tamper-proof tape is considered an "open container" pursuant to Section 23-505, Idaho Code. A violation of this rule, federal or state law, or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037, and 23-1331, Idaho Code. (10-1-15)T

**05. Fees.** The Director shall deposit assessed fees into the alcohol beverage control fund established in Section 23-940, Idaho Code. The Alcohol Beverage Control Bureau may, as deemed necessary, expend moneys to cover the costs for the uses identified in Section 015.04 of these rules. (10-1-15)T

**0156. -- 020. (RESERVED)**

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY**

#### **DOCKET NO. 11-1003-1501**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2015.

**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 18-8301 through 18-8331, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 amendment to this rule will provide a mechanism for Idaho State Police to provide a determination as to what convictions in other jurisdictions are “substantially equivalent” to a conviction under Idaho’s statutes that require a person to be registered as a sex offender in Idaho. This determination will be made before a person moves to, begins working in or becomes a student in Idaho.

**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:

This rule is necessary to comply with the Idaho Supreme Court’s opinion in Doe v. State of Idaho, Docket No. 42372 (June 30, 2015).

**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:

There is no negative fiscal impact on the state general fund or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there was no substantive change to the rule and no new federal regulations were adopted.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dawn Peck, Manager, Bureau of Criminal Identification, (208) 884-7130.

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 28, 2015.

DATED this 28th Day of August, 2015.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr., Meridian, ID 83642  
Phone: (208) 884-7003/ Fax: (208) 884-7090

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 11-1003-1501  
(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

The terms defined in Section 67-3001, Idaho Code, will have the same meaning in these rules. In addition, the following terms shall have the meanings set forth below: (3-29-12)

- 01. Bureau.** “Bureau” means the Bureau of Criminal Identification, Idaho State Police. (3-18-99)
- 02. Central Registry.** “Central Registry” means the state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code. (3-18-99)
- 03. Department.** “Department” means the Idaho State Police. (3-18-99)
- 04. Director.** “Director” means the director of the Idaho State Police. (3-18-99)
- 05. Substantially Equivalent~~—or Similar~~.** “Substantially Equivalent” means any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. ~~(3-29-12)~~ (9-1-15)T
- 06. Working Days.** “Working Days” means each day except Saturday, Sunday, or a legal state holiday. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.**

- 01. Central Registry Established.** Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-18-99)
- 02. Forms.** The following forms and procedures will be used to provide notice to and collect information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (3-29-12)
  - a.** “Idaho Sex Offender Registry Form.” This three (3) page form notifies an offender of register requirements and collects from an offender information required for registration or any change of address or status, as required by statute. (3-29-12)
  - b.** “Idaho Sex Offender Registry Homeless - Location Verification Form.” This one (1) page form is used during weekly reporting to collect from an offender the information required when the offender does not provide a physical address at the time of registration. (3-29-12)

**03. Registration Location.** An offender who is required to register either as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code, must notify and register at the sheriff's office in the county where the offender's primary address is located. (3-29-12)

**04. Photographs and Fingerprints.** Whenever the Idaho Sex Offender Registry Form is used to register an offender, it will be submitted to the central registry with the offender's photograph, fingerprints, and palmprints. (3-29-12)

**a.** An offender's photograph will be in color. The sheriff will forward a copy of the photograph with tagging information so it may easily be located by registry staff in the department of transportation photo database. Photographs submitted to the central registry will be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff will pay to the state the cost of photography materials lawfully required by a state agency or department. (3-29-12)

**b.** The sheriff will also submit the required fingerprints on the federal bureau of investigation form FD-249. For each registrant, the sheriff will forward one (1) FBI fingerprint card with each registration Form. (3-29-12)

**c.** The sheriff will also submit the required palmprints on the federal bureau of investigation form. For each registrant, the sheriff will forward one (1) set of FBI palmprint cards with each registration form, unless a set was previously submitted. (3-29-12)

**05. Notification to Local Law Enforcement.** Lists of all offenders registered within a county are available on the sex offender registry web site located at [http://isp.idaho.gov/sor\\_id/](http://isp.idaho.gov/sor_id/). The bureau will notify the appropriate county law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or change of residence of a registered sex offender; and of a registered offender's intent to reside in an agency's jurisdiction. Whenever practical, the bureau will provide notification using the Idaho law enforcement telecommunication system (ILETS). (3-29-12)

**06. Notification to Other Jurisdictions.** Within one (1) working day of receiving notification that a registered sex offender is moving to another jurisdiction, the bureau will notify the receiving jurisdiction's designated sex offender registration agency of the move by mail or electronic means. (3-29-12)

**07. Expungement of Central Registry Information.** (3-18-99)

**a.** Upon receipt of a certified copy of a death certificate recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. (3-18-99)

**b.** Upon receipt of a duly attested copy of a pardon issued by the governor of the jurisdiction where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (3-29-12)

**c.** Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed by the court of conviction, the bureau will expunge all records concerning the conviction from the central registry, provided that the person has no other conviction requiring registration. (3-29-12)

**i.** Expungement of a record will not occur in cases where a court has ordered a dismissal for a withheld judgment. (3-29-12)

**d.** Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (3-29-12)

**08. Determination of Substantially Equivalent or Similar Crime.** (3-29-12)

**a.** A person convicted of a sex offense in another jurisdiction and who moves to works in, or becomes a student in Idaho may be required to register as a sex offender in Idaho pursuant to Title 18, Chapters 83 or 84, Idaho Code. ~~(3-29-12)~~(9-1-15)T

**b.** The bureau shall determine if a person's out-of-jurisdiction conviction is substantially equivalent or similar to an Idaho sex related offense, as defined by Idaho's Criminal Code, for the purposes of requiring a person to register in Idaho. (3-29-12)

**c.** The bureau may make all substantially equivalent determinations using the following documents: (9-1-15)T

**i.** Police Report (of the incident related to the sex offense); (9-1-15)T

**ii.** Indictment or Information or other lawful charging document; (9-1-15)T

**iii.** Judgment or Order (of sex-offense conviction); (9-1-15)T

**iv.** Psychosexual Evaluation Report; and (9-1-15)T

**v.** Order of Probation. (9-1-15)T

**d.** If a person seeks a substantially equivalent determination by the bureau before moving to, working in, or becoming a student in Idaho, that person shall provide a completed application and attach certified copies of all above-named documents to the bureau. If all documents are not provided as required by this rule, the application and any documents provided shall be returned to the applicant. (9-1-15)T

**e.** The bureau shall issue a substantially equivalent determination within sixty (60) days upon receipt of a completed application and the required documents. (9-1-15)T

**ef.** The bureau's decision determination is ~~an agency action~~ a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. ~~(3-29-12)~~(9-1-15)T

**ig.** Judicial review of the bureau's decision determination shall be made in accordance with Chapter 52, Title 67, Idaho Code. ~~(3-29-12)~~(9-1-15)T

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

#### DOCKET NO. 11-1101-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

Language modified to encompass all disciplines POST now trains; "shall" changed to "will" and "must" pursuant to direction in Rule Writer's Manual; makes all academies open campus, greatly enhancing law enforcement agencies' ability to hire single parents who cannot put their children in daycare for ten weeks while they attend a live-in academy; language in reference to attending every academy class and not being late to class is deleted, as those issues are addressed in policy and in the disciplinary matrix; fingerprint requirements were updated to reflect current Bureau of Criminal Identification requirements; the Physical Readiness Testing was deleted from the challenge requirements to enhance agencies' ability to hire retired officers from other states; no certification is ever reactivated, so the language was corrected to reflect recertification; added decertification investigation language where missing to make the language identical to other similar sections; vo-tech programs are now called "college programs," so language was updated to reflect that; language in reference to being able to challenge (Subsection 176.05) was corrected from "may" to "will"; revamps the instructor and school certification rules to decrease the amount of regulation and increase the amount of support offered by POST to improve training.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected interests were involved in the drafting and approval of the rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 28th Day of August, 2015.

Victor R. McCraw  
POST Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone (208) 884-7251 / Fax (208) 884-7295



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other POST-accepted U.S. regional accrediting agency. (3-18-15)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)

**14. Correction Standards and Training Council.** An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

**15. Council.** The Idaho Peace Officer Standards and Training Council. (4-2-08)

**16. County Detention Officer.** An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

**17. Crime of Deceit.** Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

**18. Direction.** Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He ~~shall~~ **must** be under direct observation and control of the agency's full-time peace officer. (~~3-29-12~~)(      )

**19. Field Training.** Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

**20. Full Time.** Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

21. **In-Service Training.** Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)
22. **Juvenile Detention Center.** A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)
23. **Juvenile Detention Officer.** Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (4-2-08)
24. **Juvenile Probation Officer.** Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (4-2-08)
25. **Juvenile Training Council.** An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies. (4-2-08)
26. **Law Enforcement Profession.** As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (4-2-08)
27. **Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)
28. **Part Time.** Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)
29. **Part-Time Juvenile Detention Officer.** Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)
30. **Peace Officer.** Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)
31. **POST.** The Idaho Peace Officer Standards and Training Program. (7-1-93)
32. **POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile

Probation Academy, or the Basic Patrol Academy. (4-2-08)

**33. POST Certified Instructor.** Any person certified by the Idaho POST Council as being qualified to instruct or assess students in a course of instruction which meets POST standards for certification or training credit. ( )

**34. Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

~~**34. Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)~~

**35. Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers ~~shall~~ **must** be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)( )

**36. School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

**37. School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

**38. Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

**39. Supervision.** Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. (3-29-12)

**40. Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

**41. Trainee.** An officer participating in any POST approved training program. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. THE RECORDS SYSTEM.**

**01. Training File.** The Idaho Peace Officer Standards and Training Council will maintain a training file on all Idaho law enforcement officers. Officer certifications granted and ~~certified~~ **POST-approved** training schools attended by officers will be recorded in these files. (4-5-00)( )

**02. Notification of Employment/Termination.** The agency head of any agency whose officers are required to attend a POST Basic Training Academy ~~shall~~ **must** notify the Council of all presently employed officers every January and July. The names of all officers hired after submission of the original list must be submitted to the Council within fifteen (15) days of employment. The termination of an officer's employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council. (4-2-08)( )

**03. Training Record.** A training record listing all ~~certified~~ **POST-approved** courses an officer has completed, the hours credit, and other pertinent data will be kept along with the officer's file. (4-5-00)( )

~~**04. Other Law Enforcement Personnel.** A file on other law enforcement personnel may be maintained.~~

~~This file will contain records for other law enforcement persons who successfully complete POST-certified courses.~~  
(4-5-00)

~~054.~~ **Instructors.** Names of certified instructors will be maintained. (4-5-00)

~~065.~~ **Instructors and Schools.** A list of approved instructors and schools will be maintained. (4-5-00)

**042. PROCEDURE.**

**01. Application.** Each individual officer may apply for certification when they have met the requirements. When they are certified by the Council, this is entered into their file. (Refer to “Certification of Peace, Detention, Juvenile Detention, and Juvenile Probation Officers.”) (4-2-08)

**02. Roster.** School coordinators will furnish to the Council a “Course Attendance Roster” on the appropriate form designated by the Council upon the completion of each certified training school. (Refer to “~~School Formation and Certification~~ Required Documentation for School or Course Approval.”) (4-2-08)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**056. CRIMINAL RECORD.**

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

**02. Conviction.** The term “conviction” ~~shall~~ includes: (4-2-03)(    )

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

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

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

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

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

**03. Misdemeanor Conviction.** A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of an applicant, subject to the following provisions: (3-20-14)

**a.** An applicant ~~shall~~ must be rejected who has been convicted of any misdemeanor sex crime or crime of deceit, unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator, and the Division Administrator ~~shall~~ will have the discretion to refer the application to the POST Council. In all other cases, the POST Council ~~shall~~ must review the application and determine whether the applicant ~~shall~~ will be certifiable in the State of Idaho. (3-20-14)(    )

b. An applicant ~~shall~~ **must** be rejected who has been convicted of one (1) or more misdemeanor DUI offenses within the two (2) years immediately preceding application. No waivers to this rule ~~shall~~ **will** be granted by the POST Council. (3-20-14)(    )

c. An applicant ~~shall~~ **must** be rejected who has been convicted of two (2) or more misdemeanor DUI offenses within the five (5) years immediately preceding application. No waivers to this rule ~~shall~~ **will** be granted by the POST Council. (3-20-14)(    )

d. An applicant who is not subject to the provisions of subsections (b) and (c) above may be rejected if the applicant has been convicted of one (1) or more misdemeanor DUI offenses within ten (10) years prior to application. Such an applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator ~~shall~~ **will** have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. (3-20-14)(    )

e. An applicant may be rejected who has been convicted of any other misdemeanor offense within the two (2) years immediately preceding application. If the misdemeanor conviction occurred within the two (2) years immediately preceding application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator ~~shall~~ **will** have the discretion to refer the application to the POST Council. (3-20-14)(    )

f. An applicant may be rejected who has been convicted of any other misdemeanor offense two (2) or more years but less than ten (10) years prior to application. If the misdemeanor conviction occurred two (2) or more years but less than ten (10) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator ~~shall~~ **will** have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. (3-20-14)(    )

g. Any misdemeanor conviction prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, ~~shall~~ **will** not be a basis for rejection of an applicant. (3-20-14)(    )

**04. Felony Conviction.** An applicant ~~shall~~ **must** be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution, unless the felony conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application. If the conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator ~~shall~~ **will** have the discretion to refer the application to the POST Council. For the purpose of this rule, a felony conviction ~~shall~~ **will** be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers to this rule ~~shall~~ **will** be granted by the POST Council. (3-20-14)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**071. BASIC TRAINING ACADEMY.**

**01. Begin Academy Within Six (6) Months of Appointment.** Every ~~peace and detention~~ officer ~~shall~~ **must** begin the respective POST Basic Training Academy within six (6) months from the date of their appointment as a full-time officer. Every ~~peace, detention, juvenile detention, and juvenile probation~~ officer ~~shall~~ **must** successfully

complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time.

~~(4-7-11)~~( )

~~01. **Closed Campus.** The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies shall operate as a closed campus Monday through Thursday. The POST Division Administrator may consider an exemption to this requirement in the case of a documented personal hardship for the applicant where no other reasonable alternative exists and provided the applicant's agency head files a written request for review with the POST Division Administrator. A trainee granted a hardship exemption shall be required to attend all mandatory classes, and shall not be late to any class. Unauthorized lateness to or absence from any class shall be grounds for revocation of the hardship exemption by the POST Division Administrator. The POST Council may consider an exemption to this requirement on a case-by-case basis for a scheduled POST Basic Patrol, Juvenile Detention, or Juvenile Probation Training Academy.~~

~~(4-7-11)~~

~~02. **POST Basic Misdemeanor Probation Academy.** The POST Basic Misdemeanor Probation Academy may operate as a closed campus depending upon the availability of POST resources.~~

~~(3-29-12)~~

~~03. **Open Campus.** All other POST Basic Training Academies shall operate as an open campus.~~

~~(4-2-08)~~

~~04. **Attendance.** Attendance shall be required of each trainee at all classes in the Basic Training Academy.~~

~~(3-29-12)~~

~~052. **Completion.** A trainee shall must successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course shall must be repeated.~~

~~(4-7-11)~~( )

~~063. **Field Training.** The field training portion shall must be completed to be eligible for certification.~~

~~(4-7-11)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**096. LAPSE OF PEACE OFFICER CERTIFICATION.**

The certification of any peace officer shall will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision shall will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall will be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement.

~~(3-21-12)~~( )

**01. Three to Five Years.** A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to reactivate certification shall be recertified must meet the following POST requirements:

~~(3-21-12)~~( )

a. Submit a POST Certification Patrol Challenge Packet;

(4-2-03)

b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof.

(3-29-10)

c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam;

(4-2-03)

- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
- i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)
- ii. The POST Firearms Qualification Course; ~~and~~ (4-2-03)( )
- ~~iii. The POST Physical Readiness Test; and~~ (3-21-12)
- e. Satisfy the probationary period requirement of Section 065. (4-2-08)
- 02. Over Five Years.** A peace officer who has been out of full-time law enforcement status for over five (5) years ~~shall~~ **must** attend the POST Basic Patrol Academy to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: (3-21-12)( )
- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- c. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
- i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)
- ii. The POST Firearms Qualification Course; ~~and~~ (4-2-03)( )
- ~~iii. The POST Physical Readiness Test; and~~ (3-21-12)
- e. Satisfy the probationary period requirement of Section 065. (4-2-08)
- 03. Over Eight Years.** A peace officer who has been out of full-time law enforcement status for over eight (8) years ~~shall~~ **must** attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. (3-21-12)( )
- 04. Exception.** The provisions of Subsections 096.01 through 096.03 ~~shall~~ **do** not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. THE BASIC AND PART-TIME BASIC CERTIFICATE.**

In addition to the requirements set forth in Section 098 of these rules, the requirements in Section 101 are necessary for award of the basic certificate and the part-time basic certificate. (3-21-12)

**01. Probation.** The applicant ~~shall~~ **must** have satisfactorily completed at least a six (6) month probationary period, which may include basic patrol academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six



(6) months' time ~~shall~~ **must** be continuous with the agency the officer is appointed to when applying for certification. The probationary period ~~shall~~ **must** not extend over one (1) year for certification purposes. ~~(4-2-03)~~( )

**02. Basic Training.** The applicant ~~shall~~ **must** have satisfactorily completed: ~~(4-2-03)~~( )

a. The POST Basic Patrol Academy as required by the Council in Section 071; or (4-2-03)

b. Be a graduate of a college law enforcement program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and ~~shall~~ **must** have passed the POST patrol certification examination approved by the Council. The applicant ~~shall~~ **will** be allowed two (2) attempts to pass the examination. The attempts ~~shall~~ **must** be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he ~~shall~~ **must** successfully complete the POST Basic Patrol Academy to be certified. ~~(3-21-12)~~( )

**03. Field Training.** The applicant ~~shall~~ **must** have satisfactorily completed forty (40) hours of POST-approved field training. ~~(4-2-03)~~( )

**04. College Law Enforcement Program Graduates.** Graduates from Idaho POST-certified college law enforcement programs ~~shall~~ **must** also comply with the requirements of Subsection 073.02. ~~(3-21-12)~~( )

**05. Patrol and Detention College Law Enforcement Program or POST Academy Graduates.** An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement program or the Idaho POST Academy, ~~shall~~ **will** be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: ~~(3-21-12)~~( )

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the college law enforcement program or POST Academy; (3-21-12)

b. Possesses detention officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Patrol Challenge Packet; (4-2-08)

~~d.~~ Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

~~e.~~ Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-08)

~~f.~~ Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (4-2-08)

ii. The POST Firearms Qualification Course; ~~and~~ ~~(4-2-08)~~( )

~~iii.~~ ~~The POST Physical Readiness Test; and~~ ~~(3-21-12)~~

~~f.g.~~ Satisfies the probationary period requirement of Section 065. (4-2-08)

**102. CHALLENGING THE BASIC PATROL ACADEMY.**

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (3-29-10)

**01. Submission of Challenge Packet.** Submits a POST Certification Patrol Challenge Packet to POST

Council, which ~~shall~~ **must** include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; ~~(3-21-12)~~( )

**02. Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**03. Law Course Attendance.** Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

**04. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)

**a.** The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 101.02.b.; (3-21-12)

**b.** The POST Firearms Qualification Course; and (4-2-03)

~~**c.** The POST Physical Readiness Test.~~ ~~(3-21-12)~~

**05. Completes Probationary Period.** Completes his probationary period as required by Subsection 101.01. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**171. LAPSE OF DETENTION OFFICER CERTIFICATION.**

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified county detention officer who remains in an administrative, patrol, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that a county detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~( )

**01. Three to Five Years.** A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~reactivate certification~~ **be recertified** must meet the following POST requirements: ~~(3-29-10)~~( )

**a.** Submit a POST Certification Detention Challenge Packet; (4-2-03)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

**c.** Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

**d.** Pass the following tests administered by a POST Training Specialist: (4-2-03)

**i.** The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

**ii.** The POST Firearms Qualification Course; **and** ~~(4-2-03)~~( )

- iii.* ~~The POST Physical Fitness Test Battery; and~~ (4-2-03)
- e. Satisfy the probationary period requirement of Section 065. (4-2-08)
- 02. Over Five Years.** A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (3-29-10)(    )
- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)
- c. Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
- i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)
- ii. The POST Firearms Qualification Course; ~~and~~ (4-6-05)(    )
- iii.* ~~The POST Physical Fitness Test Battery; and~~ (4-6-05)
- e. Satisfy the probationary period requirement of Section 065. (4-2-08)
- 03. Over Eight Years.** A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**176. THE LEVEL I CERTIFICATE.**

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

- 01. Probation.** The applicant ~~shall~~ **must** have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time ~~shall~~ **must** be continuous with the agency the officer is appointed to when applying for certification. The probationary period ~~shall~~ **must** not extend over one (1) year for certification purposes. (4-2-03)(    )
- 02. Basic Training.** The applicant ~~shall~~ **must** have satisfactorily completed: (4-2-03)(    )
- a. The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)
- b. The POST Patrol-to-Detention Transition Academy; or (4-2-03)

c. Be a graduate of a college law enforcement ~~vo-tech~~ program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and ~~shall~~ must have passed the POST detention certification examination approved by the Council. The applicant ~~shall~~ will be allowed two (2) attempts to pass the examination. The attempts ~~shall~~ must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he ~~shall~~ must successfully complete the POST Basic Detention Academy to be certified. (4-2-03)( )

**03. Jail Training.** The applicant ~~shall~~ must have satisfactorily completed forty (40) hours of POST-approved jail training. (4-2-03)( )

**04. ~~Vo-Tech~~ College Law Enforcement Program Graduates.** Graduates from Idaho POST-certified college law enforcement ~~vo-tech~~ programs ~~shall~~ must also comply with the requirements of Subsection 073.02. (4-2-03)( )

**05. Patrol and Detention ~~Vo-Tech~~ College Law Enforcement Program or POST Academy Graduates.** An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified college law enforcement ~~vo-tech~~ program or the Idaho POST Academy, ~~may~~ will be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: (4-7-11)( )

a. Was appointed to a peace officer position in Idaho within three (3) years from graduating from the ~~vo-tech~~ college law enforcement program or POST Academy; (4-7-11)( )

b. Possesses peace officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Detention Challenge Packet; (4-2-08)

d. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

e. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-2-08)

f. Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; and (4-2-08)( )

~~iii. The POST Physical Fitness Test Battery; and~~ (4-2-08)

g. Satisfies the probationary period requirement of Section 065. (4-2-08)

**177. CHALLENGING THE BASIC DETENTION ACADEMY.**

Any county detention officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a detention officer or a student who has satisfactorily completed a Basic Detention Academy equivalent to the Idaho POST Basic Detention Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Detention Academy, provided the officer: (3-29-10)

**01. Submission of Challenge Packet.** Submits a POST Certification Detention Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

02. **Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
03. **Detention Legal Issues Course Attendance.** Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)
04. **Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)
- a. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)
- b. The POST Firearms Qualification Course; and (4-2-03)
- ~~c. The POST Physical Fitness Test Battery. (4-2-03)~~
05. **Completes Probationary Period.** Completes his probationary period as required by Subsection 176.01. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. GENERAL PROVISIONS.**

01. **Purpose.** ~~The~~ Instructor Certification ~~process are is~~ established for the purpose of ~~recognizing~~ ~~competence~~ training, assessing, and approving a person as an instructor of law enforcement subjects and/or general subjects pertinent to law enforcement personnel. (4-2-03)(    )
- ~~02. **Certification.** The Council shall certify instructors who meet the requirements set forth in Sections 250 through 256 and are deemed qualified to teach one (1) or more of the prescribed training courses. (4-2-03)~~
- ~~03. **Applications.** All applications for award of Instructor Certificates shall be completed by the applicant on the prescribed "Certified Instructor Packet" as provided by the POST Council. (4-2-03)~~
- ~~04. **Submission Certification.** The Certified Instructor Packet shall be submitted by the applicant to his agency head who shall review it prior to signing it and forwarding it to the POST Regional Training Specialist. The Council will certify applicants who meet the requirements set forth in Sections 250 through 256 and are deemed qualified to develop and instruct training courses to POST standards. Certificates ~~shall~~ will be issued to the agency head or school director for award to the applicant. (4-2-03)(    )~~
- ~~05. **POST Training Credit.** ~~No~~ The POST Council will grant training credit ~~shall be given~~ for ~~attendance at a school taught~~ successful completion of training sponsored and conducted by the POST Council or instructed entirely by one (1) or more ~~instructors who are not~~ POST-certified instructors, ~~or an approved instructor as defined in Subsection 07 of this section, provided the training is properly documented and meets established POST standards regarding measurable, verifiable training. However, POST training credit may be given for attendance at a school taught by an instructor seeking instructor certification in the respective subject pursuant to Sections 250 through 256.~~ (4-2-03)(    )~~
- ~~06. **POST-Certified School.** A school taught by one (1) or more POST-certified instructors in their respective subjects shall be considered a POST-certified school. (4-2-03)~~
07. **Quality.** Instructor certification ~~cannot insure good~~ is not a guarantee of quality instruction. Therefore, it ~~shall~~ will be the continuing responsibility of agencies, school directors, or coordinators to see that instructors are assigned only subjects which they are qualified to teach and are supervised on a regular basis and POST Academy and Regional Training Specialists to supervise, monitor, and audit instructors and courses to ensure that instructional excellence is maintained. (4-7-11)(    )

**05. Suspension.** Instructor certification may be suspended by the POST Division Administrator whenever an instructor significantly or repeatedly fails to develop, document, conduct, or report training activities according to POST standards, or fails to abide by the POST Instructor Code of Ethics. ( )

**a.** Suspensions are not punitive, and will only be initiated for the purpose of maintaining the integrity of POST standards and training activities. ( )

**b.** Suspensions are temporary and will remain in effect no longer than one (1) year, pending review. ( )

**c.** A suspension will initiate an immediate review of the suspended instructor's certification to determine if a revocation is warranted. ( )

**086. Revocation.** Instructor certification may be revoked by the Council whenever an instructor is deemed to be unqualified to continue ~~teaching~~ instructing. Review of instructor certification may be initiated upon the request of an agency head, school director or coordinator, POST Division Administrator, or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-2-03)( )

**097. Exceptions POST Approval in Lieu of Certification.** Judges, attorneys, educators, doctors, federal officials, state officials, and other non-police personnel ~~are exempt from the instructor certification requirements, and should may~~ be utilized as "Approved" instructors when their ~~talents are~~ expertise is deemed appropriate. The POST Council may grant training credit for training provided by an independent expert when the expert: (4-7-11)( )

**a.** Has completed a POST-approved instructor orientation course; or ( )

**b.** Acts as a presenter, guest speaker, or panel member of a course facilitated by a POST-certified instructor; or ( )

**c.** Acts as a presenter, guest speaker, or panel member at a management or executive-level course or seminar (for management or executive credit only). ( )

**252. REQUIREMENTS FOR INSTRUCTORS OF LAW ENFORCEMENT SUBJECTS.**

The requirements in Sections 250 through 252 are necessary for ~~award of the~~ instructor certification for law enforcement subjects ~~and/or general subjects pertinent to law enforcement personnel~~: (4-2-03)( )

**01. Law Enforcement Experience.** The applicant ~~shall~~ must have a minimum of three (3) years of law enforcement experience, ~~possess a current or previous Idaho POST professional certification, and may not have been previously decertified as a public safety official of any jurisdiction~~. (4-2-03)( )

**02. Education.** ~~The applicant shall be a high school graduate or the equivalent as recognized by the Council.~~ (4-2-03)

**032. Instructor Development Course.** The applicant ~~shall have~~ must satisfactorily completed ~~an the Idaho POST~~ Instructor Development Course approved by the Council. ~~The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement; or under unusual circumstances upon written application by a school director or coordinator.~~ (4-2-03)( )

**043. Subsequent Applications.** A current POST-certified instructor ~~in good standing is not required to complete the Instructor Development Course again when~~ making application for ~~an~~ instructor certification endorsement in an additional subject ~~and who has already satisfactorily completed an Instructor Development Course approved by the Council shall not have to complete the course again.~~ (4-2-03)( )

**054. Conducted Energy Device Instructor Certification Endorsement.** ~~An applicant~~ POST Certified Instructor applying for Conducted Energy Device Instructor Certification ~~shall~~ Endorsement must provide proof of successful completion of the ~~device~~ manufacturer's "operator" and "instructor" courses ~~for the Conducted Energy~~

~~Device they will be instructing in to obtain or maintain POST instructor endorsement for the device. (4-7-11)( )~~

~~253. REQUIREMENTS FOR INSTRUCTORS OF GENERAL SUBJECTS PERTINENT TO LAW ENFORCEMENT PERSONNEL.~~

~~The requirements in Sections 250, 251, and 253 are necessary for award of the instructor certificate for general subjects pertinent to law enforcement personnel such as criminal law, human relations, and management topics:~~

~~(4-2-03)~~

~~01. Experience. The applicant shall have a minimum of three (3) years of experience in the subject area to be instructed. (4-2-03)~~

~~02. Education. The applicant shall have a baccalaureate or higher degree in a related field. (4-2-03)~~

~~03. Recommendation. The applicant shall be recommended by a school director or coordinator. (4-2-03)~~

**254.3. PROCEDURES FOR POST INSTRUCTOR CERTIFICATION.**

**01. Application for the Instructor Development Course.** After meeting the requirements set out in Sections 250, and 251, and either 252 or 253, the applicant shall must submit to his POST Regional Training Specialist a completed POST "Certified Instructor Packet," to his POST Regional Training Specialist, which shall must include: ~~(4-2-03)( )~~

~~a. Three (3) letters A signed attestation of recommendation eligibility for certification;(4-2-03)( )~~

~~b. A resume of schools attended in preparation for instructing the selected subject The applicant's agency head's or school director's signature; (4-2-03)( )~~

~~c. A lesson plan, including visual aids, equipment needed, handouts, performance objectives, and test questions with answers. (4-2-03)~~

**02. Evaluation Completion of the Instructor Development Course.** Applicants for Instructor Certification must attend and successfully complete all of the requirements of the POST Instructor Development Course. ~~(4-2-03)( )~~

**03. POST Instructor Certification.** Pending written notification of certification, Instructor Development Course graduates may only observe or co-instruct courses which generate data or records for POST certification, recognition, or credit. Applicants may only act as a lead instructor as part of the evaluation process conducted by a POST Regional Training Specialist. ( )

~~a. Within two (2) weeks after submitting the packet, the applicant shall must contact his POST Regional Training Specialist upon successful completion of the POST Instructor Development Course to set up a time for the Training Specialist to monitor evaluate a class the applicant is instructing. In addition to evaluating the quality of instruction provided by the applicant, the Training Specialist shall take into consideration background, education, achievement, teaching experience, and qualifications, as well as such variables as need, region, and recommendations. (4-2-03)( )~~

~~b. A current POST-certified instructor making application for instructor certification in an additional subject and who has previously had a class monitored by a POST Training Specialist shall not be required to have a class in the additional subject monitored Applicants who fail to arrange for and complete an evaluation within one (1) calendar year of completion of the Instructor Development Course may be required to complete a POST Instructor Orientation Course prior to proceeding with the certification process. (4-2-03)( )~~

**03c. Recommendation.** After ensuring all requirements are met and the Certified Instructor Packet is complete evaluating the applicant for compliance with POST standards for certification as an instructor, the POST Regional Training Specialist shall will attach his comments and recommendation to the Certified Instructor p and forward it to the POST Division Administrator. ( )

d. The POST Division Administrator ~~shall~~ will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, issue the POST Instructor eCertification. ~~(4-7-11)~~( )

e. POST will notify applicants in writing of their certification status. ( )

**254. PROCEDURES FOR HIGH LIABILITY INSTRUCTOR ENDORSEMENT.**

**01. Requirements.** POST Certified Instructors must obtain additional endorsements to instruct topics related to Defensive Tactics, Firearms, Conducted Energy Devices, Emergency Vehicle Operations, and any other topic deemed as "high liability" by the POST Council. High liability topic instructor endorsement must be maintained as required by Subsection 256.02.e. ( )

**02. Application.** After meeting the requirements set out in Sections 250 through 253, the applicant must submit a completed POST High Liability Instructor Endorsement Application Packet to his POST Regional Training Specialist. Upon notification from the POST Regional Training Specialist, the applicant may begin observation of instruction in the topic for which the application was submitted. The POST High Liability Instructor Endorsement Application Packet must include: ( )

a. A resume of experience and schools attended in preparation for instructing the selected subject; ( )

b. The applicant's agency head's or school director's signature. ( )

**03. Completion of a High Liability Instructor School.** An applicant for High Liability Instructor Endorsement must attend and successfully complete all of the requirements of the POST instructor course specific to the high liability area he intends to instruct. ( )

a. The POST Regional Training Specialist will verify the high liability instructor school roster bearing the applicant's name. ( )

b. Upon notification from the POST Regional Training Specialist, the applicant may begin co-instruction of the topic for which the application was submitted, in preparation for evaluation as an endorsed instructor in the high liability area. ( )

**04. Evaluation.** Prior to evaluation by a POST Regional Training Specialist, high liability instructor endorsement applicants are not approved to act as a lead instructor for any course offered for POST training credit in the topic for which the application was submitted. Within one (1) calendar year after completing the high liability instructor school, the applicant must arrange and complete a practical evaluation conducted by his POST Regional Training Specialist. In addition to evaluating the quality of instruction provided by the applicant, the Training Specialist will take into consideration documented observation and co-instructor experience, and recommendations of currently endorsed instructors. ( )

**05. Recommendation.** After ensuring all requirements are met and the High Liability Endorsement Instructor Packet is complete, the POST Regional Training Specialist will attach his recommendation to the packet and forward it to the POST Division Administrator. The POST Division Administrator or his designee will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, issue the endorsement. ( )

**06. Multiple Endorsements.** A current POST-endorsed high liability instructor making application for instructor endorsement in an additional high liability topic must meet the requirements of this section for the additional topic prior to endorsement in that topic area. ( )

**255. EXPIRATION.**

**01. Valid Instructor Certification.** Instructor certification shall will remain valid for a period of two (2) years with the exception of firearms instructor certification which shall remain valid for a period of one (1) year



indefinitely, provided the instructor remains in good standing and complies with all POST requirements for refresher training. (4-7-11)( )

a. Instructors who fail to instruct for a period of two (2) years will be deemed inactive and may not instruct as a POST instructor until they have reapplied as required in Subsection 253.01. ( )

b. Inactive instructors must complete a POST-approved instructor orientation course. The POST Regional Training Specialist will verify and approve the POST-approved instructor orientation course roster or course record. The POST Division Administrator will then re-issue the instructor certification. ( )

02. Valid High Liability Endorsement. Instructor endorsements will remain valid for two (2) years, with the exception of Firearms endorsements which will remain valid for one (1) year, provided the instructor remains in good standing and complies with all POST requirements for refresher training. ( )

a. High Liability Instructors who fail to instruct for a period of two (2) years will be deemed inactive with respect to the relevant endorsement(s) and may not instruct as a POST instructor in the topic area(s) until they have reapplied as required in Subsection 254.02. ( )

b. Inactive high liability instructors must be re-evaluated by a POST Regional Training Specialist. ( )

c. After ensuring all requirements are met and the High Liability Endorsement Instructor Packet is complete, the POST Regional Training Specialist will attach his recommendation to the packet and forward it to the POST Division Administrator. The POST Division Administrator or his designee will review the POST Regional Training Specialist's evaluation and recommendation, and upon approval, re-issue the endorsement. ( )

023. Conducted Energy Device. A POST-certified endorsed Conducted Energy Device instructor shall must maintain valid certification through the manufacturer for each Conducted Energy Device they are POST-certified endorsed to instruct. If their certification through the manufacturer becomes invalid for any reason, their POST Conducted Energy Device Instructor Certification Endorsement for that device shall will immediately be deemed inactive. (4-7-11)( )

## 256. RENEWAL OF HIGH LIABILITY ENDORSEMENT.

01. Notification. At the end of the certification endorsement period, the POST Council will send notification to the instructor, provided the instructor still meets the qualifications for instructor certification and endorsement. (4-11-15)( )

02. Requirements. To renew the certification endorsement, the instructor must submit the following to POST Council: (4-11-15)( )

a. A teaching log indicating the instruction of at least one (1) class during the last certification endorsement period; (4-2-03)( )

b. An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)

eb. A firearms qualification score sheet witnessed by a current POST-certified endorsed firearms instructor other than the renewing instructor. The qualification course must be the POST Council-approved course pertinent to the topic the instructor is certified to teach. This requirement applies only to POST-certified endorsed firearms instructors who are renewing their firearms instructor certification endorsement. (4-11-15)( )

dc. Instructors must meet recertification endorsement requirements in compliance with Council and applicable industry standards. (4-11-15)( )

ed. In addition to the above subsections, instructors of topics related to Defensive Tactics, Firearms, and Emergency Vehicle Operations must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, to include use of force law, liability, and further instructor training specific to the knowledge and

skills to teach in the ~~certified~~ endorsed instructional topic area(s). (4-11-15)( )

~~fe.~~ Conducted Energy Device instructors must submit proof of successful completion of the manufacturer's recertification requirements for each Conducted Energy Device they are POST-~~certified~~ endorsed to instruct. (4-11-15)( )

(BREAK IN CONTINUITY OF SECTIONS)

281. POST TRAINING CREDIT: APPROVAL OF FORMAL SCHOOLS FORMATION AND CERTIFICATION OTHER COURSES OF INSTRUCTION.

282. GENERAL PROVISIONS.

01. **Purpose.** School ~~certification~~ and course approval is established for the purpose of recognizing ~~schools~~ training deemed adequate to effectively teach law enforcement subjects and/or general subjects pertinent to law enforcement personnel. (4-2-03)( )

02. **Certification Approval.** The Council ~~shall certify~~ may approve schools ~~deemed adequate to effectively teach one (1) or more of the prescribed~~ or courses that meet established POST standards regarding measurable, verifiable training courses. (4-2-03)( )

~~03. Applications. All applications for award of school certification shall be completed by the school director on the prescribed "Application for Certification of School" as provided by the POST Council. (4-2-03)~~

~~04. Submission. The Application for Certification of School form shall be submitted by the school director to his agency head who shall review it prior to signing it and forwarding it to the POST Regional Training Specialist. (4-2-03)~~

~~053.~~ **Appeal.** In the event that ~~certification~~ approval is denied, appeal may be made directly to the Council. (7-1-93)( )

~~064.~~ **No POST Training Credit.** No POST training credit ~~shall~~ will be given for attendance at a school that has not been ~~certified~~ approved by the Council. (4-2-03)( )

~~075.~~ **POST-Certified Approved School or Course.** ~~A school sponsored and conducted by the POST Council or a school taught by a POST-certified instructor in their respective subject shall be considered a POST-certified school. In addition to training instructed according to Subsection 251.04 of these rules, the POST Council will grant training credit for schools and organized collections or series of courses according to the following criteria: (4-2-03)( )~~

~~a. A school or course facilitated by a POST-certified or approved instructor which is taught in whole or in part by one (1) or more instructors who are not POST-certified or approved will be considered a POST-approved school provided the training meets the requirements of Section 284. ( )~~

~~b. A school or course provided by a third party will be considered a POST-approved school provided the sponsoring agency provides documentation meeting the pre-approval status requirements of Subsection 284.02, and if applicable, Sections 306 through 310. All schools or courses approved pursuant to this subsection are subject to the provisions of Section 285, "Course Evaluation Fee." ( )~~

~~c. A school or course which is taught or delivered outside of the state of Idaho will be considered a POST-approved school provided the trainee provides either documentation of POST course approval of the host state or documentation of International Association of Directors of Law Enforcement Standards and Training (IADLEST) national course certification and provides a certificate indicating successful completion of the training within thirty (30) days of the completion of the training session. ( )~~

~~d.~~ Any management or executive-level school or course attended for the purpose of compliance with Sections 119 or 120 of these rules by a trainee currently holding a command level rank will be considered a POST-approved school provided the trainee provides a certificate indicating successful completion of the training within thirty (30) days of the completion of the training session. ( )

~~08. **Revocation.** Certification may be revoked by the Council whenever a school is deemed to be inadequate. In such event, the head of the sponsoring agency of the school shall be notified by the Council. The school may be recertified by the Council when it deems the deficiencies have been corrected.~~ (4-2-03)

**283. EXAMINATIONS.**

Written examinations may be required of each trainee in each school ~~certified~~ approved by the Council for thirty-five (35) or more POST training hours. (4-2-03)( )

~~284. **CERTIFICATES OF COMPLETION.**~~

~~Certificates of completion may be issued by the Council to those satisfactorily completing schools worth thirty-five (35) or more POST training hours.~~ (4-2-03)

~~285. **SCHOOL CERTIFICATION.**~~

~~01. **Temporary Certification.** Temporary certification may be granted for a specific law enforcement training school offered on a one (1) time or infrequent basis. Temporary certification shall be issued for a definite period of time not to exceed one (1) year.~~ (4-2-03)

~~02. **Continuing Certification.** Continuing certification may be granted for longer than one (1) year for law enforcement training schools offered on a regular basis. Such certification may be reviewed at any time at the discretion of the POST Division Administrator.~~ (4-2-03)

~~286.4. **PROCEDURES REQUIRED DOCUMENTATION FOR SCHOOL OR COURSE APPROVAL.**~~

~~01. **Application Documentation.** The completed Application for Certification of School form shall Documentation must be submitted ~~to~~ by the POST-certified or approved instructor acting as the lead instructor or facilitator for the training Regional Training Specialist a minimum of thirty (30) days prior to the start of the school, and ~~shall~~ must include:~~ (4-2-03)( )

~~a.~~ A course outline; (4-2-03)

~~b.~~ A course description of the subject material being offered and the time period to be devoted to each subject area; (4-2-03)

~~c.~~ ~~A schedule of classes;~~ (4-2-03)

~~d.~~ A statement about the law enforcement personnel to whom it ~~shall~~ will be directed; (4-2-03)( )

~~e.~~ A resume on each instructor, unless the instructor is a POST-certified or approved instructor; and (4-2-03)( )

~~f.~~ A lesson plan meeting the guidelines presented in the POST Instructor Development and POST Instructor Orientation Courses, unless the lesson plan is permanently on file at the sponsoring agency, including all performance objectives and any documentation of the assessment method(s) used to verify student participation and/or measure the students' completion of the performance objectives. (4-2-03)( )

~~02. **Evaluation.** An evaluation of the school shall be made on the basis of the information provided in the Application for Certification of School. A school inspection may be conducted by the Council or its representative as part of the certification procedure. If there is still a question about whether or not the school shall be certified after the evaluation is complete, the POST Council shall review the application and determine whether the school shall be certified. **Submission Deadlines.** The documentation listed in Subsection 284.01 must be submitted to the POST Regional Training Specialist within the following timeframes to be eligible for POST training credit:~~ (4-2-03)( )

a. For pre-approval status, documentation should be submitted as early as possible and must be submitted no later than thirty (30) days prior to the start of the training session, school, or course. All third-party training must be pre-approved, with the exception of management or executive-level training. ( )

~~03b.~~ **Notification.** Notification of approval or denial of the request for certification shall be sent in the form of a letter from the POST Regional Training Specialist to the agency head. If approval is granted, the letter shall indicate how many POST training hours shall be awarded for completion of the training. Documentation should be submitted as early as possible and must be submitted no later than thirty (30) days following the completion of a training session, school, or course, including management or executive-level training. (4-2-03)( )

~~043.~~ **Course Attendance Roster.** The school director shall submit the original copy of the An original or electronic POST Course Attendance Roster ~~to the POST Regional Training Specialist within seven~~ must be submitted by the POST-certified or approved instructor acting as the lead instructor or facilitator no later than thirty (730) days ~~of~~ following the completion of ~~the~~ a training session, school, or course for POST training credit approval. (4-2-03)( )

~~287.~~ **THE SCHOOL DIRECTOR.**

~~01.~~ **Responsibilities.** The school director shall be responsible for the overall supervision of the school, including, if applicable: (4-2-03)

~~a.~~ Arranging for qualified instructors; (4-2-03)

~~b.~~ Arranging for adequate facilities such as classrooms, gymnasium, safe firearms ranges, etc.; (4-2-03)

~~c.~~ Applying for POST certification of school; (4-2-03)

~~d.~~ Providing for food and lodging for trainees where appropriate; (4-2-03)

~~e.~~ Preparing and grading examinations; (4-2-03)

~~f.~~ Grading classroom notebooks; and (4-2-03)

~~g.~~ The conduct and discipline of the trainees. (7-1-93)

~~02.~~ **Determination of Successful Completion.** The school director shall make the final determination as to whether a trainee has successfully completed all reasonable standards and requirements of the training course. The school director shall also have the authority to dismiss from the school any trainee prior to the completion of the course if, in the school director's opinion, the trainee is unable or unwilling to successfully complete the prescribed training course. Immediately upon such dismissal, the school director shall submit a written report to the Council and the trainee's agency head with a detailed explanation of the action. (4-2-03)

~~03.~~ **Records.** The school director shall maintain complete records on each trainee. Within seven (7) days of completion of the school, he shall submit the original copy of the POST Course Attendance Roster to the POST Regional Training Specialist. (4-2-03)

~~288.—295.~~ (RESERVED)

~~296.~~ **CERTIFICATION OF HIGH LIABILITY SCHOOLS.**

In addition to the requirements set forth in Sections 281 through 287 of these rules, the requirements in Sections 296 through 298 are necessary for evaluation of the request for certification of a high liability school. (4-2-03)

~~297.~~ **REQUIREMENTS.**

~~01.~~ **Determination of High Liability.** The POST Training Specialist shall have the discretion to make

~~the determination whether the school includes an element of risk or potential damage or injury to the trainees, property, or a third party not directly involved with the school. If such a determination is made, some or all of the following may be required:~~ (4-2-03)

- ~~a. Course evaluations from past participants or from agencies having direct knowledge of the course content and presentation;~~ (4-2-03)
  - ~~b. A list of past participants having direct knowledge of the course content and presentation;~~ (4-2-03)
  - ~~c. Documentation of certification of the school in other states;~~ (4-2-03)
  - ~~d. A complete lesson plan, to include:~~ (4-2-03)
    - ~~i. How the material relates to Idaho Code;~~ (4-2-03)
    - ~~ii. Any applicable court rulings;~~ (4-2-03)
    - ~~iii. Any content warnings or precautions;~~ (4-2-03)
    - ~~iv. A safety plan; and~~ (4-2-03)
    - ~~v. A legal review.~~ (4-2-03)
  - ~~e. A demonstration of the course for the POST Training Specialist and/or a subject matter expert who shall evaluate the content and presentation.~~ (4-2-03)
- ~~02. **Specialized Equipment.** Any associated costs or specialized equipment needed for the evaluation process shall be provided by the applicant at the time of application.~~ (4-2-03)
- ~~03. **Liability Disclaimer.** A liability disclaimer indemnifying the state of Idaho may be required as a condition of POST certification of the school.~~ (4-2-03)

**2985. COURSE EVALUATION FEE.**

- 01. Fee Schedule.** The entity making application ~~shall will~~ be charged a course evaluation fee at the time of application. The course evaluation fee schedule is as follows: (4-2-03)(\_\_\_\_)
- a.** The fee for evaluating a one (1) to four (4) hour course ~~shall will~~ be two hundred dollars (\$200). (4-2-03)(\_\_\_\_)
  - b.** The fee for evaluating a five (5) to eight (8) hour course ~~shall will~~ be four hundred dollars (\$400). (4-2-03)(\_\_\_\_)
  - c.** The fee for evaluating a nine (9) to sixteen (16) hour course ~~shall will~~ be six hundred dollars (\$600). (4-2-03)(\_\_\_\_)
  - d.** The fee for evaluating a seventeen (17) to twenty-four (24) hour course ~~shall will~~ be eight hundred dollars (\$800). (4-2-03)(\_\_\_\_)
  - e.** The fee for evaluating a twenty-five (25) to forty (40) hour course ~~shall will~~ be one thousand dollars (\$1,000). (4-2-03)(\_\_\_\_)
  - f.** The fee for evaluating a course in excess of forty (40) hours ~~shall will~~ be a combination of the above as determined by the POST Division Administrator. (4-2-03)(\_\_\_\_)
- 02. Exception.** The course evaluation fee ~~shall will~~ not be charged for courses developed and conducted by governmental agencies. (4-2-03)(\_\_\_\_)

03. **Waiver.** The course evaluation fee may be waived in whole or in part at the discretion of the POST Division Administrator. (4-2-03)

~~299~~36. -- 305. (RESERVED)

306. ~~CERTIFICATION OF SCHOOLS~~ APPROVAL OF TRAINING UTILIZING ALTERNATIVE METHODS OF TRAINING DELIVERY.

307. **ALTERNATIVE METHODS OF TRAINING DELIVERY.**

Alternative methods of training delivery ~~shall~~ will include, but not be limited to, the following types of technology: (4-2-03)(    )

01. **Videotape;** (4-2-03)

02. **Television-Based;** (4-2-03)

03. **Computer-Based;** (4-2-03)

a. Simulator; (4-2-03)

04. **Web-Based;** (4-2-03)

a. Distance learning; (4-2-03)

b. On-line interactive; and (4-2-03)

05. **Correspondence.** (4-2-03)

308. **GENERAL PROVISIONS.**

01. **Minimum Length.** Each course ~~shall~~ must be a minimum of two (2) hours in length. (4-2-03)(    )

02. **Notification.** Notification of approval or denial of the request for ~~certification shall~~ approval will be sent in the form of a letter from the POST Regional Training Specialist to the applicant. If approval is granted, the letter ~~shall~~ will indicate how many POST training hours ~~shall~~ will be awarded for completion of the training. (4-2-03)(    )

03. **Examinations.** (4-2-03)

a. Upon completion of the course, each trainee ~~shall~~ must be given an examination to assess their knowledge of the course material. The examination ~~shall~~ must be proctored by an Idaho POST-certified instructor or a subject matter expert approved by POST prior to the examination. (4-2-03)(    )

b. Only those trainees receiving a passing score on the examination ~~shall~~ will be awarded POST training hours for the course. (4-2-03)(    )

04. **POST Training Credit.** To receive credit on their POST training record, the trainee ~~shall~~ must submit the following to POST: (4-2-03)(    )

a. The certificate of completion; (4-2-03)

b. A signed statement from their agency head or school director verifying participation and completion of the course. (4-2-03)(    )

05. **Falsification of Information.** The POST Council may proceed with decertification proceedings

against any officer who falsifies any information. (4-2-03)

**06. Liability Disclaimer.** A liability disclaimer indemnifying the state of Idaho ~~shall~~ **must** be printed on all commercially-developed or distributed training materials ~~certified~~ **approved** by POST Council. ~~(4-2-03)~~( )

**309. REQUIREMENTS.**

In addition to the requirements set forth in Sections 281 and 282 of these rules, the requirement in Sections 306 through 311 are necessary for evaluation of the request for certification of a school utilizing an alternative method of training delivery. (4-2-03)

**01. Training Medium.** The training medium utilized ~~shall~~ **must** be indicated on the Application for Certification of School. ~~(4-2-03)~~( )

**02. Specialized Equipment.** Any specialized equipment, software, network access, etc. needed for the evaluation process ~~shall~~ **must** be provided to POST free-of-charge by the applicant at the time of application. ~~(4-2-03)~~( )

**03. Course Evaluation Fee.** A course evaluation fee ~~shall~~ **will** be charged pursuant to Section 2985 of these rules. ~~(4-2-03)~~( )

**310. RECORDS.**

A course file ~~shall~~ **must** be maintained by the ~~applicant~~ **host agency or facilitating instructor** and ~~shall~~ **must** be readily available to POST Council. The file ~~shall~~ **must** include: ~~(4-2-03)~~( )

**01. Name.** The name of the course provider; (4-2-03)

**02. The Lesson Plan;** (4-2-03)

**03. Objectives.** The course learning objectives; (4-2-03)

**04. Hours Awarded.** The number of POST training hours awarded; (4-2-03)

**05. Attendance.** The attendance policy and the methodology for ascertaining and validating trainee attendance and participation, such as secure password, attendance roster, encrypted passcode, etc. (4-2-03)

**06. Assessment Record.** The trainee assessment record; (4-2-03)

**07. Certificate of Completion.** The names of the trainees awarded a certificate of completion and the date they completed the course; and (4-2-03)

**08. Course Evaluations.** The Course Evaluations By The Trainees. (4-2-03)

**311. CERTIFICATES OF COMPLETION.**

The ~~applicant shall~~ **host agency or facilitating instructor will** issue a certificate of completion to each trainee successfully completing the training course. The certificate ~~shall~~ **will** include the following information: ~~(4-2-03)~~( )

**01. Course Provider.** The name of the course provider; (4-2-03)

**02. Trainee.** The name of the trainee successfully completing the course; (4-2-03)

**03. Date.** The date the trainee completed the course; (4-2-03)

**04. Hours.** The number of course hours completed; and (4-2-03)

**05. Course ~~Administrator~~ **Facilitator.**** The name of the ~~person~~ **POST-certified or POST-approved instructor** responsible for the general administration of the course. ~~(4-2-03)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

351. SELF-SPONSORED STUDENT PROGRAM SELECTION STANDARDS.

01. **Requirement.** Every Self-Sponsored Student ~~shall~~ **must** meet the minimum standards for employment (Sections 050 through 065) of this manual. ~~(4-2-08)~~( )

02. **Procedures.** (3-20-97)

a. The applicant ~~shall~~ **will** be required to complete and submit to the POST Council a comprehensive application and personal history packet, along with ~~two (2)~~ **a** sets of fingerprints on **the standard** FBI applicant fingerprint cards. A non-refundable application fee is required and must accompany the application. ~~(3-20-97)~~( )

b. In order to determine the applicant's suitability as a Self-Sponsored Student, the POST Council ~~shall~~ **will** conduct a thorough criminal and personal history background investigation. The fingerprint cards ~~shall~~ **will** be submitted to the Bureau of Criminal Identification, ~~which shall use one (1) set to conduct a statewide search, and shall forward the other set to the FBI for a national criminal history record check.~~ All results of the background investigation will be considered confidential and processed accordingly. ~~(3-20-97)~~( )

c. The applicant must also successfully complete a polygraph, psychological evaluation, physical agility test, and a Police Officer Selection written examination approved by POST Council. (3-20-97)



## IDAPA 11 - IDAHO STATE POLICE

### 11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

Fingerprint requirements were updated to reflect current Bureau of Criminal Identification requirements; "shall" changed to "will" and "must" pursuant to direction in Rule Writer's Manual; no certification is ever reactivated, so the language was corrected to reflect recertification; the Physical Agility Testing was deleted from the challenge requirements to enhance agencies' ability to hire retired officers from other states; firearms qualification was added to the correction officer challenge requirements, as this is a required job task for correction officers; added decertification investigation language where missing to make the language identical to other similar sections.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Victor McCraw at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 28th Day of August, 2015.

Victor R. McCraw  
POST Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone (208) 884-7251  
Fax (208) 884-7295

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1104-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**036. CRIMINAL RECORD.**

**01. Fingerprints.** The applicant must be fingerprinted on ~~two (2) copies of~~ the standard FBI Applicant fingerprint ~~form~~ card, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the POST Council. (4-11-06)( )

**02. Conviction.** The term "conviction" includes: (4-11-06)

- a.** Any conviction in a federal, tribal, state, county, or municipal court; (4-11-06)
- b.** A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; (4-11-06)
- c.** The payment of a fine; (4-11-06)
- d.** A plea of guilty, nolo contendere; or (4-11-06)
- e.** A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (4-11-06)

**03. Misdemeanor Conviction.** A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-11-06)

**a.** An applicant must be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant's agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator will have the discretion to refer the application to the POST Council. In all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

**b.** An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant's agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

**04. Felony Conviction.** An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction will continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council

must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. LAPSE OF CORRECTION OFFICER CERTIFICATION.**

The certification of any correction officer ~~shall~~ **will** be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified correction officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ **will** retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (~~4-4-13~~)(    )

**01. Three to Five Years.** A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall~~ **be recertified must** meet the following POST requirements: (~~4-4-13~~)(    )

- a. Submit a POST Certification Correction Challenge Packet; (4-11-06)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (~~4-11-06~~)(    )
  - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (~~4-11-06~~)(    )
- d. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** A correction officer who has been out of full-time correction officer status for over five (5) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: (~~4-4-13~~)(    )

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (~~4-11-06~~)(    )
  - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (~~4-11-06~~)(    )
- c. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** A correction officer who has been out of full-time correction officer status for over eight (8) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. (4-4-13)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. CHALLENGING THE BASIC CORRECTION ACADEMY.**

Any correction officer presently appointed by the Idaho Department of Correction or by a private prison contractor of the State Board of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a correction officer or a student who has satisfactorily completed a Basic Correction Academy equivalent to the Idaho POST Basic Correction Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Correction Academy, provided the officer: (4-11-06)

**01. Submission of Challenge Packet.** Submits a POST Certification Correction Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

~~02.~~ **Discloses Decertification Information.** ~~Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof: (    )~~

**023. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

a. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)(    )

b. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (4-11-06)(    )

~~034.~~ **Completes Probationary Period.** Completes his probationary period as required by Subsection 053.01. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**

The certification of any adult probation and parole officer ~~shall~~ **will** be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified adult probation and parole officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ **will** retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-4-13)(    )

**01. Three to Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall be~~ **recertified must** meet the following POST requirements: (4-4-13)(    )

a. Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)

- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
- i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
- ii.** The POST Firearms Qualification Course; and ~~(4-2-08)~~(\_\_\_\_)
- iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ (4-11-06)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years ~~shall~~ must attend the POST Basic Adult Probation and Parole Academy to ~~reactivate certification~~ be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence ~~shall~~ must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ must meet the following POST requirements: ~~(4-4-13)~~(\_\_\_\_)
- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b.** Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
- i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
- ii.** The POST Firearms Qualification Course; and ~~(4-2-08)~~(\_\_\_\_)
- iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ (4-11-06)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years ~~shall~~ must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement ~~shall~~ will be granted by the Council. ~~(4-4-13)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**065. CHALLENGING THE BASIC ADULT PROBATION AND PAROLE ACADEMY.**

Any adult probation and parole officer presently appointed by the Idaho Department of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as an adult probation and parole officer or a student who has satisfactorily completed a Basic Adult Probation and Parole Academy equivalent to the Idaho POST Basic Adult Probation and Parole Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Adult Probation and Parole Academy, provided the officer: (4-11-06)

- 01. Submission of Challenge Packet.** Submits a POST Certification Adult Probation and Parole

Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

**02.** **Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**023.** **Attends and Passes POST-Certified Courses.** Attends and passes Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

**034.** **Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

**a.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

**b.** The POST Firearms Qualification Course; and (4-2-08)

~~**c.** *The POST Adult Probation and Parole Officer Physical Agility Test.*~~ (~~4-2-08~~)

**045.** **Completes Probationary Period.** Completes his probationary period as required by Subsection 064.01 of these rules. (4-11-06)

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-1501**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2015.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-2901 and 49-901, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 indicates which version of the Federal Motor Carrier Safety Regulations found in the Code of Federal Regulations that have been adopted by Idaho by indicating the date of the federal rule that was adopted. This rule also revises the formatting for the incorporation by reference of the Code of Federal Regulations for consistency purposes. This rule does not adopt any new federal regulations.

**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:

This rule clarifies the versions of the Federal Motor Carrier Safety Regulations that have been adopted by Idaho by indicating the date of the rule that has been adopted.

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

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:

There is no negative fiscal impact on the state general fund or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there was no substantive change to the rule and no new federal regulations were adopted.

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

All states adopt the Federal Motor Carrier Safety Regulations for interstate transportation; otherwise, a driver would have to comply with different rules in each state. Standardized rules provide for consistent transportation safety nationwide.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Capt. Tim Horn, Idaho State Police Commercial Vehicle Safety (208) 884-7220 or [tim.horn@isp.idaho.gov](mailto:tim.horn@isp.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 28, 2015.

DATED this 28th Day of August, 2015.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7003/ Fax: (208) 884-7090

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 11-1301-1501  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

~~The Code of Federal Regulations (CFR) is referred to in Sections 012, 018 and 019. Federal Regulations are adopted by reference in Sections 018 and 019. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recompilations are also adopted by reference, but subsequent amendments are not. In accordance with Section 67-5229, Idaho Code, the following sections of the Code of Federal Regulations, specifically 49 CFR, and 40 CFR are herein incorporated by reference: ~~(3-29-10)~~(9-1-15)T~~

**01. Safety Fitness Procedures (See Rule 12).** Adoption of Federal Regulations, 49 CFR subtitle, chapter III, subchapter B - Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, subchapter C- Hazardous Materials Regulations. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Whenever a federal regulation is adopted by reference in these rules, subsequent recompilations are also adopted by reference, but subsequent amendments are not. (9-1-15)T

**02. Transportation of Hazardous Materials, Substances, and Wastes (See Rule 18).** Adoption of Federal Regulations, 40 CFR Part 262 and 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under this Rule, IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (9-1-15)T

**a.** Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 018 are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers. Amendments to the annual volumes are published in the Federal Register pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. (9-1-15)T

**03. Carrier Safety Requirements (See Rule 19).** Adoption of Federal Regulations 49 CFR Parts 356,



365, 382, 383, 385, 386, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (9-1-15)T

a. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 386, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March 31, 2014. (9-1-15)T

04. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the office of the Idaho State Police. (9-1-15)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. SAFETY FITNESS PROCEDURES (RULE 12).**

**01. Purpose And Scope.** (4-5-00)

a. The purpose of Section 012 is to establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle: (4-5-00)

i. To provide transportation of hazardous materials for which vehicle placarding is required in accordance with 49 CFR Part 172, subpart F; or (4-5-00)

ii. To transport more than fifteen (15) passengers, including the driver. (4-5-00)

b. All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. (4-5-00)

**02. Definitions.** The following definitions apply to Section 012. (4-5-00)

a. Applicable safety regulations or requirements. Means 49 CFR subtitle, chapter III, subchapter B- Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, subchapter C- Hazardous Materials Regulations. ~~The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~ Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (4-5-00)(9-1-15)T

b. Preventable accident on the part of a motor carrier. Means an accident that: (4-5-00)

i. Involved a commercial motor vehicle, and (4-5-00)

ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (4-5-00)

c. Reviews. For the purposes of Section 012: (4-5-00)

i. Compliance review. Means an onsite examination of motor carrier operations, which may be at the carrier's place of business, including driver's hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and

such other related safety and transportation records to determine safety fitness. (4-5-00)

(1) A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. (4-5-00)

(2) A compliance review may result in the initiation of an enforcement action. (4-5-00)

ii. Safety management controls. Means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (4-5-00)

d. Safety ratings. Means, for the purposes of this Section 012: (4-5-00)

i. Satisfactory safety rating. Means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Subsection 012.03 of this rule. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (4-5-00)

ii. Conditional safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iii. Unsatisfactory safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iv. Unrated carrier. Means that a safety rating has not been assigned to the motor carrier. (4-5-00)

**03. Safety Fitness Standard.** The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with: (4-5-00)

a. Commercial driver's license standards violations. (4-5-00)

b. Inadequate levels of financial responsibility. (4-5-00)

c. The use of unqualified drivers. (4-5-00)

d. Improper use and driving of motor vehicles. (4-5-00)

e. Unsafe vehicles operating on the highways. (4-5-00)

f. Failure to maintain accident register and copies of accident reports. (4-5-00)

g. The use of fatigued drivers. (4-5-00)

h. Inadequate inspection, repair, and maintenance of vehicles. (4-5-00)

i. Transportation of hazardous materials, driving and parking rule violations. (4-5-00)

j. Violation of hazardous materials regulations. (4-5-00)

k. Motor vehicle accidents and hazardous materials incidents. (4-5-00)

**04. Factors to Be Considered in Determining a Safety Rating.** The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following: (4-5-00)

**a.** Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization or automation is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly. (4-5-00)

**b.** Frequency and severity of regulatory violations. (4-5-00)

**c.** Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. (4-5-00)

**d.** Number and frequency of out-of-service driver/vehicle violations. (4-5-00)

**e.** Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. (4-5-00)

**f.** Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time. (4-5-00)

**g.** The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards and orders. (4-5-00)

**05. Determination of Safety Fitness.** Following a compliance review of a motor carrier operation, the Idaho State Police Commercial Vehicle Safety Program Manager, using the factors prescribed in Subsection 012.04 of this rule, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule. (3-29-10)

**06. Notification of a Safety Fitness Rating.** Following a compliance review, the Idaho State Police Commercial Vehicle Safety Program Manager will determine the safety fitness of a motor carrier and notify the motor carrier and the Department in writing. Notification will include a list of those items for which immediate corrective actions must be taken. (3-29-10)

**07. Motor Carrier Certification.** Upon notification of violations cited in the compliance review and recommendations made to correct violations a motor carrier shall certify to the Idaho State Police Commercial Vehicle Safety Program Manager, within thirty (30) days, whether all corrective actions identified by the safety review have been taken. Certification required by this subsection must be made to the Idaho State Police Commercial Vehicle Safety Program Manager. Failure to certify or falsely certifying under Section 012 of this Chapter will be considered a reporting violation under Section 67-2901B(3), Idaho Code. (4-5-00)

**013. -- 017. (RESERVED)**

**018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES, AND WASTES (RULE 18).**

~~**01. Adoption of Federal Regulations.** Adoption of Federal Regulations 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever any of these~~

*federal regulations exempt intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under this Rule, IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(e)(3)), 49 CFR Part 388. (4-5-00)*

**021. Obligation of Familiarity with Rules.** All interstate and foreign carriers and all intrastate carriers subject to this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Failure to be familiar with these federal regulations adopted by reference is a violation of Section 018 of this Chapter for any carrier transporting such cargoes. The federal regulations adopted by reference in this Section 018 have the following subject matter: (4-5-00)

- a. Part 107. Hazardous Materials Program Procedures. (4-5-00)
- b. Part 171. General Information, Regulations and Definitions. (4-5-00)
- c. Part 172. Hazardous Materials Table, special provisions, hazardous materials communications, emergency response information, and training requirements. (3-29-10)
- d. Part 173. Shippers-General Requirements for Shipments and Packaging. (4-5-00)
- e. Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (4-5-00)
- f. Part 177. Carriage by Public Highway. (4-5-00)
- g. Part 178. Specifications for packagings. (3-29-10)
- h. Part 179. (Not adopted regulations for rail tanker cars). (4-5-00)
- i. Part 180. Continuing Qualification and Maintenance of Packagings. (3-29-10)

**032. Recognition of Federal Waivers.** Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Department will not administer a program to duplicate consideration or approval of federal waivers on the state level. (4-5-00)

**043. Hazardous Materials.** As used here in Section 018, means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under section 5103 of the Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in Part 173 of Subchapter C of Title 49 of the Code of Federal Regulations. (3-29-10)

**054. Hazardous Substances.** As used in this Section 018, means a material, its mixtures or solutions, that is listed in the Appendix A to 49 CFR 172.101 and that is in a quantity in one (1) package that equals or exceeds the reportable quantity (RQ) listed in the Appendix A to 49 CFR 172.101. (3-29-10)

**065. Hazardous Waste.** As used in this Section 018, means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262. (4-5-00)

~~07. **Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Section 018 are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. (4-5-00)~~

**019. CARRIER SAFETY REQUIREMENTS (RULE 19).**

~~01. **Adoption of Federal Regulations - Exceptions.** Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(e)(3)), 49 CFR Part 388. (3-30-07)(9-1-15)T~~

**a.** All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b., subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

**b.** Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

**c.** The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (3-30-07)

**02. **Obligation of Familiarity With Rules.**** All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: (4-5-00)

- a.** Part 356. Motor Carrier Routing Regulations. (3-29-10)
- b.** Part 365. Rules Governing Application for Operating Authority. (3-29-10)
- c.** Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d.** Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e.** Part 385. Safety Fitness Procedures. (3-29-10)

- f. Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. (4-11-15)
- g. Part 387. Minimum Levels of Financial Responsibility. (3-29-10)
- h. Part 388. Cooperative Agreements with States. (4-5-00)
- i. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- j. Part 391. Qualifications of Drivers. (4-5-00)
- k. Part 392. Driving of Commercial Motor Vehicles. (3-29-10)
- l. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- m. Part 395. Hours of Service of Drivers. (4-5-00)
- n. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- o. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- p. Part 398. Transportation of Migrant Workers. (4-5-00)
- q. Part 399. Employee Safety and Health Standards. (4-5-00)

**03. Recognition of Federal Waivers.** Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

~~**04. Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March 31, 2014. (4-11-15)~~

**054. Availability of Incorporated Documents.** The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the office of the Idaho State Police. (3-29-10)

## IDAPA 12 - DEPARTMENT OF FINANCE

### 12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 updates references to incorporated federal laws and regulations (Truth in Lending and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) and eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers/lenders.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature as it merely updates references to incorporated federal laws and regulations (Truth in Lending and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) and eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers/lenders.

**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 26-31-102, Idaho Code, defines Regulations X and Z, the Real Estate Settlement Procedures Act and the Truth in Lending Act, for incorporation into the Idaho Residential Mortgage Practices Act and Idaho Mortgage Rules pursuant to that Act. This proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mike Larsen at 208-332-8060.

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 28, 2015.

DATED this 4th Day of September, 2015.

Michael Larsen  
Consumer Finance Bureau Chief  
Department of Finance  
800 Park Blvd.  
PO Box 83720, Boise, ID 83720-0031  
208-332-8060 (office) / 208-332-8099 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1501  
(Only Those Sections With Amendments Are Shown.)

**005. INCORPORATION BY REFERENCE (RULE 5).**

The "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporate by reference the full text of the following: (4-4-13)

**01. The Real Estate Settlement Procedures Act.** As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2015~~6~~. The Real Estate Settlement Procedures Act is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title12/html/USCODE-2012-title12-chap27-sec2601.htm>. (4-11-15)( )

**02. Regulation X.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2015~~6~~. Regulation X is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title12-vol8/xml/CFR-2014-title12-vol8-part1024.xml>. (4-11-15)( )

**03. The Truth in Lending Act.** As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2015~~6~~. The Truth in Lending Act is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title15/html/USCODE-2012-title15-chap41.htm>. (4-11-15)( )

**04. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2015~~6~~. Regulation Z is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title12-vol9/xml/CFR-2014-title12-vol9-part1026.xml>. (4-11-15)( )

**05. NMLS Policy Guidebook.** The Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators NMLS Policy Guidebook for Licensees, published by the Nationwide Mortgage Licensing System and Registry as of July 23, 2012, and available at <http://mortgage.nationwidelicencingsystem.org/slr/common/policy/Pages/default.aspx>. (4-4-13)

**06. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

**050. WRITTEN DISCLOSURES (RULE 50).**

**01. Receipt of an Application.** Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a licensee or person required to be licensed under the Act shall ~~disclose~~ **make available** to each borrower information, ~~in a manner acceptable to the Director,~~ about the ~~licensee or person required to be licensed under the Act, including the~~ services **authorized under the Act** that ~~he~~ may ~~be~~ provided ~~and the services that will be provided, in a form acceptable to the Director~~ **to a borrower**. (3-29-10)( )

**02. Information Provided** ~~Within Three Days~~ **After Receipt of an Application.** ~~Within three (3) business days a~~ After receipt of a residential mortgage loan application, a licensee or person required to be licensed under the Act shall provide to the borrower the following disclosures specific to the residential mortgage loan application: (3-29-10)( )

**a.** Disclosures in compliance with the requirements of the Truth-in-Lending Act and Regulation Z. ~~These include the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, and amount of points or prepaid interest. If the loan is a variable rate loan, such~~



~~disclosures shall include the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount, the total interest to be paid, and an example of the payment terms resulting from an increase in the amount of the loan and fees associated with the loan. (3-29-10)( )~~

b. Disclosures ~~through good faith estimates of settlement services~~ in compliance with the requirements of the Real Estate Settlement Procedures Act and Regulation X. ~~Such disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection, and any mortgage broker or mortgage lender fees associated with the residential mortgage loan. (3-29-10)( )~~

~~03. **Interest Rate Lock-In Agreement Not Entered.** If, at the time of a residential mortgage loan application, an interest rate lock-in agreement has not been entered, disclosure shall be made to the borrower, in a form approved by the director, that the disclosed interest rate and terms are subject to change. A licensee or person required to be licensed under the Act shall provide such disclosure to the borrower within three (3) business days of receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. (3-29-10)~~

~~04. **Lock-In Agreement Entered.** If a licensee or person required to be licensed under the Act enters into an interest rate lock-in agreement with a lender or represents to the borrower that a lock-in agreement has been entered into, then within no more than three (3) business days thereafter, including Saturdays, the licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the term of the lock-in agreement. (3-29-10)~~

~~053. **Loan Modification Confirmation.** Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. (3-29-10)~~

~~06. **Additional Disclosures Required.** In addition to the disclosures required under Subsection 050.02 of these rules, if a prepayment penalty is a condition of a residential mortgage loan offered by a licensee or person required to be licensed under the Act, that fact shall be separately disclosed in writing to the borrower by the licensee or person required to be licensed under the Act. Such disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the residential mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the Director, and shall be delivered to the borrower within three (3) business days of receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. (3-29-10)~~

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.02 - RULES GOVERNING HUNTER EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1501

#### 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 36-401(a)(8), 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 21, 2015.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The purpose is to clarify the limits of the Hunting Passport for 8 year old children.

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

Not applicable.

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

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change 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:

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer, Deputy Director, 208-334-3771.

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 28, 2015.

DATED this 3rd day of September, 2015.

W. Dallas Burkhalter  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0102-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**101. MENTORED HUNTING PROGRAM.**

Nothing in this section shall be construed as altering the requirements of Section 36-411, Idaho Code, to obtain a valid hunting license, or any other statutory or rule requirements for the take of wildlife. (4-4-13)

**01. Hunting Passport.** A Hunting Passport is a special authorization for any person to take wildlife when they are accompanied by a mentor and participating in the Mentored Hunting Program. (4-4-13)

**a.** Any person must obtain a Hunting Passport from the Department or a licensed vendor to participate as a mentee in the Mentored Hunting Program. (4-4-13)

**b.** Hunter education certification is not required for any person to possess a hunting passport. (4-4-13)

**c.** A Hunting Passport shall expire December 31 of the year for which it is valid. (4-4-13)

**d.** Any person who has possessed a Hunting Passport may not apply for a Hunting Passport in any subsequent year, except for any person who is eight (8) years of age who has possessed a Hunting Passport, may possess an additional Hunting Passport at nine (9) years of age. (~~4-4-13~~)(    )

**02. Eligibility of Mentee.** (4-4-13)

**a.** Any person who has not previously possessed a hunting license or equivalent license in any other state may possess a Hunting Passport to participate in the Mentored Hunting Program as a mentee. (4-4-13)

**b.** Any mentee possessing a Hunting Passport is eligible to possess general big game, turkey, and sandhill crane tags if the mentee is qualified to participate in the hunt. (4-4-13)

**c.** Any mentee possessing a Hunting Passport is not eligible to possess a control hunt tag but may be designated for a Landowner controlled hunt tag if the mentee is qualified to participate in the hunt. (4-4-13)

**d.** Any mentee with a Hunting Passport shall be ten (10) years of age to hunt big game. (4-11-15)

**e.** Any mentee with a Hunting Passport must be accompanied by a mentor as provided in Subsection 101.03.a. (4-4-13)

**f.** Any person shall be eight (8) years or older to possess a Hunting Passport. (4-4-13)

**g.** Any mentee must possess on his person a hunting passport while hunting and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. (4-4-13)

**03. Eligibility of Mentor.** (4-4-13)

**a.** Any person who possesses a valid Idaho hunting license and who is eighteen (18) years or older may participate in the Mentored Hunting Program as a mentor. (4-4-13)

**b.** A mentor may not accompany more than two (2) mentees at one (1) time that are participating in the Mentored Hunting Program. (4-4-13)

**c.** A mentor may hunt while participating in the Mentored Hunting Program if the mentor is qualified to participate in the hunt. (4-4-13)

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1501

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 4, 2015.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-409(c), 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 purpose is to clarify the disabled hunters who are eligible for designated hunter companion exceptions, and to clarify the eligibility of senior and disabled hunters to purchase leftover youth controlled hunt tags.

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

Conferring a benefit.

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

Not applicable.

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

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change 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:

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer, Deputy Director (208) 334-3771.

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 28, 2015.

DATED this 3rd Day of September, 2015.

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1501  
(Only Those Sections With Amendments Are Shown.)**

**201. TAG EXCEPTION FOR COMPANION TO DISABLED HUNTER.**

**01. Assistance of Disabled Hunter by Designated Companion.** Any disabled hunter possessing a valid disabled combination license or a disabled American Veteran hunting license or a disabled archery permit or a disabled hunt motor vehicle permit and who possesses a valid tag or who is a disabled veteran participating in a hunt as provided in Section 36-408(7), Idaho Code, may be accompanied, close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices, by a designated companion who may assist the disabled hunter with taking big game. ~~(4-4-13)~~(9-4-15)T

**02. Valid License and Applicable Special Weapon Permit.** A companion to a disabled hunter must have a valid license and applicable special weapon permit when assisting a disabled hunter with taking big game. (4-4-13)

**03. Excepted From Tag Possession.** A companion assisting a disabled hunter is excepted from tag possession to take a big game animal wounded by a disabled hunter. All other applicable rules governing IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply. (4-4-13)

**04. Validation and Attachment of Tag.** The companion to a disabled hunter may validate and attach the disabled hunter's tag on a big game animal per Subsection 320.01. (4-4-13)

**05. Accompanying the Disabled Hunter.** The companion to a disabled hunter shall accompany the disabled hunter while hunting. Once the disabled hunter has wounded a big game animal, the companion does not need to be accompanied by the disabled hunter while taking an animal wounded by the disabled hunter or while tagging or retrieving a downed animal on behalf of the disabled hunter. (4-4-13)

**06. Written Statement of Designation.** While taking a wounded big game animal to assist a disabled hunter, the companion to a disabled hunter shall possess a written statement of designation from the disabled hunter as their companion, signed by the disabled hunter including the disabled hunter's name, address, hunting license number, big game tag number, and the dates of designation as a companion. If a companion to a disabled hunter transports a big game animal on behalf of a disabled hunter, a proxy statement is required per Subsection 320.02. (4-4-13)

**07. Companion's Possession Limit.** Big game animals killed, tagged, or retrieved by a designated companion on behalf of a disabled hunter do not count against the companion's possession limit. (4-4-13)

**08. Disabled Hunter Considered for Violation.** The disabled hunter in possession of the valid tag shall be considered the hunter for violation of Section 351, waste of game meat. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

- ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)
- iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)
- iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)
- f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)
- g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag: EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)
- h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)
- 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. (3-20-14)
- 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. (3-20-14)
- i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates 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. (3-20-14)
- 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 ten (10) 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 or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. ~~(4-11-15)~~(9-4-15)T

**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)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as "first-choice only" may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**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 DEPARTMENT OF FISH AND GAME

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1502

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101(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 21, 2015.

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

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

The purpose of the rule is to clarify eligibility requirements for controlled hunt tags designated to a child or grandchild, and to make technical corrections.

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

Not applicable.

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

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature, and there is a lack of identifiable representatives of affected interests.

**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 Sharon Kiefer, Deputy Director (208) 334-3771.

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 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-4128  
[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1502**  
**(Only Those Sections With Amendments 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. (3-20-14)

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, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ~~(3-20-14)~~( )

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. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to ~~his or her non~~resident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. ~~(3-20-14)~~( )

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 ten (10) 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. (4-11-15)

**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)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as "first-choice only" may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**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 DEPARTMENT OF FISH AND GAME

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1501

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 28, 2015.

**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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 purpose of the temporary and proposed rule is to increase goose hunting opportunities in the Hagerman Valley and to help reduce goose conflicts with agricultural producers. This will benefit both hunters and agricultural producers. Decades ago the Department closed several areas around the state to goose hunting to provide migrating goose populations place to stop over where they wouldn't be hunted. The number of geese migrating through the Hagerman Valley has increased substantially over the past decade and a closure is no longer warranted. Additionally, geese are starting to have a negative impact to agricultural operations within the closed area. The temporary and proposed rule partially rescinds the goose hunting closure in the Hagerman Valley in Gooding and Twin Falls Counties. The rescission would not affect the Hagerman Wildlife Management Area Waterfowl Closure. The size of the rescission was reached through negotiated rulemaking.

**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:

Conferring a benefit.

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

Not applicable.

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

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the February 4, 2015 Idaho Administrative Bulletin, [Vol. 15-2, pages 19 and 20](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau (208) 324-4359.

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 28, 2015.

DATED this 28th Day of August, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0109-1501  
(Only Those Sections With Amendments Are Shown.)**

**400. AREAS CLOSED TO HUNTING OF GAME BIRDS.**

**01. General.** Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

**a.** That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)

**b.** Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to the river). (3-20-97)

**c.** Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)

**d.** Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)

**e.** That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)

**f.** Yellowstone National Park in Fremont County. (7-1-93)

**g.** Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)

**h.** Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18

and west of Pebble Lane (Roswell Marsh segment). (5-3-03)

**i.** On any of those portions of federal refuges, State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)

**j.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)

**02. Migratory Game Birds.** In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)

**a.** Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)

**b.** Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored waterfowl hunts. (4-4-13)

**c.** Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

**d.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

**e.** Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

**f.** Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

**g.** Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

**h.** Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

**03. Geese.** Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and

Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

**a.** Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

**b.** Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to ~~Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the mile marker 187.5, then on a direct line east to the southern tip of Ritter Island (in the Snake River), then continuing east to the intersection of 3200 South Road and~~ 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. ~~(12-7-94)~~ (8-28-15)T

**c.** Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1502

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(B) and 36-1101(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 21, 2015.

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

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

The purpose of the rule is to allow one new method of take (crossbow) for forest grouse, which is already an approved method of take for certain other big game species in general hunts so the weapon allowance does not represent new weaponry or new technology.

**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: NA

**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:

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer, Deputy Director (208) 334-3771.

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 28, 2015.

DATED this 28th Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
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(208) 334-3715  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**300. UPLAND GAME BIRD METHODS OF TAKE.**

- 01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)
- a.** Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. The Commission may designate by proclamation the shooting hours on Wildlife Management Areas with Upland Game Bird Permit requirements. (4-11-15)
- b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. Crossbow may be used to take forest grouse by a person who possesses a Disabled Persons Archery Hunting Permit or a Special Weapon Reasonable Modification Hunting Permit authorizing use of a crossbow or by a person hunting in an area where crossbow is a lawful method of take for big game. (3-30-01)( )
- c.** From any watercraft. (4-7-11)
- d.** By the use or aid of any electronic call. (7-1-93)
- e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)
- f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)
- 02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)
- a.** With lead shot exceeding BB size. (7-1-93)
- b.** With steel shot exceeding T size. (7-1-93)
- c.** By the use of dogs, except during fall hunts. (3-30-01)



# IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1501

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 specific conditions to allow the removal of the heads and tails of trout, bass, and tiger muskie for transit or while in the field.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 38](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dave Parrish (208) 287-2773.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
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(208) 334-3715  
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[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0111-1501  
(Only Those Sections With Amendments Are Shown.)

104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. **Length.** The length of a fish shall be determined by measuring the distance between the tip of the nose and the tip of the tail fin. (3-20-97)

02. **Restrictions.** No person shall have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed: unless: (~~3-20-97~~)( )

a. The angler is ashore and done fishing for the day; ( )

b. The fish is processed or packaged with the skin naturally attached to the flesh; ( )

c. The fish must be processed or packaged in a manner that the number of fish harvested can be readily determined; and ( )

d. Processed trout, bass, and tiger muskie cannot be transported by boat. ( )

03. **Possession Limit.** Any processed trout, bass, or tiger muskie count towards an angler's possession limit while in the field of in transit. ( )

# IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1502

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 28, 2015.

**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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 forecasted return of Coho salmon is sufficient to allow Coho salmon fishing seasons and harvest. This would be only the second such opportunity in more than 30 years. Most returning Coho salmon are not adipose fin-clipped, so the rule needs to be amended to allow take and possession of Coho salmon with an intact adipose fin in the Clearwater drainage. Additionally, the rules are updated and obsolete language removed before the printing of the next triennial seasons brochure.

**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:

Conferring a benefit.

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

Not Applicable.

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

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for a temporary rule to be implemented this year to provide harvest opportunity for Coho salmon, and the need to update and remove obsolete language before printing the next triennial seasons brochure.

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dave Parrish (208) 287-2773.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
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Boise, Idaho 83707  
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[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0111-1502  
(Only Those Sections With Amendments 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)(8-28-15)T

**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. (3-20-14)
34. **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)
35. **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)
36. **Special Rule Waters.** Any water with a gear, season, or bag limit rule that is different from the regional general rules. (3-29-12)
37. **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)
38. **Tributary.** A stream flowing into a larger stream or lake. (3-20-97)
39. **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)
40. **Unattended Line.** A line not under the immediate surveillance by the angler. (3-20-97)
41. **Unprotected Nongame Fish.** All fish species other than game fish and protected nongame fish. (3-30-07)
42. **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. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. BAG AND POSSESSION LIMITS.**

01. **Bag Limit.** Maximum number of fish that may be lawfully taken by one (1) person in one (1) day. *The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead.* (3-20-97)(8-28-15)I
02. **Possession Limit.** Maximum number of fish that may be lawfully in possession of any one (1) person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish. (3-20-97)

**03. Transport or Gift.** No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. However, no person may claim ownership of more fish than allowed by the possession limit. (7-1-99)

**04. Table on Bag and Possession Limits for Specified Fish.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons and regional exceptions by proclamation, which includes regional bag and possession limits for specified fish. The proclamation is published in a brochure available at Department offices and through license vendors. (3-2-10)

**05. Special Limits.** No person shall fish in any waters while having fish in possession in excess of the limits for those waters. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**403. PERMIT VALIDATION.**

When a steelhead trout has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately do the following: (3-20-97)

**01. Permit.** Completely remove one (1) numbered notch from the permit. (3-20-97)

**02. Number Code.** Look up the number code from the location code list and write it in the space provided.

| <b>RIVER LOCATION CODES</b>                        |           |
|--|-----------|
| <b>SNAKE RIVER</b>                                 |           |
| Snake River, downstream from Salmon River          | 01        |
| Snake River, from Salmon River to Hells Canyon Dam | 02        |
| Snake River, Hells Canyon Dam to Oxbow Dam         | 27        |
| <b>CLEARWATER RIVER</b>                            |           |
| Clearwater River, downstream from Orofino Bridge   | 03        |
| Clearwater River, upstream from Orofino Bridge     | 04        |
| North Fork Clearwater River                        | 05        |
| <u>Middle Fork Clearwater River</u>                | <u>06</u> |
| South Fork Clearwater River                        | 07        |
| <u>Lochsa River</u>                                | <u>08</u> |
| <b>SALMON RIVER</b>                                |           |
| Salmon River, downstream from Whitebird Creek      | 10        |
| Salmon River, Whitebird Creek to Little Salmon     | 11        |
| Salmon River, Little Salmon to Vinegar Creek       | 12        |
| Salmon River, Vinegar Creek to South Fork          | 13        |
| Salmon River, South Fork to Middle Fork            | 14        |
| Salmon River, Middle Fork to North Fork            | 15        |

| RIVER LOCATION CODES                          |           |
|---|-----------|
| Salmon River, North Fork to Lemhi River       | 16        |
| Salmon River, Lemhi River to Pahsimeroi River | 17        |
| Salmon River, Pahsimeroi River to East Fork   | 18        |
| Salmon River, upstream from the East Fork     | 19        |
| <b>OTHER</b>                                  |           |
| Little Salmon River                           | 20        |
| <u>South Fork Salmon River</u>                | <u>21</u> |
| Panther Creek                                 | 24        |
| Boise River                                   | 28        |

~~(3-2-10)~~(8-28-15)T

03. **Date Entry.** Enter the month and day the fish was caught. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**504. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

**01. Provisions for Processing and Transporting Salmon.** No person shall have in the field or in transit hatchery-produced adult anadromous salmon that has been processed by removing the head and tail unless the following conditions are met: (3-29-12)

- a. The fish has been recorded on the taker's salmon permit; (3-29-12)
- b. The fish is processed and packaged with the skin naturally attached to the flesh including a portion with a healed, clipped, adipose fin scar or the adipose fin; and ~~(3-29-12)~~(8-28-15)T
- c. The fish must be packaged in a manner that the number of fish harvested can be readily determined. (3-29-12)

**02. Restrictions on Processing and Transporting Salmon.** No person shall process salmon until they are ashore and done fishing for the day. No person shall transport processed salmon via boat. Jack salmon may not be processed while in the field or in transit. Any processed salmon count towards an angler's possession limit while in the field or in transit. (3-29-12)

**505. SALMON SPECIAL RESTRICTIONS.**

**01. Method of Take.** It is unlawful to use any hook larger than five-eighths (5/8) inch measured from the point of the hook to the shank. Salmon may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages. Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Salmon may be taken with barbed hooks in the Boise River drainages, and the Snake River between Hells Canyon and Oxbow Dams. (3-2-10)

**02. Snagging.** No person shall kill or retain in possession any salmon which has been hooked other than in the mouth or jaw. Any salmon hooked other than in the mouth or jaw must be immediately released unharmed. (4-6-05)



**03. Legal Catch.** Any salmon caught in a legal manner must be either released or killed immediately after it is landed. (4-6-05)

**04. Cease Fishing.** Once an angler has attained his bag, possession, or season limit on those waters with salmon limits, he must cease fishing for salmon. (3-20-97)

**05. No Harvest or Closed to Harvest.** Effort, by permitted methods, to catch or attempt to catch a salmon is lawful with the restriction that any salmon so caught must be released immediately, unharmed, back to the water. (4-6-05)

**06. Keeping Marked Fish.** Prior to September 1 each year, only salmon which have been marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainages. Beginning September 1 each year, anglers may retain salmon with an intact adipose fin as set by Commission season proclamation. ~~(4-6-05)~~ (8-25-15)T

**07. Fish Counted in Limit.** All fish that are hooked, landed, and not immediately released shall be counted in the limits of the person hooking the fish. (4-6-05)

**08. Special Limits.** No person shall fish in waters having special limits while possessing fish of those species in excess of the special limits. (4-6-05)

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(B), 36-1101(A), and 36-1103, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Fish and Game Commission directed the Department to work with trappers on trapper education as a means to avoid catching pets and other non-target animals rather than pursuing additional trapper equipment restrictions. The Department met with trapper association presidents who expressed support for a trapper education requirement. The rule was negotiated, and the proposed rule would establish a mandatory trapper education class, the class length, and required subject matter to be covered.

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

Section 36-412(c), Idaho Code, authorizes a fee of not more than eight dollars (\$8.00) for reimbursement of furnished materials.

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

No fiscal impact to the General Fund. A program fee of eight dollars (\$8) (Idaho Code Section 36-412(c)) for each individual enrolling in trapper education will recover some costs of the program. IDFG expects that the trapper education program will cost approximately fifty thousand dollars \$50,000 for the first two years in order to start up the program and meet short term demand for classes. Expenses will decrease in subsequent years. These expenses will affect the fish and game dedicated fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 1, 2015 Idaho Administrative Bulletin, [Vol. 15-4, page 27](#).

**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 Brenda Beckley (208) 287-2884.

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 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-4128  
[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0116-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**101. -- ~~149~~05. (RESERVED)**

**106. TRAPPER EDUCATION.**

**01. Mandatory Trapper Education Program.** All persons who purchased their first Idaho trapping license after July 1, 2010 must successfully complete a Department of Fish and Game trapper education course, or provide proof that such person holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association in another state or country. All persons being certified under this program must have successfully completed at least six (6) hours of instruction in rules, species identification, trapping methods/techniques, wildlife management, ethics, responsibility, and avoiding non-target catches. Those who have taken wolf trapping education from Idaho or from an authorized agency or association in another state or country, are not exempt and must still complete the Idaho trapper education course. ( )

**02. Fees.** A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Trapper Education Program. ( )

**03. Effective Date.** On and after July 1, 2017, no person who purchased their first Idaho trapping license after July 1, 2010 shall be issued a trapping license, unless that person presents a certificate of completion in trapping education issued by the Department or proof that such person holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association in another state or country. ( )

**107. -- 149. (RESERVED)**

**IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME**  
**13.01.17 - RULES GOVERNING THE USE OF BAIT AND TRAPPING**  
**FOR TAKING BIG GAME ANIMALS**

**DOCKET NO. 13-0117-1501**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101(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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 align the criteria for the distance of black bear baiting sites from water, trails, and roads.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Volume 15-7, page 39](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer, Deputy Director (208) 334-3771.

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 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-4128  
[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0117-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**100. USE OF BAIT FOR HUNTING.**

Bait for hunting is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions, EXCEPT gray wolf may be taken incidentally to bear baiting. (4-4-13)

**01. Time.** (7-1-93)

**a.** No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT bait may be placed one (1) week prior to the opening of bear season in Units 10, 12, 16A, 17, 19, 20, 20A, 26 and 27. (4-4-13)

**b.** All bait, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season (spring, fall, or black bear dog training); EXCEPT bait, bait containers, and materials may remain in Units 10 and 12 between the dog training season and the fall hunt. (4-4-13)

**02. Location.** (7-1-93)

**a.** No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any ~~road~~ established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles. (3-30-01)( )

**b.** No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

**03. Types.** (7-1-93)

**a.** No person shall use any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent. (4-7-11)

**b.** The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

**c.** No person shall use salt in any form (liquid or solid) for bait. (3-29-10)

**04. Containers.** (7-1-93)

**a.** No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

**b.** No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

**05. Establishment of Bait Sites.** (7-1-93)

**a.** Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (3-29-10)

**b.** All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

# **IDAPA 14 - BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

## **14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

**DOCKET NO. 14-0101-1501**

### **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 21, 2015.

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

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

The changes will allow applicants to take one of the required examinations while still in college. The rule also clarifies the examination, re-examination, and examination scores.

**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 being amended to comply with House Bill 81 which passed in the 2015 Legislative Session. The rules were discussed in an open, noticed 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) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P O Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-394

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 14-0101-1501**  
**(Only Those Sections With Amendments 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. ASBOG.** The National Association of State Boards of Geology. ( )

**045. Board.** The Idaho Board of Registration for Professional Geologists as provided for in the Act. (7-1-93)

**056. Geologist-in-Training.** The interim designation given to any person who has met the academic requirements and successfully passed the fundamentals s of geology 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)( )

**067. Registrant.** Any person currently registered as a professional geologist under provisions of the Act. (7-1-93)

**078. 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)

**089. 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. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. APPLICATION PROCEDURES.**

**01. Applications.** Applications for registration shall be: (7-1-93)

**a.** Filed on a form or forms prescribed by the Board and accompanied by official transcripts, reference statements, and a signed code of ethics (SEE "APPENDIX B" AT END OF THIS CHAPTER); (3-26-08)

- b. Filed at the office of the Board, accompanied by the required Application fee; (3-26-08)
- c. Received by the Board, if for registration by examination, not less than ninety (90) days prior to the date of examination; (4-9-09)
- d. Subscribed and certified to by the Applicant under penalty of perjury as provided for by state law; and (7-1-93)
- e. Applications not submitted in proper form, or which are incomplete, will not be accepted by the Board and will be returned to the Applicant ~~by the secretary~~ with a statement of the reason for return. (7-1-93)( )

**02. Board Action.** Upon evaluation of the Application by the Board, including receipt of statements from references, each Application will be: (7-1-93)

- a. Approved and the Applicant notified in writing of such approval and the granting of registration; or (7-1-93)
- b. Approved and the Applicant scheduled for examination for registration, and so notified in writing; or (7-1-93)
- c. Denied ~~with prejudice~~ and the Applicant ~~so~~ notified in writing ~~by certified mail~~ stating the reason for denial. In the event of denial of Application, the Application fee will be retained by the Board. (7-1-93)( )

**03. Appeal.** Upon notification by the Board that the Application has been denied or rejected, the Applicant, within thirty (30) days of receipt of such notice, may petition the Board for a hearing, under the provisions of Title 67, Chapter 52, Idaho Code. (3-26-08)

**04. Dates.** The date of application shall be the date it is delivered in person to the Board office or, if mailed, the date shown by post office cancellation mark. Qualifying education and experience of the Applicant, for examination and registration, shall be computed from the date of application as described above. (7-1-93)

**05. References.** Statements from personal references in Responsible Positions concerning the Applicant's technical ability and personal character, shall be received, as prescribed by the Act, prior to any action by the Board to approve an Application. Each statement must reflect in a positive way the technical and ethical merits of the Applicant. Applicants for the Fundamentals of Geology examination may fulfill this requirement with reference statements from geologists in Responsible Positions familiar with the ability and character of the Applicant as demonstrated in an academic setting. (3-26-08)

~~06. **Abandonment.** In the absence of special circumstances, the Board shall consider an Application abandoned when: **Lack of Activity.** If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. (7-1-93)( )~~

~~a. The Applicant fails to submit the certificate fee within six (6) months after the date of the letter of notification of approval of registration; or (7-1-93)~~

~~b. The Applicant fails to appear for a scheduled examination without obtaining a postponement from the Board; or (7-1-93)~~

~~c. The Applicant, after two (2) such postponements, fails to appear for examination at the scheduled time. (7-1-93)~~

~~07. **Abandonment—Application Fees.** If, after abandonment of an Application, an Applicant wishes to reapply for registration, an entirely new Application shall be initiated and all previously paid Application fees shall be retained by the Board. (3-26-08)~~

201. -- 299. (RESERVED)



**300. EXAMINATIONS.**

Except as otherwise provided in statute, every Applicant for registration shall take and pass the complete professional examination for registration as a professional geologist. The complete professional examination consists of a written examination that covers subjects ordinarily contained in a college curriculum and a written examination that covers the practice of geology. ( )

~~01. **Examination Required.** Every Applicant for registration shall take and pass an examination as prescribed by the Board except as may be specifically exempted from such examination under the terms of the Act. **Fundamentals of Geology.** The written examination that covers subjects contained in a college curriculum is the Fundamentals of Geology examination provided by ASBOG. To be eligible to take the Fundamentals of Geology examination an Applicant must:~~ (7-1-93)( )

~~a. File a complete Application as set forth in Subsection 200 of these rules, including providing the required references; and~~ ( )

~~b. Submit the required fees, as set forth in Subsection 150 of these rules; and~~ ( )

~~c. Have completed thirty (30) semester units or equivalent quarter units in courses in geological science leading to a degree in the geological sciences of which at least twenty-four (24) units are in third or fourth year, and/or graduate courses. Applicants who can satisfy the Board that they will have completed the required coursework and number of units and will be graduating at the end of the spring, summer or fall terms of any given year, may be eligible for examination immediately preceding the date of graduation.~~ ( )

~~02. **Eligibility.** The following shall be considered as minimum evidence that the Applicant is qualified to take the Principles and Practices of Geology Examination:~~ (3-26-08)

~~a. Completion of thirty (30) semester units in courses in geological science leading to a degree in the geological sciences of which at least twenty four (24) units are in third or fourth year, and/or graduate courses; and~~ (7-1-93)

~~b. Have at least seven (7) years of professional geological work which shall include either a minimum of three (3) years of professional geological work under the supervision of a registered geologist, or, wherein the Applicant has been under the direct supervision of an individual acceptable to the Board, or, wherein the Applicant has demonstrated five (5) years of progressive experience in responsible charge of geological work that is acceptable to the Board.~~ (7-1-93)

~~i. Each year of undergraduate study in the geological sciences shall count as one half (1/2) year of training up to a maximum of two (2) years, and each year of graduate study or research counts as a year of training.~~ (7-1-93)

~~ii. Teaching in the geological sciences at the college level shall be credited year for year toward meeting the requirement in this category, provided that the total annual teaching experience includes six (6) semester units of third or fourth year or graduate courses.~~ (7-1-93)

~~iii. Credit for undergraduate study, graduate study, and teaching individually, or in any combination thereof, shall in no case exceed a total of four (4) years toward meeting the requirement for at least seven (7) years of professional geological work as set forth above.~~ (7-1-93)

~~iv. The ability of the Applicant shall have been demonstrated by his having performed work in a Responsible Position, as the term is defined in Section 010 of these rules.~~ (3-26-08)

~~v. The Applicant shall further be of good moral character and shall have filed a complete Application with the Board, accompanied by the required fee, as set forth in Subsection 100.06 of these rules.~~ (3-26-08)

02. **Practice of Geology.** The written examination that covers the practice of geology is the Practice of Geology examination provided by ASBOG. To be eligible to take the Practice of Geology examination an Applicant

must: ( )

**a.** Have a complete Application on file with the Board; and ( )

**b.** Submit the required fee, as set forth in Subsection 150 of these rules; and ( )

**c.** Have satisfied the education requirements as set forth in Section 54-2812, Idaho Code; and ( )

**d.** Have satisfied the experience requirements as set forth in Section 54-2812, Idaho Code. ( )

**03. Authorization.** (7-1-93)

**a.** After the Board evaluates the qualifications of an Applicant and establishes his eligibility for examination, the secretary Board shall notify the Applicant of eligibility and the dates of the next scheduled examinations for which his Application qualifies him. (3-13-02)( )

**b.** The secretary Board shall notify each Applicant in writing of the acceptance or rejection of his Application and, if rejected, the reason for the rejection. (3-26-08)( )

**c.** Not less than forty-five ninety (4590) days prior to the examination date, the candidate Applicant shall give written notice to the Board of his intent to take the examination and shall submit all applicable testing fees in full. (3-13-02)( )

**d.** Not less than thirty (30) days prior to the examination date, the secretary Board shall give written notice to each candidate Applicant that has previously given written notice and has paid his examination fees, of the date, time, and location(s) of the examination. (3-13-02)( )

~~**04. Scope of Examination.** *The scope of the examination and the methods of procedure shall be prescribed by the Board with special reference to the Applicant's ability to supervise geologic projects as to insure the safety of life, health and property. The complete professional examination for registration as a professional geologist consists of two (2) separate written examinations. The first is the Fundamentals of Geology examination, covering subjects as are ordinarily given in college curricula. The second is the Principles and Practice of Geology examination which will cover the practice of geology and test the Applicant's fitness for such practice affecting the public health, safety and welfare. In addition, the examination shall meet all Americans with Disabilities Act requirements.* (3-26-08)~~

~~**05. Geologist in Training.** *An Applicant may be permitted to take the Fundamentals of Geology examination prior to his completion of the years of geologic experience required for registration, as provided for in the Act. Upon such satisfactory passage of the Fundamentals of Geology examination, the Board shall issue a certificate of completion for this portion of the complete professional examination with designation of the Applicant as a Geologist in Training. Such certificate of completion shall constitute a credit toward the Applicant's complete professional examination for a period not to exceed ten (10) years. The Geologist in Training, upon completion of the required years of geologic experience for registration, may submit a record of such experience in a complete Application to the Board and, upon approval by the Board, be assigned to take the Principles and Practice examination.* (3-26-08)~~

**064. Reexamination.** An candidate Applicant failing his first examination may apply for reexamination ~~at the expiration of six (6) months~~ without filing a new Application and shall be entitled to such reexamination on payment of the reexamination fee. An candidate Applicant who fails on reexamination must file a new Application before he can again be admitted to examination, and such new Application shall not be filed prior to one (1) year following the date of the last examination taken by the Applicant; provided, however, that it shall be unlawful for an candidate Applicant failing any examination to practice professional geology under the appropriate provisions of the Act. (3-13-02)( )

~~**075. Time and Place.**~~ (7-1-93)

**a.** The regular written examinations for registration as a professional geologist shall be conducted

~~once or twice yearly upon the dates prescribed by ASBOG.~~ (3-13-02)( )

b. The ~~secretary~~ Board shall make all arrangements necessary to provide sufficient help to conduct examinations and to provide adequate facilities at such locations throughout the state as may be required to accommodate the number of Applicants to be examined. (7-1-93)( )

**086. Examination Irregularities.** (7-1-93)

a. Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized matter or devices during the examination is strictly prohibited. (7-1-93)

b. Only scheduled examinees, Board members, ~~the assistant secretary~~ and authorized examination personnel shall be admitted to the examination room. (7-1-93)( )

**097. Grading Scores. An Applicant for registration by examination must successfully pass both the Fundamentals of Geology examination and the Practice of Geology examination.** (7-1-93)( )

~~a. As indicated in Subsection 300.04 of these rules, the entire professional examination for registration as a professional geologist consists of two (2) separate written examinations. These examinations are referred to as the: (1) Fundamentals of Geology; and (2) Principles and Practice examinations. Licensure as a professional geologist requires successful passage, as defined in Paragraphs 300.09.b. and 300.09.c. of these rules, of both of these examinations. (3-26-08)~~

~~ba.~~ Every Applicant receiving an ~~overall grade~~ scaled score of seventy ~~percent~~ (70%) or more, as determined by ASBOG, on the Fundamentals of Geology examination shall be deemed to have passed the examination, is thereby eligible to ~~take the Principles and Practice examination, and will~~ receive certification as a Geologist-in-Training, provided that the required fees have been paid. (3-13-02)( )

~~eb.~~ Every Applicant receiving a grade scaled score of seventy ~~percent~~ (70%) or more, as determined by ASBOG, on the ~~Principles and Practice of Geology~~ examination shall be deemed to have passed such examination and will be registered as a professional geologist, provided that all of the required fees have been paid. (3-13-02)( )

~~dc.~~ Every Applicant receiving a grade scaled score of less than seventy ~~percent~~ (70%), as determined by ASBOG, on either the Fundamentals of Geology examination or the ~~Principles and Practice of Geology~~ examination, shall be deemed to have failed such examination. Every Applicant having failed shall have his Application denied without prejudice, but shall be allowed to retake the failed examination in accordance with Subsection 300.064 of these rules. (3-26-08)( )

**108. Inspection Re-Score or Review of Examination.** (7-1-93)( )

a. An Applicant who fails to obtain a passing grade in any portion of the written examination ~~inspect~~ request a rescore or review of his examination papers at such times, ~~and~~ locations, and under such circumstances as may be designated by the ~~secretary~~ Board, ASBOG, or both. (3-26-08)( )

b. When a review is requested and authorized, A at the time of ~~inspection~~ review, no one other than the examinee or his attorney and a representative of the Board shall have access to such examination papers. (7-1-93)( )

**11. Examination Appeal.** (7-1-93)

~~a. Within fifteen (15) days after the date notice of the results of the examination has been mailed to him, an Applicant who was unsuccessful in the examination may appeal, by petition, to the Board for a review of his examination papers. (3-26-08)~~

~~b. The petition for review shall be made in writing stating the reason for such appeal and citing the~~

~~item or items against which the request is directed.~~

~~(7-1-93)~~

~~e. The Board shall, upon receiving such petition for review, conduct a hearing in accordance with the applicable provisions of Title 67, Chapter 52, Idaho Code.~~

~~(7-1-93)~~

**121. Retention of Examinations.** The Board shall retain examination results for at least one (1) year.

~~(3-13-02)~~ ( )

**301. -- ~~93~~99. (RESERVED)**

**400. GEOLOGIST IN TRAINING.**

An Applicant who has passed the Fundamentals of Geology examination and satisfied the education requirements set forth in Subsection 250.01 of these rules, will receive a certificate of completion that designates the Applicant as a Geologist-in-Training.

( )

**01. Supervised Practice.** 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.

( )

**02. Limitation.** Designation as a Geologist in Training is limited to a period not to exceed ten (10) years. 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.

( )

**401. -- 999. (RESERVED)**

# **IDAPA 14 - BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

## **14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

### **DOCKET NO. 14-0101-1502 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2614 (Bureau of Occupational Licenses), and 54-2802, 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 21, 2015.

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

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

During the 2015 regular legislative session, the Legislature passed House Bill (HB) 117 which amended Idaho Code §67-2614, the Idaho Bureau of Occupational License's (IBOL) section on renewal or reinstatement of licenses or registrations. HB 117 simplified and standardized the license renewal process for licensing boards served by the Bureau. While boards have the option of maintaining their individual licensing requirements, this Board has decided to amend its rules to align them with the Bureau's statute. Other boards are in the process of amending their statutes to allow them to align their rules, and the statutes and rules of other boards are already in synch with the Bureau's statute. The changes contained in this rule were discussed and decided upon by the Board at a properly noticed open Board meeting.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The Board operates solely on dedicated funds derived primarily from licensing and registration fees. This rule will increase the reinstatement fee from \$25 to \$35. The number of annual renewal fees collected will be capped at just one (1) rather than one (1) for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. The statute authorizing the reinstatement fee is Section 67-2614, 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:

There will be no fiscal impact to the state general fund since licensing and registration fees collected are dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Board discussed and decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 17th Day of September, 2015.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P O Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph / (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 14-0101-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**150. FEES.**

The fees for registration under the Act shall be the following: (4-9-09)

**01. Application.** A non-refundable fee for application shall be one hundred dollars (\$100). (4-9-09)

**02. Initial Certificate.** The fee for the initial certificate shall be twenty dollars (\$20). (4-9-09)

**03. Examination/Reexamination.** The fee for the National examination is set at the current Association of State Boards of Geology (ASBOG) rate and is non-refundable. (4-9-09)

**04. Annual Renewal Fee.** Annual renewal fee shall be sixty dollars (\$60). (4-9-09)

**05. Annual Renewal Fee for Registrants Seventy (70) Years of Age or Older.** Annual renewal fee shall be one-half (1/2) of the current renewal fee for registrants seventy (70) years of age or older. (4-9-09)

**06. Reinstatement Fee.** Reinstatement fee ~~shall be twenty-five dollars (\$25)~~ is as provided in Section 67-2614, Idaho Code. ~~(4-9-09)~~ ( )

**07. Duplicate Certificate Fee.** The fee for replacing a lost, destroyed, or mutilated certificate shall be twenty dollars (\$20). (4-9-09)

**IDAPA 15 - OFFICE OF THE GOVERNOR  
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**15.02.02 - VOCATIONAL REHABILITATION SERVICES**

**DOCKET NO. 15-0202-1501**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5407, 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 21, 2015.

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

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

These changes are necessary to keep up with the increasing costs associated with vocational rehabilitation services. These rule changes increase ICBVI's contribution of goods and services to Vocational Rehabilitation clients. The VR Policy Manual also requires an update in terminology to be consistent with Rehabilitation Services Administration regulations.

**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: NA

These rule changes will have no effect on the state general fund. There is a negative fiscal impact, but the changes will be federally funded.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes are beneficial to the public and must be updated due to the adoption of a new case management system by the 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Raelene Thomas, Management Assistant, at (208) 334-3220, ext. 124.

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 28, 2015.

DATED this 3rd Day of September, 2015.

Raelene Thomas  
Management Assistant  
Idaho Commission for the Blind and Visually Impaired  
341 W. Washington St.  
P. O. Box 83720  
Boise, ID 83720-0012  
Phone: (208) 334-3220 ext.124  
Fax: (208) 334-2963

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0202-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**110. ELIGIBILITY.**

**01. Eligibility Requirements.** Eligibility of a client for vocational rehabilitation services shall be based upon a determination by the Commission that: (4-2-08)

**a.** The client is blind or visually impaired; (4-2-08)

**b.** The client's blindness or visual impairment constitutes or results in a substantial impediment to employment; and (4-2-08)

**c.** There is a reasonable expectation that vocational rehabilitation services will benefit the client in terms of securing, retaining, or regaining employment. (4-2-08)

**d.** The client has a disability priority which can include no significant disability (NSD), significant disability (SD), or most significant disability (MSD). ( )

**02. Residency Requirements.** A client must have legal residence status, be able to complete an employment eligibility verification, and be present in the state. (4-2-08)

**03. Presumptive Eligibility.** Individuals who are current SSI or SSDI beneficiaries are presumed to be eligible for vocational rehabilitation services unless the Commission can demonstrate by clear and convincing evidence that such individuals are incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of their disability. (4-2-08)

**04. Certificate of Ineligibility.** If an individual is determined ineligible for services, a certificate of ineligibility will be prepared and a copy provided the individual or the individual's representative. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. PAYMENT POLICY.**

**01. Upper Limits.** In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

**a.** Education expenses - public in-state institutions. ( )

**i.** Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. (5-8-09) ( )

**ii.** The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ( )

**b.** Education expenses - private in-state institutions. ( )



i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of a public Idaho, whichever is higher college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission.

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

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ( )

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year that would be incurred at Boise State University, Idaho State University, or University of a public Idaho, whichever is higher college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission.

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

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the “usual and customary” charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. ~~(5-8-09)~~( )

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: ~~Two~~ To be paid at specialist’s rate not to exceed three hundred dollars (~~\$2300~~) maximum, plus actual cost of related procedures such as (e.g., x-rays). ~~(4-2-08)~~( )

ii. Psychological exam by licensed psychologist: Two hundred fifty dollars (~~\$2050~~) plus actual cost of psychometric tests. ~~(4-2-08)~~( )

iii. Ophthalmologist/Optomtrist exam: ~~Two~~ Three hundred dollars (~~\$2300~~) plus actual cost of visual field exam or other necessary tests. ~~(4-2-08)~~( )

(1) Low vision exam: ~~One~~ To be paid at specialist’s rate not to exceed two hundred ~~twenty-five~~ dollars (~~\$25200~~). ~~(4-2-08)~~( )

(2) Follow-up low vision consultation: ~~Fifty~~ Sixty-five dollars (~~\$565~~). ~~(4-2-08)~~( )

- (3) Eye report: Twenty-five dollars (\$25). (4-2-08)
- iv. Eye glasses or contact lenses: ~~Eighty~~ Two hundred dollars (~~\$8200~~) ~~for~~ frames ~~costs~~ and the usual and customary cost for lenses and contact lenses. ~~Nine~~ Twelve hundred dollars (~~\$91,200~~) for bioptics. ~~(5-8-09)~~ (\_\_\_\_)
- v. Audiologist exam: ~~Eighty-five~~ To be paid at specialists rate not to exceed two hundred dollars (~~\$85200~~). ~~(4-2-08)~~ (\_\_\_\_)
- vi. Physical exam (general basic medical): ~~Sixty-five~~ Two hundred dollars (~~\$65200~~) plus actual cost of additional procedures and tests. ~~(4-2-08)~~ (\_\_\_\_)
- f. Psychotherapy/Counseling sessions: Up to ~~ten (10) hourly sessions at eighty~~ one hundred dollars (~~\$8100~~) per hour and up to ten (10) sessions. Exceptions may be made by Rehabilitation Services Chief. ~~(4-2-08)~~ (\_\_\_\_)
- g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. After the expiration of the three (3) month period, the commission will pay the state Medicaid rate for medication and medical supplies. ~~(4-2-08)~~ (\_\_\_\_)
- h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: ~~Five hundred~~ One thousand dollars (~~\$51,000~~) per case. ~~(4-2-08)~~ (\_\_\_\_)
- i. Transportation. (4-2-08)
- i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
- ii. Transportation ~~costs~~ services associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). The Commission does not provide funds for a client's purchase of a motor vehicle. Exceptions can be approved by the Rehabilitation Services Chief. ~~(5-8-09)~~ (\_\_\_\_)
- iii. ICBVI may reimburse for state mileage rate for client transportation services or may reimburse for the actual cost of gasoline. (\_\_\_\_)
- ~~iv.~~ Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
- j. Maintenance: Three thousand dollars (\$3,000) per federal fiscal year and no more than five hundred dollars (\$500) per month. There is no limit on the number of months a client can receive maintenance up to the three thousand dollar (\$3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (3-29-12)
- i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
- ii. If a client is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is three hundred dollars (\$300) for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (3-29-12)
- k. Copy fees: ~~Fifteen~~ Twenty dollars (~~\$1520~~) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. ~~(4-2-08)~~ (\_\_\_\_)

**l.** Tools and equipment: ~~One~~ **Two** thousand dollars (\$~~1~~**2**,000) per case depending on employment goal. Value of tools and equipment provided to client from existing Commission inventory will count towards the ~~one~~ **two** thousand dollar (\$~~1~~**2**,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)(    )

**m.** On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)

**n.** Computers including hardware and software: ~~One~~ **Two** thousand dollars (\$~~1~~**2**,000) per case. If the Commission determines that a change in computers is necessary, as appropriate, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)(    )

**o.** Self-employment plans: Three thousand dollars (\$3,000), to include tools and equipment, excluding adaptive technology and computers. (4-2-08)(    )

**p.** Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)

**q.** Vehicle purchase: The Commission may provide finances to modify and/or repair an already owned vehicle to make it accessible for the client's use under the following circumstances: (    )

**i.** The cost of the modification and/or repair cannot exceed the current Blue Book fair trade in value of the vehicle; (    )

**ii.** The client must maintain insurance on the vehicle for replacement cost; (    )

**iii.** The Commission can aid in the purchase of a used vehicle or utility trailer as long as they are a part of the approved self-employment plan or a part of the Business Enterprise Program. (    )

**r.** Physical, Occupational, and Speech Therapy: The Commission may cover one hundred dollars (\$100) per session at maximum of ten (10) sessions per case. Exceptions can be made by rehabilitation Services Chief. (    )

**02.** Exclusion of Surgery ~~and Organ Transplantation.~~ (4-2-08)

~~a.~~ The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)(    )

~~b.~~ The Commission does not provide funds for a client's organ transplantation. (4-2-08)

**03.** **Authorization to Purchase.** When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the ~~#~~**R**ehabilitation ~~s~~**S**ervices ~~e~~**C**hief or the Commission ~~a~~**A**dministrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)(    )

**04.** **Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the ~~#~~**R**ehabilitation ~~s~~**S**ervices ~~e~~**C**hief of the Commission. (4-2-08)(    )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.02 - RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES**  
**(EMS) PHYSICIAN COMMISSION**

**DOCKET NO. 16-0202-1501**

**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 56-1013A and 56-1023, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered on an ongoing basis during 2015.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2016-1, 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 Idaho EMS.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

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 28, 2015.

DATED this 28th Day of August, 2015.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0202-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 201~~5~~<sup>6</sup>-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~(7-1-15)~~ ( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1501

#### 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, and 56-260 through 56-266, Idaho Code; also 42 CFR 435.

**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 21, 2015.

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

Under the Medicare Access and CHIP Reauthorization Act of 2015, changes are being made to align this chapter of rules with federal regulations approved in that act. Transitional Medicaid (TM) previously thought to have a sunset clause was extended, and is being added. A change for eligibility for "authorized employment" is being removed to ensure eligibility determinations are correctly determined. Language is being removed that is not necessary for eligible institutions.

**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:

The anticipated fiscal impact for FY 2017 for Transitional Medicaid will be \$9,771,060, with \$6,928,649 from federal funds and \$2,842,411 from state general funds. The fiscal impact amount was calculated using an estimation of the number of adults with children who will become eligible for Transitional Medicaid in FY 2017 multiplied by the current average monthly Medicaid claim by the Parent/Caretaker eligibility group.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department has determined it was not feasible because changes are being made to align with federal regulations and to be in compliance with Idaho's State Plan.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cheri Bourn at (208) 334-4934.

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 28, 2015.

DATED this 31st Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0301-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**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: (3-20-14)

- 01. U.S. Citizen.** A U.S. Citizen or a “national of the United States.” (3-20-14)
- 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: (3-20-14)
  - 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; (3-20-14)
  - 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; (3-20-14)
  - c.** The child is under eighteen (18) years of age; (3-20-14)
  - d.** The child is a lawful permanent resident; and (3-20-14)
  - 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. (3-20-14)
- 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. (3-20-14)
- 04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who was 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. (3-20-14)
- 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. (3-20-14)
- 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: (3-20-14)
  - 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; (3-20-14)
  - 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; (3-20-14)
  - 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; (3-20-14)
  - 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 (3-20-14)

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. (3-20-14)

**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. (3-20-14)

**08. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359. (3-20-14)

**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). (3-20-14)

**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. (3-20-14)

**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: (3-20-14)

a. Is under the age of eighteen (18) years; or (3-20-14)

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 (3-20-14)

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 (3-20-14)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-14)

**12. Afghan Special Immigrant.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007. (3-20-14)

**13. Iraqi Special Immigrant.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. (3-20-14)

~~**14. Employment Authorized Alien.** An alien granted an employment authorization document (EAD), as defined in 8 CFR Part 274a.12(e). (3-20-14)~~

~~**154. 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 221.143 of this rule, may be eligible for emergency medical services if he meets all other conditions of eligibility. (3-20-14)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**412. -- 4198. (RESERVED)**

**419. TRANSITIONAL MEDICAID FOR ADULTS.**

Participants who no longer qualify for Medicaid due to an increase in earned income or working hours are eligible for an additional twelve (12) months of Medicaid. Participants must have been eligible for Medicaid during at least three (3) of the six (6) months immediately preceding the month in which the participant became ineligible. ( )



(BREAK IN CONTINUITY OF SECTIONS)

**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, or any other applicable program. ~~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.~~  
(3-20-14)( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1501**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-203, Idaho Code, 7 CFR 273.2(j), and 7 CFR 273.8(a).

**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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 aligned the Food Stamp rules with a federal requirement that excludes households from receiving the \$5000 resource limit when they are not in compliance with program participation requirements. The chapter is also being amended to clarify the language describing the effected households.

Specifically, this rulemaking reduces the food stamp applicant resource limit from \$5,000 to \$2,250, or \$3,250 for certain households, and clarifies the description of such households.

**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:

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and aligns rules with federal limits.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Malinda Reissig at (208) 334-5779.

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 28, 2015.

DATED this 31st Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0304-1501  
(Only Those Sections With Amendments Are Shown.)

**010. DEFINITIONS A THROUGH D.**

For the Food Stamp Program, the following definitions apply: (4-11-06)

**01. Adequate Notice.** Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

**02. Administrative Error Claim.** A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

**03. Aid to the Aged, Blind and Disabled (AABD).** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (4-11-06)

**04. Applicant.** A person applying for Food Stamps. (6-1-94)

**05. Application for Participation.** The application form filed by the head of the household or authorized representative. (6-1-94)

**06. Application for Recertification.** When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (4-11-06)

**07. Authorized Representative.** A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

**08. Battered Women and Children's Shelter.** A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

**09. Boarder.** Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

**10. Boarding House.** A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

**11. Broad Based Categorical Eligibility.** If a participant meets the eligibility requirements found in 7 CFR Section 273.2(j)(2) as well as all other Food Stamp eligibility criteria, then the participant is eligible for Food Stamps. Participants who are eligible under this definition are also subject to resource, gross, and net income eligibility standards. ( )

**12. Categorical Eligibility.** If all household members receive or are authorized to receive monthly cash payment through TAFI, AABD or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (4-11-06)

**13. Certification Determination.** Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure

prompt, efficient and correct certifications. (6-1-94)

**134. Certification Period.** The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (4-11-06)

**145. Contact (Six-Month).** A six-month contact is a recertification that waives the interview requirement, allowing for written contact and verification of the participant's circumstances in lieu of the interview. (3-29-12)

**156. Claim Determination.** The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

**167. Client.** A person entitled to or receiving Food Stamps. (6-1-94)

**178. Department.** The Idaho Department of Health and Welfare. (6-1-94)

**189. Disqualified Household Members.** Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

**a.** Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

**b.** Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

**c.** Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

**d.** Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

**e.** Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)

**f.** Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)

**g.** Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)

**h.** Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

**i.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

**1920. Documentation.** The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

**201. Drug Addiction or Alcoholic Treatment Program.** Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**181. ~~(RESERVED)~~ BROAD BASED CATEGORICALLY ELIGIBLE HOUSEHOLD EXCEPTIONS.**

If a household contains any of the following members, the household is not eligible under Broad Based Categorical Eligibility. ( )

**01. IPV.** Any household member is disqualified for an Intentional Program Violation (IPV). ( )

**02. Drug-Related Felony.** Any household member is ineligible because of a drug-related felony. ( )

**03. Strike.** Any household member is on strike. ( )

**04. Transferred Resources.** Any household member transferred resources in order to qualify for benefits. ( )

**05. Refusal to Cooperate.** Any household member refused to cooperate in providing information that is needed to determine initial or ongoing eligibility. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. RESOURCE LIMIT.**

The Food Stamp resource limit is five thousand dollars (\$5,000) for Broad Based Categorically Eligible households. Households that do not meet the requirements for Broad Based Categorical Eligibility are subject to resource limits published by the USDA Food and Nutrition Service. ~~(4-7-11)~~( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,  
BLIND AND DISABLED (AABD)**  
**DOCKET NO. 16-0305-1501**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2015.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Aid to the Aged, Blind, and Disabled (AABD) program rules are being updated and aligned with the current State Plan that was approved by the Centers for Medicare and Medicaid Services (CMS) in January 2015. This change adds additional types of allowable pre-existing medical expenses towards a participant's liability.

**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 reason:

CMS approved amendments to the State Plan that were effective in January 2015, and these changes provide a benefit to participants that adds additional pre-existing medical expenses allowed towards a participant's liability.

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

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

The Department anticipates that the annual fiscal impact for changes to the pre-existing medical expenses will be \$403,600, with \$252,240 from federal funds and \$120,960 from state general funds. The fiscal impact amount is due to the Department's anticipation of an increase in the number of requests from participants for pre-existing medical expenses.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because these changes update the rules for amendments made to the State Plan that were approved in January 2015, by the Centers for Medicare and Medicaid Services (CMS) and not negotiable by the Department.

**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 Callie Harrold (208) 334-0663.

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 28, 2015.

DATED this 1st Day of September, 2015.

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450 W. State Street - 10th Floor  
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**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT  
OF DOCKET NO. 16-0305-1501  
(Only Those Sections With Amendments Are Shown.)**

**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 is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (3-20-14)

**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. (3-20-14)

**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)

**p.** Incurred Medical Expenses. Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount. (4-11-15)

**q.** Pre-existing Medical Expenses. Subtract amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. The deduction for medical and remedial care expenses is limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero. (1-1-15)T



**(BREAK IN CONTINUITY OF SECTIONS)**

**725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.**

After income ownership is decided, patient liability is determined using steps in Table 725.

| <b>TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY</b> |  |  |
|--|--|--|
| <b>Step</b>  | <b>Procedure</b>   |  |
| 01. AABD Income Exclusions                                       | Subtract income excluded in determining eligibility for AABD cash.   |  |
| 02. 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.   |  |
| 03. 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.   |  |
| 04. AABD Cash  | Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care.   |  |
| 05. VA Pension   | Subtract the first ninety (90\$) of the VA pension for a veteran.  |  |
| 06. Personal Needs   | Subtract forty dollars (\$40) for the participant's personal needs. Do not allow this deduction for a veteran.   |  |
| 07. Employed and Sheltered Workshop Activity Needs               | For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars (\$200) or his earned income.  |  |
| 08. Community Spouse Allowance: Step a.                          | Compute the Community Spouse Allowance (CSA) using Step a. through Step c.   |  |
|  | <p>Compute the Shelter Adjustment.<br/>                     Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs.</p> <p>Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative.<br/>                     Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons.</p> <p>The Shelter Adjustment is the positive balance remaining.</p> |  |

| <b>TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY</b> |  |
|--|--|
| <b>Step</b>  | <b>Procedure</b>   |
| 09. Community Spouse Allowance:<br>Step b.                       | <p>Compute the Community Spouse Need Standard (CSNS).<br/>                     Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.</p> |
| 10. Community Spouse Allowance:<br>Step c.                       | <p>Compute the Community Spouse Allowance.<br/>                     Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum.</p> <p>A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.</p>  |
| 11. Family Member Allowance (FMA)                                | <p>Compute the family member's gross income.<br/>                     Subtract the family member's gross income from the minimum CSNS.<br/>                     Divide the difference by three (3).<br/>                     Round cents to the next higher dollar.</p> <p>Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant.</p> <p>A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.</p>   |
| 12. Medicare and Health Insurance Premiums                       | <p>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.<br/>                     Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.</p>  |
| 13. Mandatory Income Taxes                                       | <p>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.</p>   |
| 14. Guardian Fees  | <p>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 the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly.</p>  |

| TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY |                                      |  |
|---|--------------------------------------|--|
| Step  | Procedure                            |  |
| 15.   | Trust Fees                           | Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust.   |
| 16.   | 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, 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.   |
| 17.   | Income Garnisheed for Child Support  | Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.  |
| 18.   | Incurred Medical Expenses            | Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount.   |
| <b>19.</b>  | <u>Pre-existing Medical Expenses</u> | <u>Subtract amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. The deduction for medical and remedial care expenses is limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.</u> |

~~(4-11-15)~~(1-1-15)T

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

**DOCKET NO. 16-0305-1502**

**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 21, 2015.

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

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

These rule changes are needed to amend and align with the federal requirements for eligibility and the Department's current business practice for determining countable self-employment income. Subsections are being deleted from rule to remove authorized employment and the self-employment standard deduction.

**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:

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is to align with federal requirements and other Department rules.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Callie Harrold at (208) 334-0663.

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 28, 2015.

DATED this 31st Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**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 105.16 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules. (3-20-14)

**01. U.S. Citizen.** A U.S. Citizen or a “national of the United States.” (3-20-14)

**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: (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)

**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) 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)

**04. 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)

**05. 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)

**06. 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)

**07. 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)

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

**09. 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)

**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. (3-30-07)

**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: (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)

**12. 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)

**13. 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). (3-20-14)~~

**154. 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 105.143 of this rule, may be eligible for emergency medical services if he meets all other conditions of eligibility. (3-20-14)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.**

Allowable operating expenses subtracted from self-employment income are listed in Subsections 402.01 through 402.17~~6~~ of this rule. ~~(3-29-12)~~(    )

~~**01. Self-Employment Standard Deduction.** The Department uses a standard self-employment deduction, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the allowable expenses described in Subsection 402.02 through 402.17 of this rule. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as calculated in Section 401 of these rules. ~~(3-29-12)~~~~

- ~~**02**~~**1.** **Labor.** Labor paid to individuals not in the family. (7-1-99)
- ~~**03**~~**2.** **Materials.** Materials such as stock, seed and fertilizer. (7-1-99)
- ~~**04**~~**3.** **Rent.** Rent on business property. (7-1-99)
- ~~**05**~~**4.** **Interest.** Interest paid to purchase income producing property. (7-1-99)
- ~~**06**~~**5.** **Insurance.** Insurance paid for business property. (7-1-99)
- ~~**07**~~**6.** **Taxes.** Taxes on income producing property. (7-1-99)
- ~~**08**~~**7.** **Business Transportation.** Business transportation as defined by the IRS. (7-1-99)
- ~~**09**~~**8.** **Maintenance.** Landscape and grounds maintenance. (7-1-99)
- ~~**10**~~**9.** **Lodging.** Lodging for business related travel. (7-1-99)
- ~~**11**~~**0.** **Meals.** Meals for business related travel. (7-1-99)
- ~~**12**~~**1.** **Use of Home.** Costs of partial use of home for business. (7-1-99)
- ~~**13**~~**2.** **Legal.** Business related legal fees. (7-1-99)
- ~~**14**~~**3.** **Shipping.** Business related shipping costs. (7-1-99)
- ~~**15**~~**4.** **Uniforms.** Business related uniforms. (7-1-99)
- ~~**16**~~**5.** **Utilities.** Utilities for business property. (7-1-99)
- ~~**17**~~**6.** **Advertising.** Business related advertising. (7-1-99)

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

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1501**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| <b>Friday, October 23, 2015<br/>9:00 a.m. MDT</b>  | <b>Friday, October 23, 2015<br/>12:00 p.m. MDT</b>                                     | <b>Friday, October 23, 2015<br/>2:00 p.m. PDT</b>   |
|--|--|---|
| <b>Medicaid Central Office<br/>3232 W. Elder Street<br/>Conference Room D -- West/East<br/>Boise, ID</b> | <b>Medicaid Region VI Office<br/>1070 Hiline Road<br/>Suite #230<br/>Pocatello, ID</b> | <b>Medicaid Region I Office<br/>1120 Ironwood Drive<br/>Large Conference Room<br/>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:

These rule changes clarify gaps that have been identified in these rules and adjust to changes in current Medicaid practice regarding school-based services and therapy services. Further, these rule changes adjust requirements currently resulting in unnecessary regulatory burdens on providers in their efforts to remain in compliance with the rules.

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

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

This rulemaking has no fiscal impact to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 42 and 43](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Frede' Trenkle-MacAllister at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 31st Day of August, 2015.



Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1501  
(Only Those Sections With Amendments Are Shown.)

**730. THERAPY SERVICES: DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (4-2-08)

**01. Duplicate Services.** Services are considered duplicate: (4-2-08)

**a.** When participants receive any combination of physical therapy, occupational therapy, or speech-language pathology services with treatments, evaluations, treatment plans, or goals that are not separate and unique to each service provided; or (4-2-08)

**b.** When more than one (1) type of therapy is provided at the same time. (4-2-08)

**02. Feeding Therapy.** Feeding Therapy means those therapy services necessary for the treatment of feeding disorders. Feeding disorders include problems gathering food and getting ready to suck, chew, or swallow it. ( )

**023. Maintenance Program.** A maintenance program established by a therapist that requires the skills of a therapist and consists of any combination of drills, techniques, exercises, treatments, or activities that preserve the participant's present level of functioning and prevent regression of that function. A maintenance program begins when: activities and mechanisms to assist a participant in maximizing or maintaining the progress he or she has made during therapy or to prevent or slow further deterioration due to a disease or illness. (4-2-08)( )

~~**a.** The therapeutic goals of a treatment plan have been achieved and no further functional progress is expected to occur;~~ (4-2-08)

~~**b.** The client or his caregivers, or both, have been taught and can carry out the therapy procedures; or~~ (4-2-08)

~~**c.** The skills of a therapist are no longer required.~~ (4-2-08)

**034. Occupational Therapy Services.** Therapy services that: (4-2-08)

**a.** Are provided within the scope of practice of licensed occupational therapists; (4-2-08)

**b.** Are necessary for the evaluation and treatment of impairments, functional disabilities, or changes in physical function and health status; and (4-2-08)

**c.** Improve the individual's ability to perform those tasks required for independent functioning. (4-2-08)

**045. Physical Therapy Services.** Therapy services that: (4-2-08)

a. Are provided within the scope of practice of licensed physical therapists; (4-2-08)

b. Are necessary for the evaluation and treatment of physical impairment or injury by the use of therapeutic exercise and the application of modalities that are intended to restore optimal function or normal development; and (4-2-08)

c. Focus on the rehabilitation and prevention of neuromuscular, musculoskeletal, integumentary, and cardiopulmonary disabilities. (4-2-08)

**056. Speech-Language Pathology Services.** Therapy services that are: (4-2-08)

a. Provided within the scope of practice of licensed speech-language pathologists; and (4-2-08)

b. Necessary for the evaluation and treatment of speech and language disorders which result in communication disabilities; or (4-2-08)

c. Necessary for the evaluation and treatment of swallowing disorders (dysphagia), regardless of the presence of a communication disability. (4-2-08)

~~06. Supervision. (4-2-08)~~

~~a. Direct supervision requires that the therapist be physically present and available to render direction in person and on the premises where the therapy is being provided. (4-2-08)~~

~~b. General supervision requires direct, on premises contact between the therapist, the therapy assistant, and the participant at least every five (5) visits or once every week if seen on a daily basis. Between direct contacts, the therapist is required to maintain indirect, off-premises contact with the therapy assistant. These indirect, off-premises contacts may be by telephone, written reports, or group conferences. (4-2-08)~~

**07. Therapeutic Procedures.** Therapeutic procedures are the application of clinical skills, services, or both, that attempt to improve function. (4-2-08)

**08. Therapist.** An individual licensed by the appropriate Idaho state licensing board as an occupational therapist, physical therapist, or speech-language pathologist. ( )

**089. Therapist Therapy Professional.** An individual licensed by the appropriate Idaho state licensing board as an occupational therapist or occupational therapist assistant, physical therapist or physical therapist assistant, or speech-language pathologist. (4-2-08)( )

~~09. Therapy Assistant. An individual licensed by the appropriate therapy licensure board to assist in the practice of occupational or physical therapy under the supervision of the appropriate licensed therapist. The therapy assistant is not recognized as an independent Medicaid provider. (4-2-08)~~

**10. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are all considered to be therapy services. These services are ordered by the participant's attending physician, nurse practitioner, or physician assistant as part of a plan of care. (4-2-08)

**11. Treatment Modalities.** A treatment modality is any physical agent applied to produce therapeutic changes to biological tissue, including the application of thermal, acoustic, light, mechanical or electrical energy. (4-2-08)

**731. THERAPY SERVICES: PARTICIPANT ELIGIBILITY.**

To be eligible for therapy services, a participant must be eligible for Medicaid benefits and must have: (4-2-08)

**01. Physician Order.** A physician order for therapy services; and (4-2-08)( )

~~02.~~ ~~Referral. A referral from their Healthy Connections Primary Care Provider when applicable.~~ (4-2-08)

~~032.~~ **A Therapy Evaluation Showing Need.** A therapy evaluation of the participant showing a need for therapy due to a functional limitation, a loss or delay of skill, or both; and (4-2-08)

~~043.~~ **A Therapy Evaluation Establishing Participant Benefit.** A therapy evaluation establishing that the participant will benefit and demonstrate progress as a result of the therapy services. (4-2-08)

**732. THERAPY SERVICES: COVERAGE AND LIMITATIONS.**

Therapy services are covered under these rules when delivered by a therapy professional and provided by one (1) of the following providers: outpatient hospitals, outpatient rehabilitation facilities, comprehensive outpatient rehabilitative facilities, nursing facilities, school-based services, Idaho Infant Toddler Program, independent practitioners, and home health agencies. (7-1-13)( )

**01. Service Description: Occupational Therapy and Physical Therapy.** Modalities, therapeutic procedures, tests, and measurements as described in the Physical Medicine and Rehabilitation Subsection and the Neurology and Neuromuscular Procedures Subsection of the Physician's Current Procedural Terminology (CPT Manual) are covered with the following limitations: (4-2-08)

**a.** Any evaluation or re-evaluation may only be performed by the therapist. Any changes in the participant's condition not consistent with planned progress or treatment goals necessitate a documented re-evaluation by the therapist before further treatment is carried out. (4-2-08)

**b.** Any CPT procedure code that falls under the heading of either, "Active Wound Care Management," or "Tests and Measurements," requires the therapist to have direct, one-to-one, patient contact. (4-2-08)

**c.** The therapist may be reimbursed for the technical component of muscle testing, joint range of motion, electromyography, or nerve velocity determinations as described in the CPT Manual when ordered by a physician, nurse practitioner, or physician assistant. (4-2-08)

**d.** Any assessment provided under the heading "Orthotic Management and Prosthetic Management" must be completed by the therapist. (4-2-08)

**e.** Any modality that is defined as "unlisted" in the CPT Manual requires prior authorization by the Department. In this case, the therapist and the physician, nurse practitioner, or physician assistant must provide information in writing to the Department that documents the medical necessity of the modality requested. (4-2-08)

**f.** The services of occupational or physical therapy assistants used when providing covered therapy benefits are included as part of the covered service. These services are billed by the supervising therapist. Therapy assistants may not provide evaluation services, make clinical judgments or decisions, or take responsibility for the service. The therapist has full responsibility for the service provided. Therapy assistants act at the direction and under the supervision of the treating therapist and in accordance with state licensure rules. (4-2-08)( )

**02. Service Description: Speech-Language Pathology.** Speech-language pathology services must be provided as defined in Section 730 of these rules. Services provided by speech-language pathology assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services. (4-2-08)

**03. Non-Covered Services: Occupational Therapy, Physical Therapy, and Speech-Language Pathology.** (4-2-08)

**a.** Continuing services for participants who do not exhibit the capability to achieve measurable improvement. (4-2-08)

**b.** Services that address developmentally acceptable error patterns. (4-2-08)

- c. Services that do not require the skills of a ~~therapist or~~ therapy ~~assistant~~ professional. (4-2-08)(    )
- ~~d. Services provided by unlicensed aides or technicians, even if under the supervision of a therapist, except as provided under Section 854 of these rules. (4-2-08)~~
- ~~ed.~~ Massage, work hardening, and conditioning. (4-2-08)
- ~~fe.~~ Services that are not medically necessary, as defined in Section 011 of these rules. (4-2-08)
- ~~g. Maintenance programs, as defined under Section 730 of these rules. (4-2-08)~~
- ~~hf.~~ Duplicate services, as defined under Section 730 of these rules. (4-2-08)
- ~~ig.~~ Group therapy in settings other than school-based services and the Idaho Infant Toddler Program. (7-1-13)
- h. Acupuncture (with or without electrical stimulation). (    )
- i. Biofeedback. (    )
- j. Duplicate Services. (    )
- k. Services that are considered to be experimental or investigational. (    )
- l. Vocational Program. (    )
- m. Vision Therapy. (    )
- 04. Service Limitations.** (4-2-08)
- a. Physical therapy (PT) and speech-language pathology (SLP) services are limited to a combined annual dollar amount for all PT and SLP services. The Department will set the total amount based on the annual Medicare caps. The Department may authorize additional therapy services, when the services are determined to be medically necessary and supporting documentation is provided to the Department. (3-29-12)
- b. Occupational therapy services are limited to an annual dollar amount set by the Department based on the annual Medicare caps. The Department may authorize additional therapy services, when the services are determined to be medically necessary and supporting documentation is provided to the Department. (3-29-12)
- c. Exceptions to service limitations. (3-29-12)
- i. Therapy provided by home health agencies is subject to the limitations on home health services contained in Section 722 of these rules. (3-29-12)
- ii. Therapy provided through school-based services or the Idaho Infant Toddler Program is not included in the service limitations under Subsection 732.04 of this rule. (7-1-13)
- iii. Therapy provided to EPSDT participants under the age of twenty-one (21) in accordance with the EPSDT requirements contained in Sections 881 through 883 of these rules, and in Section 1905(r) of the Social Security Act, will be authorized by the Department when additional therapy services are medically necessary. (3-29-12)
- d. Feeding therapy services are covered for children with a diagnosed feeding disorder that results in a clinically significant deviation from normal childhood development. The provider of feeding therapy is an occupational therapist or speech therapist with training specific to feeding therapy. (    )

e. Maintenance therapy is covered when an individualized assessment of the participant's condition demonstrates that skilled care is required to carry out a safe and effective maintenance program. ( )

f. Telehealth modalities are covered to the extent they are allowed under the rules of the applicable board of licensing. The Department will define limitations on telehealth in the provider handbook to promote quality services and program integrity. ( )

**733. THERAPY SERVICES: PROCEDURAL REQUIREMENTS.**

The Department will pay for therapy services rendered by ~~or under the supervision of a licensed therapist~~ a therapy professional if such services are ordered by ~~the attending~~ a physician, nurse practitioner, or physician assistant as part of a plan of care. (4-2-08)( )

**01. Physician Orders. (4-2-08)**

a. All therapy must be ordered by a physician, nurse practitioner, or physician assistant. Such orders must include at a minimum, the service to be provided, the frequency, and, where applicable, the ~~each therapeutic session~~ expected duration of ~~time for which the therapy will be needed. If the initial physician, nurse practitioner, or physician assistant order does not specify at least the type of service and the frequency, then:~~ (4-2-08)( )

i. The therapist may perform a therapy evaluation based on the initial physician order for the evaluation. ( )

ii. The therapist must then develop a plan of care based on that evaluation and send the plan to the ordering physician, nurse practitioner, or physician assistant and begin care. ( )

iii. The physician, nurse practitioner, or physician assistant must either sign an order specifying the service to be provided, the frequency and the duration, or they must sign the therapy plan of care within thirty (30) days for therapy to continue. No claims may be billed until the complete order or the plan of care is signed by the physician, nurse practitioner, or physician assistant. ( )

b. In the event that services are required for extended periods, these services must be reordered as necessary, but at least every ninety (90) days for all participants with the following exceptions: (5-8-09)

i. Therapy provided by home health agencies must be included in the home health plan of care and be reordered at least every sixty (60) days. (4-2-08)

ii. Therapy for individuals with ~~chronic~~ long-term medical conditions, as documented by physician, nurse practitioner, or physician assistant, must be reordered at least every ~~six (6) months~~ three hundred sixty-five (365) days. (4-2-08)( )

**02. Level of Supervision. (4-2-08)**

~~a. General s~~Supervision of physical therapist assistants and occupational therapyist assistants is required when therapy services are provided by outpatient hospitals, nursing facilities, home health agencies, outpatient rehabilitation facilities, comprehensive outpatient rehabilitation facilities, the Idaho Infant Toddler Program, and providers of school-based services by the physical therapist or occupational therapist must be done according to the rules of the applicable licensure board. (7-1-13)( )

~~b. Direct supervision of therapy assistants is required when therapy services are provided by independent practitioners. (4-2-08)~~

03. Plan of Care. All therapy is provided under a plan of care that is established prior to beginning treatment. The plan of care must be signed by the person who established the plan. The plan of care must be consistent with the therapy evaluation and must contain, at a minimum: ( )

a. Diagnoses: ( )

**b.** Treatment goals that are measurable and pertain to the identified functional impairment(s); and ( )

**c.** Type, frequency, and duration of therapy services. ( )

**734. THERAPY SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

The following providers are qualified to provide therapy services as Medicaid providers. (4-2-08)

**01. Occupational Therapist, Licensed.** A person licensed by the State Board of Medicine to conduct occupational therapy assessment and therapy in accordance with the Occupational Therapy Practice Act, Title 54, Chapter 37, Idaho Code, and IDAPA ~~22.01.09~~ 24.06.01, “Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.” (4-2-08)( )

**02. Physical Therapist, Licensed.** A person licensed by the Physical Therapy Licensure Board to conduct physical therapy assessments and therapy in accordance with the Physical Therapy Practice Act, Title 54, Chapter 22, Idaho Code, and IDAPA 24.13.01, “Rules Governing the Physical Therapy Licensure Board.” (4-2-08)

**03. Speech-Language Pathologist, Licensed.** A person licensed by the Speech and Hearing Services Licensure Board to conduct speech-language assessments and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, and IDAPA 24.23.01, “Rules of the Speech and Hearing Services Licensure Board,” who possesses a certificate of clinical competence in speech-language pathology from the American Speech, Language, and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**850. SCHOOL-BASED SERVICE: DEFINITIONS.**

**01. Activities of Daily Living (ADL).** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-30-07)

**02. Educational Services.** Services that are provided in buildings, rooms, or areas designated or used as a school or as an educational facilities setting, which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students, and which are included in the individual educational plan (IEP) for the participant student. (3-29-10)( )

**03. School-Based Services.** School-based services are health-related and rehabilitative services provided by Idaho public school districts and charter schools under the Individuals with Disabilities Education Act (IDEA). (7-1-13)

**04. The Psychiatric Rehabilitation Association (PRA).** An association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. The PRA also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. https://netforum.aveetra.com/eWeb/StartPage.aspx?Site=USPRA. http://www.uspra.org (3-20-14)( )

**05. Practitioner of the Healing Arts.** A physician's assistant, nurse practitioner, or clinical nurse specialist who is licensed and approved by the state of Idaho to make such recommendations or referrals for Medicaid services. (7-1-13)

**06. Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (3-20-14)

**a.** Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-V; and (3-20-14)

b. Must have a functional impairment that substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (3-20-14)

**07. Serious and Persistent Mental Illness (SPMI).** A participant must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-V with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (3-20-14)

**851. SCHOOL-BASED SERVICE: PARTICIPANT ELIGIBILITY.**

To be eligible for medical assistance reimbursement for covered services, school districts and charter schools must ensure the student is: (7-1-13)

**01. Medicaid Eligible.** Eligible for Medicaid and the service for which the school district or charter school is seeking reimbursement; (7-1-13)

**02. School Enrollment.** Enrolled in an Idaho school district or charter school; (7-1-13)

**03. Age.** Twenty-one (21) years of age or younger and the semester in which his twenty-first birthday falls is not finished; (3-30-07)

**04. Educational Disability.** Identified as having an educational disability under the Department of Education standards in IDAPA 08.02.03, "Rules Governing Thoroughness." (7-1-13)

~~**05. Inpatients in Hospitals or Nursing Homes.** Payment for school related services will not be provided to students who are inpatients in nursing homes or hospitals. Health related services for students residing in an ICF/ID are eligible for reimbursement. (7-1-13)~~

**05. Parental Consent.** Providers must obtain consent from a parent or legal guardian for school-based Medicaid reimbursement. ( )

**852. SCHOOL-BASED SERVICE: SERVICE-SPECIFIC PARTICIPANT ELIGIBILITY.**

~~Psychosocial Rehabilitation (PSR);~~ Community Based Rehabilitation Services (CBRS). Behavioral Intervention, Behavioral Consultation, and Personal Care Services (PCS) have additional eligibility requirements. ~~(3-20-14)~~( )

**01. ~~Psychosocial Rehabilitation (PSR)~~ Community Based Rehabilitation Services (CBRS).** To be eligible for ~~PSR~~ CBRS, the student participant must meet one (1) of the following: ~~(3-20-14)~~( )

a. A student who is a child under eighteen (18) years of age must meet the Serious Emotional Disturbance (SED) eligibility criteria for children in accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code, ~~and have documented evidence of a history and physical examination that has been completed within the last twelve (12) months prior to the initiation of mental health services.~~ A child who meets the criteria for SED must experience a substantial impairment in functioning. The child's level and type of functional impairment must be documented in the ~~medical~~ school record. ~~The Child and Adolescent Functional Assessment Scale/ Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS) instrument~~ A Department-approved assessment must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at ~~regular intervals~~ least annually in order to determine the child's change in functioning that occurs as a result of mental health treatment. ~~Items endorsed on the CAFAS/PECFAS must be supported by specific descriptions of the child's observable behavior in the comprehensive diagnostic assessment. Substantial impairment requires that the child score in the moderate range in at least two (2) subscales on the CAFAS/PECFAS. One (1) of the two (2)~~

~~subscales must be from the following: Self-harmful Behavior, Moods/Emotions, or Thinking. In addition, the child must have obtained a comprehensive diagnostic assessment that indicates:~~ (3-20-14)(    )

~~i. The service represents the least restrictive setting and other services have failed or are not appropriate for the clinical needs of the child;~~ (3-20-14)

~~ii. The service can reasonably be expected to improve the child's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced; and~~ (3-20-14)

~~iii. Verification that the child is not at immediate risk of self-harm or harm to others who cannot be stabilized, not in need of more restrictive care or inpatient care, and not over the age of eighteen (18).~~ (3-20-14)

**b.** A student who is eighteen (18) years old or older must meet the criteria of Serious and Persistent Mental Illness (SPMI). This requires that a student participant meet the criteria for SMI, as described in 42 CFR 483.102(b)(1), have at least one (1) additional functional impairment, and have a diagnosis under DSM-V, or later edition, with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. In addition, the psychiatric disorder must be of sufficient severity to affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the areas listed below on either a continuous or intermittent basis, at least once per year. ~~The participant's comprehensive diagnostic assessment must clearly identify the participant's need for skill training services that target skill deficits caused by his mental health condition. The participant's record must contain documentation that collaboration has occurred with the participant's other service providers in order to prevent duplication of skill training treatment services.~~ The skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The detail of the participant's level and type of functional impairment must be documented in the medical record in the following areas: (3-20-14)(    )

- i. Vocational/educational; (3-20-14)
- ii. Financial; (3-20-14)
- iii. Social relationships/support; (3-20-14)
- iv. Family; (3-20-14)
- v. Basic living skills; (3-20-14)
- vi. Housing; (3-20-14)
- vii. Community/legal; or (3-20-14)
- viii. Health/medical. (3-20-14)

~~e. A student must meet the Department of Education's criteria for emotional disturbance found in the Idaho Special Education Manual available online at the Idaho Department of Education website, [http://www.sde.idaho.gov/site/special\\_edu/](http://www.sde.idaho.gov/site/special_edu/).~~ (3-20-14)

**02. Behavioral Intervention and Behavioral Consultation.** To be eligible for behavioral intervention and behavioral consultation services, the student must: (3-20-14)

**a.** Meet the criteria for developmental disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501-503; and (3-20-14)(    )

**b.** Exhibit maladaptive behaviors that include frequent disruptive behaviors, aggression, self-injury, criminal or dangerous behavior evidenced by a score of at least one point five (1.5) standard deviations from the



mean in at least two (2) behavior domains and by ~~at least two (2)~~ a raters familiar with the student, or at least two (2) standard deviations from the mean in one (1) composite score that consists of at least three (3) behavior domains by ~~at least two (2)~~ a raters familiar with the student, on a standardized behavioral assessment approved by the Department; and (3-20-14)( )

- c. Have maladaptive behaviors that interfere with the student's ability to access an education. (3-20-14)

**03. Personal Care Services.** To be eligible for personal care services (PCS), the student must have a completed children's PCS assessment and allocation tool approved by the Department. To determine eligibility for PCS, the assessment results must find the student requires PCS due to a medical condition that impairs the physical or functional abilities of the student. (3-20-14)( )

**853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.**

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

- a. Vocational Services. (3-30-07)

**b. Educational Services.** Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

- c. Recreational Services. (3-30-07)

**d. Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals.** ( )

**02. Evaluation And Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a.** Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided prior to receiving a signed and dated recommendation or referral; (7-1-13)

**b.** Be conducted by qualified professionals for the respective discipline as defined in Section 855 of these rules; (3-20-14)

- c. Be directed toward a diagnosis; and (7-1-13)( )

- d. Include recommended interventions to address each need; and (7-1-13)( )

- e. Include name, title, and signature of the person conducting the evaluation. ( )

**03. Reimbursable Services.** School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided prior to receiving a signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. (7-1-13)( )

a. Behavioral Intervention. Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose ~~to~~ of preventing or treating behavioral conditions of for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. ~~The following staff-to-participant ratios apply:~~  
(7-1-13)( )

i. ~~There must be at least~~ Group services must be provided by one (1) qualified staff providing direct services for ~~every~~ a maximum of three (3) students, ~~unless the student has an assessment score of at least two (2) standard deviations from the mean in one (1) composite score.~~  
(7-1-13)( )

ii. ~~When intervention is provided by a professional for students with an assessment score of at least two (2) standard deviations from the mean in one (1) composite score, there must be at least one (1) qualified staff for every two (2) students.~~  
(7-1-13)

iii. ~~When intervention is provided by a paraprofessional for students with an assessment score of at least two (2) standard deviations from the mean in one (1) composite score, group intervention is not allowable.~~  
(7-1-13)

~~iv.~~ i. As the number and severity of the students with behavioral issues increases, the staff-~~to-participant~~student ratio must be adjusted accordingly.  
(7-1-13)( )

~~v.~~ iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction.  
(7-1-13)

b. Behavioral Consultation. Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members.  
(7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

c. Medical Equipment and Supplies. Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized, ~~based on medical necessity, in order to be billed~~. Authorized items must be for used at the school ~~at the location~~ where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be used for the student's exclusive use and must be transferred with the student if the student changes schools. ~~Equipment no longer usable by the student, may be donated to the school by the student~~ All equipment purchased by Medicaid belongs to the student.  
(7-1-13)( )

d. Nursing Services. Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed.  
(3-30-07)( )

e. Occupational Therapy and Evaluation. Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

f. Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements. The provider must deliver at least one (1) of the following services:  
(7-1-13)

i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care;  
(7-1-13)

- ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with ~~bedpan~~ bathroom routines; (7-1-13)(    )
- iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (7-1-13)
- ~~iv. The continuation of developmental disabilities programs to address the activities of daily living needs in the school setting as identified on the child's PCS assessment, in order to increase or maintain independence for the student with developmental disabilities as determined by the nurse or qualified intellectual disabilities professional (QIDP); (7-1-13)~~
- iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)
- vi. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)
- g. Physical Therapy and Evaluation. (3-30-07)
- h. Psychological Evaluation. (3-30-07)
- i. Psychotherapy. (3-30-07)
- j. ~~Psychosocial Rehabilitation (PSR)~~ Community Based Rehabilitation Services (CBRS) Services and Evaluation. ~~Psychosocial rehabilitation (PSR)~~ Community Based Rehabilitation ~~s~~Services and evaluation services that are interventions to ~~assist~~ reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. Training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, ~~study skills~~, and coping skills are types of interventions that may be reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. (3-20-14)(    )
- k. Speech/Audiological Therapy and Evaluation. (3-30-07)
- l. Social History and Evaluation. (3-30-07)
- m. Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home, and school, ~~or location of services~~ when: (7-1-13)(    )
- i. The student requires special transportation assistance, ~~such as~~ a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student and ~~ordered~~ recommended by a physician or other practitioner of the healing arts; (3-30-07)(    )
- ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)
- iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)
- iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)
- v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)
- n. Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional

providing the student with a health-related service may be billed with the following limitations: (7-1-13)

- i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. ~~(3-30-07)~~( )
- ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)
- iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**854. SCHOOL-BASED SERVICE: PROCEDURAL REQUIREMENTS.**

The following documentation must be maintained by the provider and retained for a period of six (6) years: (7-1-13)

**01. Individualized Education Program (IEP) and Other Service Plans.** School districts and charter schools may bill for Medicaid services covered by a current Individualized Education Program (IEP), transitional Individualized Family Service Plan (IFSP) ~~when the child turns three (3) years old~~, or Services Plan (SP) defined in the Idaho Special Education Manual on the State Department of Education website for parentally placed private school students with disabilities when designated funds are available for special education and related services. The plan must be developed within the previous three hundred sixty-five (365) days which indicates the need for one (1) or more medically-necessary health-related service, and lists all the Medicaid reimbursable services for which the school district or charter school is requesting reimbursement. The IEP and transitional IFSP must include:

~~(7-1-13)~~( )

- ~~#a.~~ Type, frequency, and duration of the service(s) provided; (7-1-13)
- ~~#b.~~ Title of the provider(s), including the direct care staff delivering services under the supervision of the professional; (7-1-13)
- ~~##c.~~ Measurable goals, when goals are required for the service; and (7-1-13)
- ~~#d.~~ Specific place of service, if provided in a location other than school. ~~(7-1-13)~~( )

**02. Evaluations and Assessments.** Evaluations and assessments must support services billed to Medicaid, and must accurately reflect the student's current status. Evaluations and assessments must be completed at least every (3) years. (7-1-13)

**03. Service Detail Reports.** A service detail report that includes: (7-1-13)

- a. Name of student; (7-1-13)
- b. Name, ~~and~~ title, and signature of the person providing the service; ~~(7-1-13)~~( )
- c. Date, time, and duration of service; (7-1-13)
- d. Place of service, if provided in a location other than school; (7-1-13)
- e. Category of service and brief description of the specific areas addressed; and (7-1-13)
- f. Student's response to the service when required for the service. (7-1-13)

**04. One Hundred Twenty Day Review.** A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual plan. (7-1-13)

**05. Documentation of Qualifications of Providers.** (7-1-13)

**06. Copies of Required Referrals and Recommendations.** Copies of required referrals and recommendations. (7-1-13)

**a.** School-based services must be recommended or referred by a physician or other practitioner of the healing arts for all Medicaid services for which the school district or charter school is receiving reimbursement. (7-1-13)

**b.** A recommendation or referral must be obtained prior to the provision of services for which the school district or charter school is seeking reimbursement. Therapy requirements for the physician's order are identified in Section 733 of these rules. (7-1-13)(    )

**c.** A recommendation or referral must be obtained for the service at least every three hundred sixty-five (365) days. (    )

**07. Parental Notification.** School districts and charter schools must document that parents were notified of the health-related services and equipment for which they will bill Medicaid. Notification must comply with the requirements in Subsection 854.08 of this rule. (3-20-14)

**08. Requirements for Cooperation with and Notification of Parents and Agencies.** Each school district or charter school billing for Medicaid services must act in cooperation with students' parents or guardian, and with community and state agencies and professionals who provide like Medicaid services to the student. (7-1-13)(    )

**a.** Notification of Parents. For all students who are receiving Medicaid reimbursed services, school districts and charter schools must ensure document that parents are notified of the Medicaid services and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s). The school district must document that they provided the student's parent or guardian with a current copy of the child's plan and any pertinent addenda; and (7-1-13)(    )

**b.** ~~Notification to~~ Primary Care Physician (PCP). School districts and charter schools must request the name of the student's primary care physician and request a written consent to release and obtain information between the PCP and the school from the parent or guardian ~~so the school program can share health related information with the physician with written consent from the parent or guardian. The following information must be sent to the student's primary care physician:~~ (7-1-13)(    )

*i. Results of evaluations within sixty (60) days of completion;* (7-1-13)

*ii. A copy of the cover sheet and services page within thirty (30) days of the plan meeting; and* (7-1-13)

*iii. A copy of progress notes, if requested by the physician, within sixty (60) days of completion.* (7-1-13)

**c.** Other Community and State Agencies. Upon receiving a request for a copy of the evaluations or the current plan, the school district or charter school must furnish the requesting agency or professional with a copy of the plan or appropriate evaluation after obtaining consent for release of information from the student's parent or guardian. (7-1-13)

**855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.** Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

**01. Behavioral Intervention.** Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

**a.** A behavioral intervention professional must meet the following: (7-1-13)

- i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 028; or (7-1-13)
  - ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 019; or (7-1-13)
  - iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 029; or (7-1-13)
  - iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 “Medicaid Enhanced Plan Benefits,” Section 685; or (7-1-13)
  - v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)
  - vi. Must be able to provide documentation of one (1) year’s supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)
- b.** A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)
- i. Must be at least eighteen (18) years of age; (7-1-13)
  - ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned, ~~and meet the requirements under the “Standards for Paraprofessionals Supporting Students with Special Needs,” available online at the State Department of Education website;~~ and (7-1-13) ( )
  - iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. (7-1-13)
- c.** A paraprofessional delivering behavioral intervention services must be under the supervision of a behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)
- 02. Behavioral Consultation.** Behavioral consultation must be provided by a professional who has a Doctoral or Master’s degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)
- a.** An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 028. (7-1-13)
  - b.** An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 019. (7-1-13)
  - c.** A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity” Section 029. (7-1-13)
  - d.** An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 027, excluding a registered nurse or audiologist. (7-1-13)
  - e.** An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” Section 685. (7-1-13)

**03. Medical Equipment and Supplies.** See Subsection 853.03 of these rules. (3-20-14)

**04. Nursing Services.** Nursing services must be provided by a registered nurse or licensed professional nurse (RN), or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

**05. Occupational Therapy and Evaluation.** Occupation therapy and evaluation must be provided by or under the supervision of an individual qualified and registered to practice in Idaho. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-13)(      )

**06. Personal Care Services.** Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Registered Nurse or Licensed Professional Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a registered nurse or licensed professional nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; or (7-1-13)

iii. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title I, Part A, Section 1119. The assistant must be at least age eighteen (18) years of age. Medically-oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” The professional nurse may require a certified nursing assistant (CNA) if, in their professional judgment, the student’s medical condition warrants a CNA. (7-1-13)(      )

b. The registered nurse (RN) must complete the PCS assessment and develop the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-13)

i. Development of the written PCS plan of care; (7-1-13)

ii. Review of the treatment given by the personal assistant through a review of the student’s PCS record as maintained by the provider; and (7-1-13)

iii. Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)

~~e. In addition to the RN oversight, the Qualified Intellectual Disabilities Professional (QIDP) as defined in 42 CFR 483.430 provides oversight for students with developmental disabilities when identified as a need on the PCS assessment. Oversight must include: (7-1-13)~~

~~i. Assistance in the development of the PCS plan of care for those aspects of developmental disabilities programs that address the student’s activities of daily living needs provided in the school by the personal assistant; (7-1-13)~~

~~ii. Review of the developmental disabilities programs given by the personal assistant through a review of the student’s PCS record as maintained by the provider and through on-site observation of the student; and (7-1-13)~~

~~iii. Reevaluation of the PCS plan of care as necessary, but at least annually. (7-1-13)~~

~~d.c.~~ The RN, ~~QIDP, or a combination of both,~~ must conduct supervisory visits on a quarterly basis, or

more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-13)( )

**07. Physical Therapy and Evaluation.** Physical therapy and evaluation must be provided by an individual qualified and licensed as a physical therapist to practice in Idaho. For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-13)( )

**08. Psychological Evaluation.** A psychological evaluation must be provided by a: (7-1-13)

a. Licensed psychiatrist; (7-1-13)

b. Licensed physician; (7-1-13)

c. Licensed psychologist; (7-1-13)

d. Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)

e. Endorsed or ~~C~~certified school psychologist. (7-1-13)( )

**09. Psychotherapy.** Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

a. Psychiatrist, M.D.; (7-1-13)

b. Physician, M.D.; (7-1-13)

c. Licensed psychologist; (7-1-13)

d. Licensed clinical social worker; (7-1-13)

e. Licensed clinical professional counselor; (7-1-13)

f. Licensed marriage and family therapist; (7-1-13)

g. Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)

h. Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)

i. Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)

j. Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (7-1-13)

k. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-13)

**10. ~~Psychosocial Rehabilitation (PSR)~~ Community Based Rehabilitation Services (CBRS).** Psychosocial rehabilitation CBRS providers must be under the supervision of a licensed behavioral health professional staff, physician, or nurse. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. CBRS must be provided by a: (7-1-13)( )

a. Licensed physician, licensed practitioner of the healing arts, ~~or licensed psychiatrist~~;



- ~~(7-1-13)~~( )
- b. ~~Licensed master's level psychiatric~~ Advanced practice professional nurse; ~~(7-1-13)~~( )
- c. Licensed psychologist; (7-1-13)
- d. Licensed clinical professional counselor or professional counselor; (7-1-13)
- e. Licensed marriage and family therapist ~~or associate marriage and family therapist~~; ~~(7-1-13)~~( )
- f. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)
- g. Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)
- h. Licensed professional or registered nurse (RN); (7-1-13)
- i. Licensed occupational therapist; (7-1-13)
- j. Endorsed or ~~C~~certified school psychologist; ~~(3-20-14)~~( )
- ~~k. Certified school social worker; or~~ ~~(3-20-14)~~
- k. ~~Psychosocial rehabilitation (PSR)~~ Community Based Rehabilitation Services specialist. A PSR ~~CBRS~~ specialist is: ~~(3-20-14)~~( )
- i. An individual who has a Bachelor's degree and holds a current PRA credential; or (3-20-14)
- ii. An individual who has a Bachelor's degree or higher and was hired on or after November 1, 2010, to work as a PSR CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to do so for a period not to exceed thirty (30) months from the initial date of hire. In order to continue as a PSR CBRS specialist beyond a total period of thirty (30) months from the date of hire, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA. ~~(3-20-14)~~( )
- iii. Credential required for PSR CBRS specialists ~~working primarily with adults~~. ~~(3-20-14)~~( )
- (1) Applicants who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA requirements. (3-20-14)
- (2) Applicants who work primarily with adults, but also intend to work with participants under the age of eighteen (18), must have training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The worker's supervisor must determine the scope and amount of training the worker needs in order to work competently with children assigned to the worker's caseload. (3-20-14)
- ~~iv. Credential required for PSR specialists working primarily with children.~~ ~~(3-20-14)~~
- ~~(3)~~ Applicants who intend to work primarily with children under the age of eighteen (18) must obtain a certificate in children's psychiatric rehabilitation in accordance with the PRA requirements. (3-20-14)
- ~~(24)~~ Applicants who primarily work with children, but who also intend to work with participants eighteen (18) years of age or older, must have training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The worker's supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the worker's caseload. (3-20-14)
- ~~v. An individual who is qualified to apply for licensure to the Idaho Bureau of Occupational Licenses, in any of the professions listed above in Subsections 855.10.a. through 855.10.i., who has failed his licensing exam or has been otherwise denied licensure is not eligible to provide services under the designation of PSR Specialist unless~~

~~this individual has obtained one (1) of the PRA credentials.~~

~~(3-20-14)~~

**11. Speech/Audiological Therapy and Evaluation.** Speech/audiological therapy and evaluation must be provided by or under the direction of a speech pathologist or audiologist who possesses a certificate of clinical competence from the American Speech, Language and Hearing Association (ASHA); or who will be eligible for certification within one (1) year of employment. Personnel records must reflect the expected date of certification. For therapy-specific rules, refer to Sections 730 through 739 of these rules. ~~(7-1-13)( )~~

**12. Social History and Evaluation.** Social history and evaluation must be provided by a registered nurse or licensed professional nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

**13. Transportation.** Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

**14. Therapy Paraprofessionals.** The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. ~~(7-1-13)( )~~

**a. Occupational Therapy.** Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-13)

**b. Physical Therapy.** Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," for qualifications, supervision and service requirements. (7-1-13)

**c. Speech-Language Pathology.** Refer to IDAPA 24.23.01, "Rule of the Speech and Hearing Services Licensure Board," and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**857. SCHOOL-BASED SERVICE: QUALITY ASSURANCE AND IMPROVEMENT.**

The provider will grant the Department immediate access to all information required to review compliance with these rules. ~~(3-30-07)( )~~

**01. Quality Assurance.** Quality Assurance consists of reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department will work with the school to answer questions and provide clear direction regarding the corrective action plan. ( )

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate student satisfaction, outcomes monitoring, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for the students. ( )

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1502

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| <b>Tuesday, October 13, 2015<br/>9:00 a.m. &amp; 1:00 p.m. (MDT)</b>                                     | <b>Wednesday, October 14, 2015<br/>1:00 p.m. (PDT)</b>  |
|--|---|
| <b>Medicaid Central Office<br/>3232 W. Elder Street<br/>Conference Room D -- West/East<br/>Boise, ID</b> | <b>Medicaid Region I Office<br/>1120 Ironwood Drive<br/>Large Conference Room<br/>Coeur d'Alene, ID</b> |

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

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

The Department is moving towards outcome-based health care policy initiatives with the implementation of the legislative intent language passed by the 2015 Legislature. Current rules for primary care case management and for health homes are being revised to support the new health care policy initiatives.

The changes to these rules will provide for the services and provider reimbursement changes needed to support the new model of care for participants. Outdated language will be removed from these rules and other references needed to support the new model will be added.

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

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

This rulemaking has no fiscal impact to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 44](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 28th Day of August, 2015.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**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 a complete and properly submitted claim for payment has been received and each of the following conditions are met: (3-20-14)

**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. (3-20-14)

**d.** 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.d. of this rule does not apply with respect to retroactive eligibility adjustment. 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. (3-20-14)

**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. (3-20-14)

**07. Referral From Participant's Assigned Primary Care Provider.** Medicaid services may require a referral from the participant's assigned primary care provider. Services requiring a referral are listed in the Idaho Medicaid Provider Handbook. Services provided without a referral, when one is required, are not covered and are subject to sanctions, recoupment, or both. The Department may change the services that require a referral after appropriate notification of Medicaid-eligible individuals and providers as specified in Section 563 of these rules. ( )

**08. Follow-up Communication with Assigned Primary Care Provider.** Medicaid services may require timely follow-up communication with the participant's assigned primary care provider. Services requiring post-service communication with the primary care provider and time frames for that communication are listed in the Idaho Medicaid Provider Handbook. Services provided without timely communication of care outcomes, when communication is required, are not covered and are subject to sanctions, recoupment, or both. The Department may change the services that require communication of care outcomes after appropriate notification of Medicaid eligible individuals and providers as specified in section 563 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.**

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

**01. Hospital Services.** The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

- a. Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)
- b. Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)
- c. Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)
- d. Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)
- e. Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

**02. Ambulatory Surgical Centers.** Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

**03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

- a. Physician services are described in Sections 500 through 506. (3-30-07)
- b. Abortion procedures are described in Sections 510 through 516. (3-30-07)

**04. Other Practitioner Services.** Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

- a. Midlevel practitioner services are described in Sections 520 through 526. (3-30-07)
- b. Chiropractic services are described in Sections 530 through 536. (3-30-07)
- c. Podiatrist services are described in Sections 540 through 545. (3-29-12)

- d. Licensed midwife (LM) services are described in Sections 546 through 552. (3-29-12)
- e. Optometrist services are described in Sections 553 through 556. (3-29-12)
- 05. Primary Care Case Management.** Primary care case management services are described in Sections 560 through 579 of these rules. (5-8-09)
- a. Healthy Connections services are described in Sections 560 through 566. (4-4-13)
- ~~b. Health Home services are described in Sections 570 through 576. (4-4-13)~~
- 06. Prevention Services.** The range of prevention services covered is described in Sections 580 through 649 of these rules. (4-4-13)
- a. Child Wellness Services are described in Sections 580 through 586. (3-30-07)
- b. Adult Physical Services are described in Sections 590 through 596. (3-30-07)
- c. Screening mammography services are described in Sections 600 through 606. (3-30-07)
- d. Diagnostic Screening Clinic services are described in Sections 610 through 614. (4-4-13)
- e. Additional Assessment and Evaluation services are described in Section 615. (4-4-13)
- f. Health Questionnaire Assessment is described in Section 618. (4-4-13)
- g. Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
- h. Nutritional services are described in Sections 630 through 636. (3-30-07)
- i. Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. Outpatient Behavioral Health Services.** Community-based outpatient services for behavioral health treatment are described in Sections 707 through 711 of these rules. (3-20-14)
- 11. Inpatient Psychiatric Hospital Services.** Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-20-14)
- 12. Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)
- 13. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules. (5-8-09)
- 15. Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and

- supplies is described in Sections 750 through 779 of these rules. (5-8-09)
- a. Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
  - b. Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)
  - c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)
- 16. Vision Services.** Vision services are described in Sections 780 through 789 of these rules. (5-8-09)
- 17. Dental Services.** The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 through 819 of these rules. (3-29-12)
- 18. Essential Providers.** The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)
- a. Rural health clinic services are described in Sections 820 through 826. (3-30-07)
  - b. Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
  - c. Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
  - d. School-Based services are described in Sections 850 through 857. (3-20-14)
- 19. Transportation.** The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)
- a. Emergency transportation services are described in Sections 860 through 866. (3-30-07)
  - b. Non-emergency medical transportation services are described in Sections 870 through 876. (4-4-13)
- 20. EPSDT Services.** EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)
- 21. Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**413. OUTPATIENT HOSPITAL SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Review Prior to Delivery of Outpatient Services.** Failure to obtain a timely review from the Department or its quality improvement organization (QIO) prior to delivery of outpatient services, listed on the select procedure and diagnosis list in the QIO Idaho Medicaid Providers Manual and the Hospital Provider Handbook, as amended, for participants who are eligible at the time of service, will result in a retrospective review. The Department will assess a late review penalty, as outlined in Subsection 405.05 of these rules, when a review is conducted due to an untimely request. (4-4-13)

**02. Follow-Up for Emergency Room Patients ~~with Chronic Conditions~~.** Hospitals must establish procedures to refer Medicaid participants ~~with targeted chronic diseases defined in Section 560 of these rules~~ who are not enrolled in Healthy Connections to an Idaho Medicaid Healthy Home Connections provider, if one is available within a reasonable distance of the participant's residence. Hospitals must coordinate care of patients who already have a Healthy Home Connections provider with that PCP. (4-4-13)( )

(BREAK IN CONTINUITY OF SECTIONS)

500. PHYSICIAN SERVICES: DEFINITIONS.

01. **Physician Services.** Physician services include the treatment of medical and surgical conditions by doctors of medicine or osteopathy subject to the limitations of practice imposed by state law, and to the restrictions and exclusions of coverage contained in Section 390 and Subsection 502.01 of these rules. Physician services as defined in Subsection 500.01 of this rule will be reimbursed by the Department. (5-8-09)

02. **Psychiatric Telehealth.** ~~Psychiatric Telehealth is an electronic real-time synchronous audio-visual contact between a physician and participant related to the treatment of the participant. The participant is in one (1) location, called the hub site, with specialized equipment including a video camera and monitor, and with the hosting provider. The physician is at another location, called the spoke site, with specialized equipment. The physician and participant interact as if they were having a face-to-face service. This rule does not apply to outpatient behavioral health services provided through the Idaho Behavioral Health Plan (IBHP) that are delivered via telehealth methods as defined in Title 54, Chapter 57, Idaho Code.~~ (3-20-14)(      )

501. (RESERVED)

502. PHYSICIAN SERVICES: COVERAGE AND LIMITATIONS.

01. **Outpatient Psychiatric Mental Health Services.** Physician services not provided through the IBHP as outpatient psychiatric mental health services are limited to twelve (12) hours of psychiatric evaluations per eligible participant in any twelve (12) month period; and any combination of individual or group psychotherapy services provided by a physician up to a maximum of forty-five (45) hours of service in the consecutive twelve (12) months period beginning with the first such service. (3-20-14)

02. **Sterilization Procedures.** Particular restrictions pertaining to payment for sterilization procedures are contained in Sections 680 through 686 of these rules. (3-30-07)

03. **Abortions.** Restrictions governing payment for abortions are contained in Sections 511 through 514 of these rules. (3-30-07)

04. **Tonometry.** Payment for tonometry is limited to one (1) examination for individuals over the age of forty (40) years during any twelve (12) month period (in addition to tonometry as a component of examination to determine visual acuity). In the event examination to determine visual acuity is not done, two (2) tonometry examinations per twelve (12) month period are allowed participants over the age of forty (40). This limitation does not apply to participants receiving continuing treatment for glaucoma. (3-30-07)

05. **Physical Therapy Services.** Payment for physical therapy services performed in the physician's office is limited to those services which are described and supported by the diagnosis. (3-30-07)

06. **Injectable Vitamins.** Payment for allowable injectable vitamins will be allowed when supported by the diagnosis. Injectable vitamin therapy is limited to Vitamin B12 (and analogues), Vitamin K (and analogues), folic acid, and mixtures consisting of Vitamin B12, folic acid, and iron salts in any combination. (3-30-07)

07. **Corneal Transplants and Kidney Transplants.** Corneal transplants and kidney transplants are covered by the Medical Assistance Program. (3-30-07)

08. **Psychiatric Telehealth.** ~~Payment for psychiatric Synchronous interaction telehealth services not provided through the IBHP is limited to psychiatric services for diagnostic assessments, pharmacological management, and psychotherapy with evaluation and management services twenty (20) to thirty (30) minutes in duration. Reimbursement is not available for a telephone conversation, electronic mail message (e-mail), or facsimile transmission (fax) between a physician and a participant. Service will not be reimbursed when provided via a videophone or webcam.~~ encounters, delivered as defined in Title 54, Chapter 57, Idaho Code, are reimbursable as follows: (3-20-14)(      )



a. Physician services delivered via telehealth are subject to primary care provider communication requirements in Section 210 of these rules. The Department will define limitations for telehealth in the Idaho Medicaid Provider Handbook to promote quality services and program integrity. ( )

b. Fee for service reimbursement is not available for a telephone conversation, electronic mail message (e-mail), or facsimile transmission (fax) between a physician and a participant. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**560. HEALTHY CONNECTIONS ~~AND IDAHO MEDICAID HEALTH HOME~~: DEFINITIONS.**

Healthy Connections is a primary care case management program in which a primary care provider or team provides comprehensive medical care for participants with the goal of improving health outcomes. For purposes of this Sub Area that includes Sections 560 through 579~~66~~ of these rules, the following terms and definitions apply:

~~(4-4-13)~~( )

~~01. **Best Practices Protocol.** A regimen of proven, effective and evidence-based practices. (4-2-08)~~

~~02. **Care Plan.** A patient specific document that identifies health care orders for the patient and serves as a guide to care. It can either be written for an individual patient or be retrieved from a computer and individualized. (4-4-13)~~

~~03. **Chronic Disease Management.** The process of applying best practices protocol to manage a chronic disease in order to produce the best health outcomes for a participant with the targeted chronic disease. (4-2-08)~~

01. **Capitated Payments.** Payments to a primary care provider made on a per assigned participant per month basis for patient services. Capitated payments will vary to reflect the level of responsibility for services the provider elects to provide as described in Section 564 of these rules. Capitated payments may include payment for all provider services at a set rate per participant per month when that type of full-risk reimbursement is agreed to by the provider and the Department. ( )

~~04. **Clinic.** Two (2) or more qualified medical professionals who provide services jointly through an organization for which an individual is given authority to act on its behalf. It also includes Federally Qualified Health Centers (FQHCs), Certified Rural Health Clinics, and Indian Health Clinics. (3-30-07)~~

~~05. **Covered Services.** Those medical services and supplies for which reimbursement is available under the State Plan. (3-30-07)~~

~~06. **Grievance.** The formal process by which problems and complaints related to Healthy Connections are addressed and resolved. Grievance decisions may be appealed as provided herein. (3-30-07)~~

~~07. **Health Home.** A primary care provider organization contracted with Medicaid to lead a team approach for chronic disease management. The Health Home provides comprehensive patient centered care management and health promotion services to patients with chronic conditions in accordance with the requirements described in section 560 through 579 of these rules and Section 1945 of the Social Security Act. (4-4-13)~~

~~08. **Health Information Technology.** Electronic tools utilized to securely exchange or manage health information between two or more entities. (4-4-13)~~

~~09. **Healthy Connections.** The provision of health care services through a single point of entry for the purposes of managing participant care with an emphasis on preventative and primary care and reducing inappropriate utilization of services and resulting costs. This is sometimes referred to as managed care. Healthy Connections is a primary care case management model. (4-2-08)~~

~~10. **Individual or Family Supports.** Community based social supports or recovery services available to~~

~~assist individuals or families in need. (4-4-13)~~

~~11. National Committee for Quality Assurance (NCQA). Accrediting organization which develops health care performance measurements and provides certifications of quality to health care providers. (4-4-13)~~

**04. Patient-Centered Medical Home.** A model of primary care that is patient-centered, comprehensive, team-based, coordinated, accessible, and focused on quality and safety. This results in primary care being delivered at the right place, at the right time, and in the manner that best suits a patient's needs. ( )

~~1205. Preventive Care.~~ Medical care that focuses on disease prevention and health maintenance. (4-4-13)

~~1306. Primary Care Case Management.~~ ~~The process~~ A model of care in which a primary care providers is and their primary care team are responsible for direct care of a participant, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the participant that improve the health of the participant. (4-2-08)( )

~~1407. Primary Care Provider (PCP).~~ A qualified medical professional physician, physician assistant, or advanced practice nurse practitioner who contracts with Medicaid to coordinate and manage the care of certain participants enrolled in the Healthy Connections program. (4-4-13)( )

**08. Primary Care Team.** A multidisciplinary team of health care providers who work together to meet the physical, emotional, and psychological needs of their patients using a patient-centered and coordinated approach. ( )

~~15. Qualified Medical Professional.~~ A duly licensed physician in the following specialties: Pediatrics, Internal Medicine, Family Practice, General Practice, General Surgery, Obstetrics/Gynecology, or a physician in any other specialty who chooses to assume the function of primary care case management. It also includes nurse practitioners, and physician assistants. Licenses must be held in the state(s) where services are being rendered. (3-30-07)

~~16. Quality Improvement Program.~~ A program of organized, ongoing, and systematic efforts to improve and assess the quality of care within a primary care provider practice or organization. (4-4-13)

~~17. Quality Measures.~~ A measure of health care performance based on specified dimensions of care and service. (4-4-13)

~~1809. Referral.~~ A documented communication from a participant's primary care provider (PCP) to another Medicaid provider authorizing specific covered services subject to primary care case management that are not provided by the participant's PCP. (4-4-13)

~~19. Risk Factor.~~ A characteristic, condition, or behavior that increases the possibility of disease or injury. (4-4-13)

~~20. Targeted Chronic Disease.~~ A disease identified by the Department for management under the Idaho Medicaid Health Home program. Specific conditions are identified in the Medicaid Provider Handbook available at [www.idmedicaid.com](http://www.idmedicaid.com). (4-4-13)

**210. Transitional Care.** The care or services provided by a health care provider A set of actions designed to ensure the coordination and continuity of health care of the as patients as they move transfer between health different locations or different levels of care settings or between healthcare providers within the same location. (4-4-13)( )

(BREAK IN CONTINUITY OF SECTIONS)

562. HEALTHY CONNECTIONS: ~~COVERAGE AND LIMITATIONS~~ **PRIMARY CARE SERVICES.**

01. ~~Exempted~~ **Eligible Services.** ~~All services are subject to primary care case management unless specifically exempted. The following services are exempt~~ **Participants enrolled with a primary care provider (PCP) are eligible to receive:** (3-30-07)(    )

- a. ~~Family planning services~~ **Basic care management and care coordination;** (3-30-07)(    )
- b. ~~Treatment for emergency medical conditions defined in Subsection 010.23 of these rules~~ **Timely access to routine primary care;** and (4-4-13)(    )
- c. ~~Hospital admissions subsequent to an emergency room visit provided that the patient's discharge is coordinated with a PCP~~ **A patient-centered health care decision making process;** (4-4-13)(    )
- d. ~~Dental care~~ **Twenty-four (24) hour, seven (7) days per week access to an on-call medical professional;** and (4-2-08)(    )
- e. ~~Podiatry (performed in the office);~~ **Referral to other medically necessary services as specified in Section 210 of these rules, based on the clinical judgement of their primary care provider.** (3-30-07)(    )
- ~~f. Audiology (hearing tests or screening, does not include ear/nose/throat services); (3-30-07)~~
- ~~g. Optical/Ophthalmology/Optomist services (performed in the office); (3-30-07)~~
- ~~h. Chiropractic (performed in the office); (3-30-07)~~
- ~~i. Pharmacy (prescription drugs only); (3-30-07)~~
- ~~j. Nursing home; (3-30-07)~~
- ~~k. ICF/ID services; (3-30-07)~~
- ~~l. Immunizations (not requiring an office visit); (4-2-08)~~
- ~~m. Flu shots and/or pneumococcal vaccine (not requiring an office visit); (3-30-07)~~
- ~~n. Diagnosis and/or treatment for sexually transmitted diseases; (3-30-07)~~
- ~~o. One screening mammography per calendar year for women age forty (40) or older; (3-30-07)~~
- ~~p. Indian Health Clinic/638 Clinic services provided to individuals eligible for Indian Health Services; (4-2-08)~~
- ~~q. In home services, known as Personal Care Services and Personal Care Services Case Management; (4-2-08)~~
- ~~r. Laboratory services, including pathology; (4-2-08)~~
- ~~s. Anesthesiology services; (3-29-12)~~
- ~~t. Radiology services; (4-4-13)~~
- ~~u. Services rendered at an Urgent Care Clinic when the participant's PCP's office is closed; (4-4-13)~~
- ~~v. School-based services; (4-4-13)~~
- ~~w. Services managed directly by the Department, as defined in the provider handbook for those~~

~~services at [www.idmedicaid.com](http://www.idmedicaid.com); and~~

~~(4-4-13)~~

~~⌘ Pregnancy related services provided by an obstetrician or gynecologist not enrolled as a Healthy Connections provider.~~

~~(4-4-13)~~

**02. Change in ~~Services That Require a Referral~~ **Primary Care Provider.** ~~The Department may change the services that require a referral after appropriate notification of Medicaid eligible individuals and providers. Participants may change their primary care provider at any time by contacting Healthy Connections staff.~~**

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

### 563. HEALTHY CONNECTIONS: PROCEDURAL REQUIREMENTS.

**01. ~~Primary Care Case Management.~~** ~~Under the Healthy Connections model of managed care, each participant obtains medical services through a PCP. This provider either provides the needed service, or makes a referral for needed services. This management function neither reduces nor expands the scope of covered services. Changes to Requirements. The Department will provide sixty (60) day notice of any substantive and significant changes to requirements for referrals, primary care provider reimbursement, as specified in Section 565 of these rules, or provider duties on its website and provider portal. The Department will provide a method to allow providers to provide input and comment on proposed changes.~~

~~(4-2-08)( )~~

~~a. Referrals. The primary care provider is responsible for making all reasonable efforts to monitor and manage the participant's care, providing primary care services, and making referrals for services when medically necessary. All services not specifically exempted in Section 562 of these rules require receipt of a referral prior to delivery of services. Services that require a referral, but are provided without a referral are not covered. All referrals must be documented in the participant's patient record.~~

~~(4-4-13)~~

~~b. Changing PCP. If a participant is dissatisfied with his PCP, he may change providers by contacting his designated Healthy Connections Representative at least ten (10) days prior to the end of the month. The change is effective the first day of the following month. This advance notice requirement may be waived by the Department.~~

~~(4-4-13)~~

~~c. Changing Service Areas. A participant who moves from the area where he is enrolled must contact his designated Healthy Connections Representative to disenroll from his current PCP and enroll with a new PCP in the area where moving. Enrollment with the new PCP is effective the first day of the month following the request.~~

~~(4-4-13)~~

#### **02. Problem Resolution.**

(3-30-07)

**a.** To help assure the success of Healthy Connections, the Department provides a mechanism for timely and personal attention to problems and complaints related to the program.

(4-4-13)

**b.** To facilitate problem resolution, the Department will have a designated representative who will receive and attempt to resolve all complaints and problems related to the program and function as a liaison between participants and providers. It is anticipated that most problems and complaints will be resolved informally at this level.

(4-4-13)

**c.** A participant or a provider may register a complaint or notify the Department of a problem related to Healthy Connections either in writing, electronically, or by telephone to the designated representative. The designated representative will attempt to resolve conflicts and disputes whenever possible and refer the complainant to alternative forums where appropriate.

(4-4-13)

**d.** If a participant or provider is not satisfied with the resolution of a problem or complaint addressed by the designated representative, he may file a formal grievance in writing to the representative. The manager of the managed care program may, where appropriate, refer the matter to a review committee designated by the Department to address issues such as quality of care or medical necessity. However, such decisions are not binding on the Department. The Department will respond in writing to grievances within thirty (30) days of receipt.

(4-4-13)

e. Decisions in response to grievances may be appealed. Appeals are governed by the requirements of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," and must be filed according to the provisions of that chapter. (4-4-13)

564. HEALTHY CONNECTIONS: PROVIDER QUALIFICATIONS AND DUTIES.

01. ~~Provider Participation Qualifications. Primary care case management services may be provided by qualified medical professionals, licensed to practice in the state where services are being rendered.~~ **Primary Care Providers.** Primary care services may be provided by enrolled physicians, physician assistants, advanced practice nurse practitioners, and by care teams under those providers' direction. (3-30-07)( )

02. **Provider Duties.** All Healthy Connections providers are responsible for delivering the services listed in Section 562 of these rules. ( )

03. **Additional Services.** Healthy Connections providers may also elect to provide specific additional sets of patient-centered medical home services in exchange for increased reimbursement as described in Section 565 of these rules. The definition and provision of additional patient-centered medical home services are subject to specific requirements as defined by the Department and described in the Idaho Medicaid Provider Handbook and individual provider agreements with the Department. Additional services may include: ( )

- a. Connection to the Idaho Health Data Exchange; ( )
- b. Maintaining third-party patient-centered medical home recognition or certification; ( )
- c. Expanded patient access to services; ( )
- d. Provision of an evidence-based primary care service model that enables improved patient health outcomes; ( )
- e. Reporting clinical data to the Department to allow for assessment of provider abilities and impact of their services on patient health outcomes; ( )
- f. Coordination of transitions of care between health care settings; ( )
- g. Integration of behavioral health services; and ( )
- h. Other indicators of improved patient health outcomes associated with primary care provider abilities. ( )

~~024.~~ **Provider Participation Conditions and Restrictions.** (3-30-07)

- ~~a. Quality of Services. Each provider must:~~ (4-4-13)
- ~~i. Maintain and provide services in accordance with community standards of care;~~ (4-4-13)
- ~~ii. Exercise his best efforts to effectively control utilization of services; and~~ (4-4-13)
- ~~iii. Provide twenty-four (24) hour coverage by telephone to assure participant access to services.~~ (4-4-13)

~~ba.~~ **Provider Agreements.** Each independent provider or provider organization participating in primary care case management must: (4-4-13)

- i. Sign an agreement; (4-4-13)
- ii. Enroll with the Department all primary care providers and all clinic locations participating in the Healthy Connections program; and (4-4-13)

iii. ~~Sign an addendum to the primary care case management provider agreement when participating in the Idaho Medicaid Health Home program~~ Complete pre-enrollment requirements for participation in the Healthy Connections program as defined by the Department in the Idaho Medicaid Provider Handbook. (4-4-13)(    )

**eb.** Patient Limits. A provider may limit the number of participants he manages. Subject to this limit, the provider must accept all participants who either elect or are assigned to the provider, unless disenrolled in accordance with Subsection 564.02.d. of this rule. A provider may change the participant limit effective the first day of any month. The provider must make the request in writing to the Department thirty (30) days prior to the effective date of the change. ~~This advance notice requirement maybe waived by the Department.~~ (4-4-13)(    )

**ec.** Disenrollment. When the provider-patient relationship breaks down due to failure of the participant to follow the care plan or for other reasons, a provider may choose to withdraw as the participant's primary care provider effective the first day of any month. The PCP must notify in writing, both the participant and the Department thirty (30) days prior to the date of withdrawal. This advance notice requirement may be waived by the Department. (4-4-13)

**ed.** Record Retention. Each provider must: (4-4-13)

i. Retain patient and financial records and provide the Department access to those records for a minimum of six (6) years from the date of service; (4-4-13)

ii. Upon the reassignment of a participant to another PCP, the provider must transfer (if a request is made) a copy of the patient's medical record to the new PCP; and (4-4-13)

iii. Disclose information required by Subsection 205.01 of these rules, when applicable. (4-4-13)

**fe.** Termination or Amendment of Provider Agreements. The Department may terminate a provider's agreement as provided in Subsection 205.03 of these rules. An agreement may be amended for the same reasons. (3-30-07)

**565. HEALTHY CONNECTIONS: PROVIDER REIMBURSEMENT.**

~~**01. Case Management Fee. Reimbursement is as follows:-** (4-2-08)~~

~~**a.** A PCP is paid a case management fee for primary care case management services based on the level of each participant's health care needs. (4-4-13)~~

~~**b.** A PCP enrolled in the Idaho Medicaid Health Home program is paid a chronic disease case management fee. (4-4-13)~~

~~**c.** The amount of the fee is determined by the Department. (4-4-13)~~

~~**d.** The amount of the fee is fixed and the same for all participating PCPs. (4-2-08)~~

**01. Capitated Payments. Healthy Connections providers are compensated for their patient care services on a per participant per month basis.** (    )

~~**02. Primary Care Case Management Reimbursement is based on:-** (3-29-12)~~

~~**a.** The number of participants enrolled with the provider on the first day of each month multiplied by the amount of the case management fee established for participants enrolled in the Basic Plan Benefit package; (4-4-13)~~

~~**b.** The number of participants enrolled with the provider on the first day of each month, multiplied by the amount of the case management fee established for participants enrolled in the Enhanced Plan Benefit package; and (4-4-13)~~

~~e. An incentive payment is added per participant to the primary care case management fee in Subsection 565.01.a. of this rule when the PCP offers extended hours of service in one (1) of the following ways:~~ (4-4-13)

~~i. The number of hours the PCP's office is available for delivery of service to participants equals or exceeds forty-six (46) hours per week. The extended hours must be verified by and on file with the Department prior to an increase to the monthly case management fee; or~~ (4-4-13)

~~ii. The PCP has electronic health records available and accessible for delivery of services at a nearby service location that is within the same Healthy Connections provider organization and makes services available to the participant at least forty-six (46) hours per week. The alternate location and extended hours must be verified by and on file with the Department prior to an increase to the monthly case management fee.~~ (4-4-13)

~~iii. The number of participants enrolled with an Idaho Medicaid Health Home provider on the first day of the month for services described in Section 572 these rules, multiplied by the case management fee established per participant enrolled in that program.~~ (4-4-13)

02. **Capitated Payment Amounts.** Capitated payment amounts are determined by the Department and reflect the complexity of the patient's health combined with the provider's ability to impact patient health outcomes. This monthly payment to a provider is based on the number of participants assigned to the provider on the first day of each month. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~567.—569. (RESERVED)~~

**SUB AREA: PREVENTION SERVICES**  
(Sections 570—649)

~~570. **IDAHO MEDICAID HEALTH HOME: DEFINITIONS.**~~

~~For purposes of the Idaho Medicaid Health Home program, the terms and definitions in Section 560 of these rules apply.~~ (4-4-13)

~~571. **IDAHO MEDICAID HEALTH HOME: PARTICIPANT ELIGIBILITY.**~~

~~01. **Eligibility.** A Medicaid participant diagnosed with two (2) targeted chronic diseases, or one (1) targeted chronic disease and one (1) or more risk factors is eligible for enrollment in the Idaho Medicaid Health Home program.~~ (4-4-13)

~~02. **Eligibility Determination.** A participant who meets the diagnostic criteria for health home eligibility is identified by the PCP to the Department. The Department will utilize claims data and other documentation as needed to verify the participant is eligible for Idaho Medicaid Health Home services.~~ (4-4-13)

~~572. **IDAHO MEDICAID HEALTH HOME: COVERAGE AND LIMITATIONS.**~~

~~The following services are covered for an eligible participant assigned to a Health Home provider:~~ (4-4-13)

~~01. **Comprehensive Care Management.** A Health Home provider must develop and implement a patient-centered care plan based on an individual's health risk assessment. The care plan must describe how the Health Home provider will coordinate clinical care with other providers as well as non-clinical health care related needs and services.~~ (4-4-13)

~~02. **Care Coordination and Health Promotion.** A Health Home provider must:~~ (4-4-13)

~~a. Coordinate the participant's care by sharing clinical information relevant to patient care with other~~

- ~~providers;~~ (4-4-13)
- ~~b. Provide educational information and information about health care resources to the participant;~~ (4-4-13)
- ~~e. Have ongoing communication with the participant to encourage compliance with prescribed treatment; and~~ (4-4-13)
- ~~d. Provide other activities necessary to facilitate improved health outcomes for the participant.~~ (4-4-13)
- ~~03. **Comprehensive Transitional Care.** A Health Home provider must:~~ (4-4-13)
- ~~a. Receive relevant medical information from and share relevant medical information with emergency rooms and inpatient facilities to foster a coordinated approach to preventing avoidable readmissions; and~~ (4-4-13)
- ~~b. Review and update care plans after unplanned admissions to adjust care coordination and management activities to address identifiable causes for the admission.~~ (4-4-13)
- ~~04. **Individual, Family, Community, and Social Support Services.** A Health Home provider must:~~ (4-4-13)
- ~~a. Coordinate care in a manner that effectively utilizes available individual and family supports to improve and maintain the health of the participant; and~~ (4-4-13)
- ~~b. Provide information on available community and social support services that aid in promoting healthy behaviors and reducing physical and mental health risk factors.~~ (4-4-13)

~~573. **IDAHO MEDICAID HEALTH HOME: PROCEDURAL REQUIREMENTS.**~~

- ~~01. **Provider Agreement.** A Health Home provider must sign an addendum to the primary care case management provider agreement which identifies the location of the Health Home and other requirements necessary to meet the Health Home service requirements in these rules.~~ (4-4-13)
- ~~02. **Data Reporting.** Health Home providers must report data to the Department on a periodic basis in keeping with schedules outlined in the provider handbook and the terms of the Health Homes provider agreement.~~ (4-4-13)
- ~~03. **Quality Improvement Program.** A provider must establish a continuous quality improvement program directed towards improving care for patients with chronic conditions.~~ (4-4-13)

~~574. **IDAHO MEDICAID HEALTH HOME: PROVIDER QUALIFICATIONS AND DUTIES.**~~

- ~~01. **Provider Infrastructure and Health Home Assessment.** A prospective Health Home provider must complete a Health Home practice assessment in cooperation with the Department to determine the ability of the provider to provide the required services in keeping with a patient-centered medical home model. This assessment must demonstrate that the provider;~~ (4-4-13)
- ~~a. Has identified the qualified medical and mental health professionals and other resources available to provide Health Home services;~~ (4-4-13)
- ~~b. Has the ability to utilize health information technology to coordinate and facilitate communication of health information and to link to services;~~ (4-4-13)
- ~~e. Is able to submit clinical and practice transformation data within six (6) months of the date the provider agreement is signed; and~~ (4-4-13)



~~d. Has a chronic disease patient registry in place within three (3) months of the date the provider agreement is signed. (4-4-13)~~

~~02. **Qualifications.** An Idaho Medicaid Health Home provider must: (4-4-13)~~

~~a. Possess a current NCQA patient-centered medical home level one (1) recognition, or demonstrate that the provider is actively pursuing that recognition. A provider that does not achieve this NCQA recognition within two (2) years of the initiation date of their Idaho Medicaid Health Home provider agreement will be terminated as a Health Home provider for non-compliance with the provider agreement. (4-4-13)~~

~~b. Be enrolled as a Healthy Connections primary care provider (PCP); (4-4-13)~~

~~e. Sign an addendum to their primary care provider agreement which identifies the location of the enrolled site and indicates reporting schedule and quality measurement requirements; (4-4-13)~~

~~d. Have qualified medical professionals, licensed to practice in the state where services are being rendered; and (4-4-13)~~

~~e. Maintain office hours that allow enhanced access to care as described in Section 565.02 of these rules. (4-4-13)~~

~~03. **Provider Duties.** A Health Home provider must provide or coordinate the following elements of Health Home services: (4-4-13)~~

~~a. **Care Plan.** Develop a patient-centered care plan for each participant that coordinates and integrates both clinical and non-clinical health care related needs and services; (4-4-13)~~

~~b. **Chronic Disease Management.** Provide access to chronic disease management, including self-management support to the participant and the participant's family; (4-4-13)~~

~~e. **Individual, Family, and Community Supports.** Facilitate access to individual, family, and community supports outlined in the provider's agreement. (4-4-13)~~

~~d. **Mental Health & Substance Abuse Services.** Facilitate access to mental health and substance abuse services. (4-4-13)~~

~~e. **Preventive Care.** Coordinate and provide access to preventive and health promotion services, including prevention of mental illness and substance abuse disorders. (4-4-13)~~

~~f. **Quality Improvement Program.** Establish a continuous quality improvement program and report on quality improvement measures outlined in the provider agreement and the provider handbook. (4-4-13)~~

~~g. **Quality of Services.** Maintain and provide quality services for each Home Health participant. (4-4-13)~~

~~h. **Transitional Care.** Coordinate and provide access to comprehensive care management and transitional care from and to inpatient settings and from a pediatric to an adult system of health care. (4-4-13)~~

~~575. (RESERVED)~~

~~576. **IDAHO MEDICAID HEALTH HOME: QUALITY ASSURANCE.**~~

~~The Department will establish performance measurements to evaluate the effectiveness of the Idaho Medicaid Health Home program through the collection and reporting of quality measures as specified in Section 1945 of the Social Security Act. (4-4-13)~~

~~577. -- 579. (RESERVED)~~

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1501

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| <b>Monday, October 19, 2015<br/>10:00 a.m. (MDT)</b>   | <b>Monday, October 19, 2015<br/>2:00 p.m. (MDT)</b>  | <b>Tuesday, October 20, 2015<br/>1:30 p.m. (PDT)</b>   |
|--|--|--|
| <b>Medicaid Central Office<br/>3232 W. Elder Street<br/>Conference Room D -- West/East<br/>Boise, ID</b> | <b>Medicaid Region VII Office<br/>150 Shoup Ave., Suite 20<br/>Large Conference Room<br/>Idaho Falls, ID</b> | <b>Medicaid Region II Office<br/>1118 "F" Street<br/>2nd Floor Conference Room<br/>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:

These rule changes are needed to align with and implement new requirements in federal regulations that went into effect March 17, 2014, for Idaho's Home and Community Based Services (HCBS) offered through the State Plan, and under the authority of the HCBS 1915(c) waiver and the 1915(i) State Plan Option. The purpose of the regulations is to enhance participants' opportunity to receive services in the most integrated settings appropriate, and to increase their opportunities for choice and access to the benefits of community living.

New rules pertaining to Home and Community Based Services are being added to this chapter to ensure that participants receiving HCBS live in and receive services in settings that comply with required qualities of settings, service delivery methods, and person-centered planning processes.

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

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

This rulemaking has no fiscal impact to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 45-46](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stephanie Perry at (208) 364-1878.

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 28, 2015.

DATED this 31st Day of August, 2015.

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**011. DEFINITIONS: E THROUGH K.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Educational Services.** Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the participant or required by federal and state educational statutes or regulations; are not related services; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (3-19-07)

**02. Eligibility Rules.** IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

**03. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-19-07)

**a.** Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-19-07)

**b.** Serious impairment to bodily functions. (3-19-07)

**c.** Serious dysfunction of any bodily organ or part. (3-19-07)

**04. Enhanced Plan.** The medical assistance benefits included under this chapter of rules. (3-19-07)

**05. EPSDT.** Early and Periodic Screening Diagnosis and Treatment. (3-19-07)

**06. Equity.** The net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**07. Facility.** Facility refers to a hospital, nursing facility, or an intermediate care facility for persons with intellectual disabilities. (3-19-07)

**a.** "Free-standing and Urban Hospital-based Behavioral Care Unit" means the same as Subsection 011.07.b. or 011.07.h. of this rule, and qualifies as a behavioral care unit nursing facility provider described in

Section 266 of these rules. (4-4-13)

**b.** “Free-standing Nursing Facility” means a nursing facility that is not owned, managed, or operated by, nor is otherwise a part of a licensed hospital. (3-19-07)

**c.** “Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID)” means an entity as defined in Subsection 011.30 in this rule. (4-4-13)

**d.** “Nursing Facility (NF)” means a facility licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare patients. (3-19-07)

**e.** “Rural Hospital-based Provider” means a hospital-based nursing facility not located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (4-4-13)

**f.** “Rural Hospital-based Behavioral Care Unit” means the same as Subsection 011.07.e., and qualifies as a behavioral care unit nursing facility provider described in Section 266 of these rules. (4-4-13)

**g.** “Skilled Nursing Facility” means a nursing facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and federally certified as a “Nursing Facility” under Title XVIII. (3-19-07)

**h.** “Urban Hospital-based Nursing Facility” means a hospital-based nursing facility located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (4-4-13)

**08. Fiscal Intermediary Agency.** An entity that provides services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered. (5-8-09)

**09. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-19-07)

**10. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-19-07)

**11. Funded Depreciation.** Amounts deposited or held which represent recognized depreciation. (3-19-07)

**12. Generally Accepted Accounting Principles (GAAP).** A widely accepted set of rules, conventions, standards, and procedures for reporting financial information as established by the Financial Standards Accounting Board. (3-19-07)

**13. Goodwill.** The amount paid by the purchaser that exceeds the value of the net tangible assets. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is a nonallowable, nonreimbursable expense. (3-19-07)

**14. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-19-07)

**15. Historical Cost.** The actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects’ fees, and engineering studies. (3-19-07)

**16. Home and Community Based Services (HCBS).** HCBS are those long-term services and supports

that assist eligible participants to remain in their home and community. ( )

- 167.** **ICF/ID Living Unit.** The physical structure that an ICF/ID uses to house patients. (3-19-07)
- 178.** **Improvements.** Improvements to assets which increase their utility or alter their use. (3-19-07)
- 189.** **Indirect Care Costs.** The following costs either directly coded to the nursing facility or allocated to the nursing facility through the Medicare step-down process described in the PRM: (3-19-07)
- a.** Activities; (3-19-07)
  - b.** Administrative and general care costs; (3-19-07)
  - c.** Central service and supplies; (3-19-07)
  - d.** Dietary (non-“raw food” costs); (3-19-07)
  - e.** Employee benefits associated with the indirect salaries; (3-19-07)
  - f.** Housekeeping; (3-19-07)
  - g.** Laundry and linen; (3-19-07)
  - h.** Medical records; (3-19-07)
  - i.** Other costs not included in direct care costs, or costs exempt from cost limits; and (3-19-07)
  - j.** Plant operations and maintenance (excluding utilities). (3-19-07)
- 1920.** **Inflation Adjustment.** The cost used in establishing a nursing facility’s prospective reimbursement rate is indexed forward from the midpoint of the cost report period to the midpoint of the rate year using the inflation factor plus one percent (+1%) per annum. (3-19-07)
- 201.** **Inflation Factor.** For use in establishing nursing facility prospective rates, the inflation factor is the Skilled Nursing Facility Market Basket as established by Data Resources, Inc. (DRI), or its successor. If subsequent to the effective date of these rules, Data Resources, Inc., or its successor develops an Idaho-specific nursing facility index, it will be used. The Department is under no obligation to enter into an agreement with DRI or its successor to have an Idaho-specific index established. The national index is used when there is no state or regional index. (3-19-07)
- 212.** **In-State Care.** Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (3-19-07)
- 223.** **Inspection of Care Team (IOCT).** An interdisciplinary team which provides inspection of care in intermediate care facilities for persons with intellectual disabilities approved by the Department as providers of care for eligible medical assistance participants. Such a team is composed of: (3-19-07)
- a.** At least one (1) registered nurse; and (3-19-07)
  - b.** One (1) Qualified Intellectual Disabilities Professional (QIDP); and when required, one (1) of the following: (3-19-07)
    - i.** A consultant physician; or (3-19-07)
    - ii.** A consultant social worker; or (3-19-07)
    - iii.** When appropriate, other health and human services personnel responsible to the Department as

employees or consultants. (3-19-07)

**234. Instrumental Activities of Daily Living (IADL).** Those activities performed in supporting the activities of daily living, including, but not limited, to managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community. (3-19-07)

**245. Interest.** The cost incurred for the use of borrowed funds. (3-19-07)

**256. Interest on Capital Indebtedness.** The cost incurred for borrowing funds used for acquisitions of capital assets, improvements, etc. These costs are reported under property costs. (3-19-07)

**267. Interest on Working Capital.** The costs incurred for borrowing funds which will be used for “working capital” purposes. These costs are reported under administrative costs. (3-19-07)

**278. Interest Rate Limitation.** The interest rate allowed for working capital loans and for loans for major movable equipment for ICF/ID facilities is the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (+1%) at the date the loan is made. (3-19-07)

**289. Interim Reimbursement Rate (IRR).** A rate paid for each Medicaid patient day which is intended to result in total Medicaid payments approximating the amount paid at audit settlement. The interim reimbursement rate is intended to include any payments allowed in excess of the percentile cap. (3-19-07)

**2930. Intermediary.** Any organization that administers the Title XIX and Title XXI program; in this case the Department of Health and Welfare. (3-19-07)

**301. Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID).** An entity licensed as an ICF/ID and federally certified to provide care to Medicaid and Medicare participants with developmental disabilities. (3-19-07)

**342. Keyman Insurance.** Insurance on owners or employees with extraordinary talents in which the direct or indirect beneficiary is the facility or its owners. Premiums related to keyman insurance are not allowable. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. DEFINITIONS: P THROUGH Z.**  
For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Patient Day.** (3-21-12)

**a.** For ICF/ID, a calendar day of care includes the day of admission and excludes the day of discharge, unless discharge occurs after 3:00 p.m. or it is the date of death. When admission and discharge occur on the same day, one (1) day of care is deemed to exist. (3-21-12)

**b.** For a nursing facility, a calendar day of care includes the day of admission and excludes the day of discharge, unless it is the date of death. When admission and discharge occur on the same day, one (1) day of care is deemed to exist. (3-21-12)

**02. Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

**03. Patient.** The person undergoing treatment or receiving services from a provider. (3-19-07)

**04. Personal Assistance Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal

assistants working for them, and is the employer of record as well as the actual employer. (5-8-09)

**05. Personal Assistance Services (PAS).** Services that include both attendant care for participants under an HCBS waiver and personal care services for participants under the Medicaid State Plan. PAS means services that involve personal and medically-oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or instrumental activities of daily living (IADLs). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to persons by a health care professional or participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (5-8-09)

**06. Person-Centered Planning.** The process whereby a service plan for home and community based services is developed, with a focus on the needs and preferences of the participant. ( )

**067. Physician.** A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (3-19-07)

**078. Physician's Assistant.** A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-19-07)

**089. Picture Date.** A point in time when case mix indexes are calculated for every nursing facility based on the residents in the nursing facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the nursing facility's rate for the next quarter. (3-19-07)

**109. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-19-07)

**101. Private Rate.** Rate most frequently charged to private patients for a service or item. (3-19-07)

**142. PRM.** The Provider Reimbursement Manual. (3-19-07)

**123. Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-19-07)

**134. Property Costs.** Property costs are the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish which components are an integral part of property costs. (3-19-07)

**145. Property Rental Rate.** A rate paid per Medicaid patient day to free-standing nursing facilities and ICF/IDs in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/ID facilities. (3-19-07)

**156. Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and has entered into a written provider agreement with the Department in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)

**167. Provider Agreement.** An written agreement between the provider and the Department, in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)

**178. Provider Reimbursement Manual (PRM).** The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, which are incorporated by reference in Section 004 of these rules. (3-19-07)

**189.** **Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (3-19-07)

**1920.** **Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners,” and who is registered with the Bureau of Occupational Licenses. (3-19-07)

**201.** **Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-19-07)

**242.** **Raw Food.** Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (3-19-07)

**223.** **Reasonable Property Insurance.** Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm’s length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility’s fiscal year cannot be considered reasonable. (3-19-07)

**234.** **Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, and special day parties (birthday, Christmas, etc.). (7-1-11)

**245.** **Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX and Title XXI long term care for the Department. (3-19-07)

**256.** **Registered Nurse - R.N.** Which in the state of Idaho is known as a Licensed Professional Nurse and who meets all the applicable requirements to practice as a licensed professional nurse under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01 “Rules of the Idaho Board of Nursing.” (3-19-07)

**267.** **Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes services, facilities, or supplies for the provider. (3-19-07)

**278.** **Related to Provider.** The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (3-19-07)

**289.** **Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as “facility.” Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-19-07)

**2930.** **Resource Utilization Groups (RUG).** A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. The RUG Grouper is used for the purposes of rate setting and determining nursing facility level of care. (4-2-08)

**301.** **Skilled Nursing Care.** The level of care for patients requiring twenty-four (24) hour skilled nursing services. (3-19-07)

**342.** **Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (3-19-07)

**323.** **State Plan.** The contract between the state and federal government under 42 U.S.C. section



1396a(a). (3-19-07)

~~34~~. **Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-19-07)

~~35~~. **Title XVIII.** Title XVIII of the Social Security Act, known as Medicare, for the aged, blind, and disabled administered by the federal government. (3-19-07)

~~36~~. **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. (3-19-07)

~~37~~. **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. (3-19-07)

~~38~~. **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 participant of medical assistance. (3-19-07)

~~39~~. **Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-19-07)

~~39~~~~40~~. **Uniform Assessment.** A set of standardized criteria to assess functional and cognitive abilities. (3-19-07)

~~40~~. **Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities as described in IDAPA 16.03.23 "Rules Governing Uniform Assessments of State-Funded Clients." (3-19-07)

~~41~~. **Updated Assessments.** Assessments are considered updated and current when a qualified professional with the same credential or the same qualifications of that professional who completed the assessment has reviewed such assessment and verified by way of their signature and date in the participant's file that the assessment continues to reflect the participant's current status and assessed needs. (3-29-12)

~~42~~. **Utilities.** All expenses for heat, electricity, water and sewer. (3-19-07)

~~43~~. **Utilization Control (UC).** A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants or participants to Title XIX and Title XXI benefits in a nursing facility. (3-19-07)

~~44~~. **Utilization Control Team (UCT).** A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the nursing facilities approved by the Department as providers of care for eligible medical assistance participants. (3-19-07)

~~45~~. **Vocational Services.** Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**075. ENHANCED PLAN BENEFITS: COVERED SERVICES.**

Individuals who are eligible for the Medicaid Enhanced Plan Benefits are eligible for all benefits covered under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." In addition to those benefits, individuals in the enhanced plan are eligible for the following enhanced benefits as provided for in this chapter of rules. (4-11-15)

- 01. Dental Services.** Dental Services are provided as described under Sections 080 through 089 of these rules. (3-29-12)
- 02. Enhanced Hospital Benefits.** Organ transplants are provided under the Enhanced Hospital services as described in Sections 090 through 099 of these rules. (3-19-07)
- 03. Enhanced Outpatient Behavioral Health Benefits.** Enhanced Outpatient Behavioral Health services are described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-20-14)
- 04. Enhanced Home Health Benefits.** Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)
- 05. Therapies.** Physical, Speech, and Occupational Therapy Providers as described in Section 215 of these rules. (3-19-07)
- 06. Long Term Care Services.** The following services are provided under the Long Term Care Services. (3-30-07)
- a.** Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)
- b.** Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)
- c.** A & D Wavier Services as described in Sections 320 through 330 of these rules. (3-30-07)
- 07. Hospice.** Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)
- 08. Developmental Disabilities Services.** (3-19-07)
- ~~**a.** *Developmental Disability Standards as described in Sections 500 through 506 of these rules.* (3-19-07)~~
- ~~**ba.** Children's Developmental Disability Services as described in Sections 520 through 528, 660 through 666, and 680 through 686 of these rules. (7-1-13)~~
- ~~**eb.** Adult Developmental Disabilities Services as described in Sections 507 through 520, and 649 through 657 of these rules. (7-1-13)~~
- ~~**ec.** ICF/ID as described in Sections 580 through 649 of these rules. (3-19-07)~~
- ~~**e.** *Developmental Disabilities Agencies as described in Sections 700 through 719 of these rules.* (3-19-07)~~
- 09. Service Coordination Services.** Service coordination as described in 720 through 779 of these rules. (3-19-07)
- 10. Breast and Cervical Cancer Program.** Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. PERSONAL CARE SERVICES: ELIGIBILITY.**

- 01. Financial Eligibility.** The participant must be financially eligible for medical assistance under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

**02. Other Eligibility Requirements.** Regional Medicaid Services (RMS) will prior authorize payment for the amount and duration of all services when all of the following conditions are met: (3-19-07)

**a.** The RMS finds that the participant is capable of being maintained safely and effectively in his own home or personal residence using PCS. (3-19-07)

**b.** The participant is an adult for whom a Uniform Assessment Instrument (UAI) has been completed, or a child for whom a children's PCS assessment has been completed; (3-29-10)

**c.** The RMS reviews the documentation for medical necessity; and (4-2-08)

**d.** The participant has a plan of care that meets the person-centered planning requirements described in Sections 315 and 316 of these rules. ~~(4-2-08)~~ ( )

**03. State Plan Option.** A participant who receives medical assistance is eligible for PCS under the State Medicaid Plan option if the Department finds he requires PCS due to a medical condition that impairs his physical or mental function or independence. (3-19-07)

**04. Annual Eligibility Redetermination.** The participant's eligibility for PCS must be redetermined at least annually under Subsections 302.01. through 302.03 of these rules. (3-19-07)

**a.** The annual financial eligibility redetermination must be conducted under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." RMS must make the medical eligibility redetermination. The redetermination can be completed more often than once each year at the request of the participant, the Self-Reliance Specialist, the Personal Assistance Agency, the personal assistant, the supervising RN, the QIDP, or the physician. (4-2-08)

**b.** The medical redetermination must assess the following factors: (3-19-07)

**i.** The participant's continued need for PCS; (3-19-07)

**ii.** Discharge from PCS; and (3-19-07)

**iii.** Referral of the participant from PCS to a nursing facility. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**304. PERSONAL CARE SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Service Delivery Based on Plan of Care or NSA.** All PCS services are provided based on a written plan of care or a negotiated service agreement (NSA). The requirements for the NSA for participants in Residential Care or Assisted Living Facilities are described in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." The requirements for the NSA for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes." The Personal Assistance Agency and the participant who lives in his own home are responsible to prepare the plan of care. (3-19-07)

**a.** The plan of care for participants who live in their own homes or in a PCS Family Alternate Care Home is based on: (3-29-10)

**i.** The physician's or authorized provider's information if applicable; (4-2-08)

**ii.** The results of the UAI for adults, the children's PCS assessment and, if applicable, the QIDP's assessment and observations of the participant; and (3-29-10)

- iii. Information obtained from the participant. (3-19-07)
- b. The plan of care must include all aspects of medical and non-medical care that the provider needs to perform, including the amount, type and frequency of necessary services. (3-19-07)
- c. The plan of care must be revised and updated based upon treatment results or a change(s) in the participant's needs, or both, but at least annually. (3-19-07)
- d. The plan of care or NSA must meet the person-centered planning requirements described in Sections 315 and 316 of these rules. ( )

**02. Service Supervision.** The delivery of PCS may be overseen by a licensed professional nurse (RN) or Qualified Intellectual Disabilities Professional (QIDP). The RMS must identify the need for supervision. (3-19-07)

- a. Oversight must include all of the following: (3-19-07)
  - i. Assistance in the development of the written plan of care; (3-19-07)
  - ii. Review of the treatment given by the personal assistant through a review of the participant's PCS record as maintained by the provider; (3-19-07)
  - iii. Reevaluation of the plan of care as necessary; and (3-19-07)
  - iv. Immediate notification of the guardian, emergency contact, or family members of any significant changes in the participant's physical condition or response to the services delivered. (3-19-07)
- b. All participants who are developmentally disabled, other than those with only a physical disability as determined by the RMS, may receive oversight by a QIDP as defined in 42 CFR 483.430. Oversight must include: (3-19-07)
  - i. Assistance in the development of the plan of care for those aspects of active treatment which are provided in the participant's personal residence by the personal assistant; (3-19-07)
  - ii. Review of the care or training programs given by the personal assistant through a review of the participant's PCS record as maintained by the provider and through on-site interviews with the participant; (3-19-07)
  - iii. Reevaluation of the plan of care as necessary, but at least annually; and (3-19-07)
  - iv. An on-site visit to the participant to evaluate any change of condition when requested by the personal assistant, the Personal Assistance Agency, the nurse supervisor, the service coordinator or the participant. (3-19-07)

**03. Prior Authorization Requirements.** All PCS services must be prior authorized by the Department. Authorizations will be based on the information from: (3-29-10)

- a. The children's PCS assessment or Uniform Assessment Instrument (UAI) for adults; (3-29-10)
- b. The individual service plan developed by the Personal Assistance Agency; and (3-29-10)
- c. Any other medical information that supports the medical need. (3-29-10)

**04. PCS Record Requirements for a Participant in His Own Home.** The PCS records must be maintained on all participants who receive PCS in their own homes or in a PCS Family Alternate Care Home. (3-29-10)

- a. Written Requirements. The PCS provider must maintain written documentation of every visit made

- to the participant's home and must record the following minimum information: (3-19-07)
- i. Date and time of visit; (3-19-07)
  - ii. Length of visit; (3-19-07)
  - iii. Services provided during the visit; and (3-19-07)
  - iv. Documentation of any changes noted in the participant's condition or any deviations from the plan of care. (3-19-07)
- b.** Participant's Signature. The participant must sign the record of service delivery verifying that the services were delivered. The RMS may waive this requirement if it determines the participant is not able to verify the service delivery. (3-19-07)
- c.** A copy of the information required in Subsection 304.04 of these rules must be maintained in the participant's home unless the RMS authorizes the information to be kept elsewhere. Failure to maintain this information may result in recovery of funds paid for undocumented services. (3-19-07)
- d.** Telephone Tracking System. Agencies may employ a software system that allows personal assistants to register their start and stop times and a list of services by placing a telephone call to the agency system from the participant's home. This system will not take the place of documentation requirements of Subsection 304.04 of these rules. (3-19-07)
- e.** Participant in a Residential or Assisted Living Facility. The PCS record requirements for participants in Residential Care or Assisted Living Facilities are described in IDAPA 16.03.22. "Residential Care or Assisted Living Facilities in Idaho." (3-19-07)
- f.** Participant in a Certified Family Home. The PCs record requirements for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (3-19-07)
- 05. Provider Responsibility for Notification.** The Personal Assistance Agency is responsible to notify the RMS and physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. This notification must be documented in the Personal Assistance Agency record. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**308. PERSONAL CARE SERVICES (PCS): QUALITY ASSURANCE.**

- 01. Responsibility for Quality.** Personal Assistance Agencies are responsible for assuring that they provide quality services in compliance with applicable rules. (3-19-07)
- 02. Review Results.** Results of quality assurance reviews conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (3-19-07)
- 03. Quality Improvement Plan.** The provider must respond within forty-five (45) days after the results are received. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (3-19-07)

**04. HCBS Compliance.** Personal Assistance Agencies, Residential Care or Assisted Living Facilities, and Certified Family Homes are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 311 through 317 of these rules and must comply with associated Department quality assurance activities. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of

the provider agreement, or any applicable state or federal regulation. ( )

**309. (RESERVED)**

**SUB AREA: HOME AND COMMUNITY BASED SERVICES**  
**(Sections 310 - 317)**

**310. HOME AND COMMUNITY BASED SERVICES.**

Home and Community Based Services (HCBS) are those long-term services and supports that assist eligible participants to remain in their home and community. The federal authorities under 42 CFR 441.301, 42 CFR 441.710, and 42 CFR 441.725 require the state to deliver HCBS in accordance with the rules described in Sections 310 through 317 of these rules. HCBS include the following: ( )

**01. Children’s Developmental Disability Services.** Children’s developmental disability services as defined in Sections 665 and 685 of these rules. ( )

**02. Adult Developmental Disability Services.** Adult developmental disability services as defined in Sections 645 through 659, 703, and 705 of these rules. ( )

**03. Consumer-Directed Services.** Consumer-directed services as defined in IDAPA 16.03.13, “Consumer-Directed Services.” ( )

**04. Aged and Disabled Waiver Services.** Aged and disabled waiver services as defined in Section 326 of these rules. ( )

**05. Personal Care Services.** Personal care services as defined in Section 303 of these rules. ( )

**311. HOME AND COMMUNITY BASED SETTINGS.**

Home and community based settings include all locations where participants who receive HCBS live or receive their services. ( )

**01. Home and Community Based Settings Not Included.** Home and community based settings do not include the following: ( )

**a.** A nursing facility; ( )

**b.** An institution for mental diseases; ( )

**c.** An intermediate care facility for persons with intellectual disabilities (ICF/ID); ( )

**d.** A hospital; or ( )

**e.** Any other location that has the qualities of an institutional setting. These institutional qualities include: ( )

**i.** Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; or ( )

**ii.** A building on the grounds of, or immediately adjacent to, a state or federally operated inpatient treatment facility; or ( )

**iii.** Any setting that has the effect of isolating participants receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. ( )

**312. HOME AND COMMUNITY BASED SETTINGS REQUIREMENTS.**

Home and community based settings must support eligible participants to have the same opportunities for integration.

independence, choice, and rights as individuals who do not require supports or services to remain in their home or community. Through the person-centered planning process, goals will be identified which teach the participant those strategies that support them to be successful in HCBS settings. These supportive strategies must be documented in the service plan. Providers must develop and implement policies and procedures to address HCBS setting requirements. ( )

**01. Home and Community Based Settings.** Home and community based settings are required to have the following qualities: ( )

**a. Integration and Access.** The setting is integrated in and supports full access of participants receiving HCBS to the greater community. Typical, age-appropriate activities include opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community in the same manner as individuals who do not require supports or services to remain in their home or community. ( )

**b. Selection of Setting.** Home and community based settings are selected by the participant or legal guardian from among setting options, including non-disability specific settings, and are based on the participant needs and preferences as well as consideration of the participant's safety and the safety of those around the participant. ( )

**c. Participant Rights.** The setting ensures a participant's rights of privacy, dignity, and respect, and freedom from coercion and unauthorized restraint. ( )

**d. Autonomy and Independence.** The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including daily activities, physical environment, and with whom to interact. ( )

**e. Choice.** The setting facilitates opportunities for participant choice regarding the services and supports provided in the setting. ( )

**02. HCBS Requirements and Decision-making Authority.** HCBS requirements, contained in this rule and in Sections 313 through Sections 316 of these rules, do not supersede decision-making authority legally assigned to another individual or entity on the participant's behalf. This includes: ( )

**a.** A representative payee appointed by the Social Security Administration; ( )

**b.** Court-imposed restrictions related to probation or parole; and ( )

**c.** Legal guardians who retain all decision-making authority for the participant unless otherwise indicated in the individual guardianship documents. It is presumed that the parent or parents of participants birth through seventeen (17) are the legal guardians with full decision-making capabilities, unless the minor child has a designated legal guardian. ( )

**03. Services Delivered in the Participant's Own Home.** It is presumed that services delivered in the participant's own home, that is not a provider-owned or controlled residence, meet the HCBS setting requirements described in this rule. Providers may not impose restrictions on HCBS setting qualities in a participant's own home without a supportive strategy that has been agreed to through the person-centered planning process. ( )

**313. RESIDENTIAL PROVIDER-OWNED OR CONTROLLED SETTING QUALITIES.**

In addition to the requirements for the setting described in Section 312 of these rules, provider-owned or controlled settings, including Residential Care or Assisted Living Facilities and Certified Family Homes that provide services to HCBS participants, must also meet the following conditions: ( )

**01. Written Agreement.** A lease, residency agreement, admission agreement, or other form of written agreement will be in place for each HCBS participant at the time of occupancy. The lease or residency agreement must provide protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law. ( )

02. Privacy. Participants have the right to privacy within their residence. Each participant must have privacy in their sleeping or living unit to include the following: ( )

a. The right to entrance doors which are lockable by the individual, with only appropriate staff having keys to doors. ( )

b. Participants sharing units have a choice of roommates in that setting. ( )

03. Décor. Participants have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. ( )

04. Schedules and Activities. Participants have the freedom and support to control their own schedules and activities. ( )

05. Access To Food. Participants have access to food at any time. ( )

06. Visitors. Participants are able to have visitors of their choosing at any time. ( )

07. Accessibility. The setting is physically accessible to the participant. ( )

**314. EXCEPTIONS TO RESIDENTIAL PROVIDER-OWNED OR CONTROLLED SETTING QUALITIES.**

Exceptions to residential setting requirements outlined in Section 313 of these rules must be made based on the needs of the participant that are identified through person-centered planning. Service plans with exceptions to residential setting requirements must be submitted to the Department or its designee for review and approval. When an exception is made, the following information must be documented in the person-centered service plan: ( )

01. Assessed Needs. Specific and individualized assessed needs that are related to the exception. ( )

02. Interventions and Supports. Positive interventions and supports used prior to any exceptions to the person-centered service plan. ( )

03. Prior Methods. List less intrusive methods previously implemented that were unsuccessful in addressing the needs of the participant. ( )

04. Description of Intervention. A clear description of the intervention for the exception that is directly proportionate to the specific assessed needs. ( )

05. Data Collection. Regular collection and review of data to measure the ongoing effectiveness of the exception. ( )

06. Time Limits. Established time limits for periodic reviews to determine if the exception is still necessary, if a transition plan can be developed, or if the exception can be terminated. ( )

07. Informed Consent. Informed consent of the participant or legal guardian for the exception. ( )

08. Assurance of No Harm. An assurance that interventions and supports will cause no harm to the participant. ( )

**315. HOME AND COMMUNITY BASED PERSON-CENTERED PLANNING REQUIREMENTS.**

All participants who receive HCBS must direct the development of their service plan through a person-centered planning process. Information and support must be given to the HCBS participant to maximize their ability to make informed choices and decisions. With the aid of a facilitator, the participant receiving HCBS will direct the person-centered planning process. Individuals invited to participate in the person-centered planning process should be identified by the participant or his legal guardian. Unless all decision-making authority has been conferred to the



legal guardian, the legal guardian will have a participatory role as needed and defined by the participant. The person-centered planning process must: ( )

**01. Timely and Convenient.** Be timely and occur at times and locations of convenience to the participant. ( )

**02. Cultural Considerations.** Reflect cultural considerations of the participant. ( )

**03. In Plain Language and Accessible.** Be conducted by providing information in plain language and in a manner that is accessible to participants with disabilities and persons who are limited English proficient as defined in 42 CFR 435.905(b). ( )

**04. Conflict Resolution.** Utilize strategies for solving conflict or disagreement within the process, and follow clear conflict-of-interest guidelines for all planning participants. ( )

**05. Facilitators Cannot Be Service Providers.** Individuals responsible for facilitating the person-centered planning meeting and developing the plan of service cannot be providers of direct services to the participant. ( )

**316. HOME AND COMMUNITY BASED PERSON-CENTERED SERVICE PLAN REQUIREMENTS.**  
All person-centered service plans must reflect the following components: ( )

**01. Services And Supports.** Clinical services and supports that are important for the participant's behavioral, functional, and medical needs as identified through an assessment. ( )

**02. Service Delivery Preferences.** Indication of what is important to the participant with regard to the service provider and preferences for the delivery of such services and supports. ( )

**03. Setting Selection.** HCBS settings selected by the participant are chosen from among a variety of setting options, including non-disability-specific settings. The person-centered service plan must identify and document the alternative home and community setting options that were considered by the participant. ( )

**04. Participant Strengths and Preferences.** ( )

**05. Individually Identified Goals and Desired Outcomes.** ( )

**06. Paid and Unpaid Services and Supports.** Paid and unpaid services and supports that will assist the participant to achieve identified goals, and the providers of those services and supports, including natural supports. ( )

**07. Risk Factors.** Risk factors to the participant as well as people around the participant and measures in place to minimize them, including individualized back-up plans and strategies when needed. ( )

**08. Understandable Language.** Be understandable to the participant receiving services and supports, and the individuals important in supporting him or her. At a minimum, the written plan must be understandable, and written in plain language in a manner that is accessible to participants with disabilities and persons who are limited English proficient, consistent with 42 CFR 435.905(b). ( )

**09. Plan Monitor.** Identify the name of the individual or entity responsible for monitoring the plan. ( )

**10. Plan Signatures.** Be finalized and agreed to, with the informed consent of the participant in writing, and signed by all individuals and providers responsible for its implementation. ( )

**a. Children's DD service providers responsible for implementation of the plan include those identified in Sections 665 and 685 of these rules.** ( )

b. Adult DD service providers responsible for implementation of the plan include those required to develop a provider implementation plan as defined in Sections 513 and 654 of these rules. ( )

c. Consumer-directed service providers responsible for implementation of the plan include the participant, Support Broker, and Fiscal Employment Agency as identified in IDAPA 16.03.13, "Consumer-Directed Services." ( )

d. Personal Care and Aged and Disabled Waiver service providers responsible for the implementation of the plan include the providers of those services defined in Sections 305, 306, and 328 of these rules. ( )

11. Plan Distribution. Be distributed to the participant and other people involved in the implementation of the plan. At a minimum, the following providers will receive a copy of the plan: ( )

a. Children's DD service providers defined in Sections 665 and 685 of these rules as identified on the plan of service developed by the family-centered planning team. Additionally, the participant and parent or legal guardian will determine during the person-centered planning process whether the service plan, in whole or in part, will be distributed to any other developmental disability service provider. ( )

b. Adult DD service providers required to develop a provider implementation plan as defined in Sections 513 and 654 of these rules. Additionally, the participant will determine during the person-centered planning process whether the service plan, in whole or in part, will be distributed to any other developmental disability service provider. ( )

c. Consumer-Directed service providers as defined in IDAPA 16.03.13, "Consumer-Directed Services," Section 110. In addition, the participant will determine during the person-centered planning process whether the service plan, in whole or in part, is to be distributed to any other community support worker or vendors. ( )

d. Personal Care and Aged and Disabled Waiver service providers defined in Sections 305, 306, and 329 of these rules. ( )

12. Residential Requirements. For participants living in residential provider owned or controlled settings as described in Section 313 of these rules, the following additional requirements apply: ( )

a. Options described in Subsection 316.03 of this rule must include a residential setting option that allows for private units. Selection of residential settings will be based on the participant's needs, preferences, and resources available for room and board. ( )

b. Any exception to residential provider owned or controlled setting qualities as described in Section 313 of these rules must be documented in the person-centered plan as described in Section 314 of these rules. ( )

**317. HCBS TRANSITION PLAN.**

As required by the Department, all current providers of HCBS must complete and return a Department-approved self assessment form related to the setting requirements and qualities described in Sections 311 through 313 of these rules no later than January 1, 2017. ( )

01. Provider Transition Plan. Providers not in compliance with any portion of the new requirements and qualities, as identified through the self assessment process, must submit a transition plan detailing their proposal for coming into compliance. All transition plans must be reviewed and approved by the Department. ( )

02. New HCBS Providers or Service Settings. New HCBS providers or service settings are expected to fully comply with the HCBS requirements and qualities as a condition of becoming a Medicaid provider. ( )

03. Quality Assurance. The Department will begin enforcement of quality assurance compliance with Sections 311 through 313 of these rules on January 1, 2017. ( )

~~309~~18. -- 319. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**328. AGED AND DISABLED WAIVER SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Role of the Department.** The Department or its contractor will provide for the administration of the UAI, and the development of the initial individual service plan. This will be done either by Department staff or a contractor. The Department or its contractor will review and approve all individual service plans, and will authorize Medicaid payment by type, scope, and amount. (4-4-13)

**a.** Services that are not in the individual service plan approved by the Department or its contractor are not eligible for Medicaid payment. (4-4-13)

**b.** Services in excess of those in the approved individual service plan are not eligible for Medicaid payment. (3-19-07)

**c.** The earliest date that services may be approved by the Department or its contractor for Medicaid payment is the date that the participant's individual service plan is signed by the participant or his designee. (4-4-13)

**02. Pre-Authorization Requirements.** All waiver services must be pre-authorized by the Department. Authorization will be based on the information from: (3-19-07)

**a.** The UAI; (3-19-07)

**b.** The individual service plan developed by the Department or its contractor; and (3-19-07)

**c.** Any other medical information which verifies the need for nursing facility services in the absence of the waiver services. (3-19-07)

**03. UAI Administration.** The UAI will be administered, and the initial individual service plan developed, by the Department or its contractor. (4-4-13)

**04. Individual Service Plan.** All waiver services must be authorized by the Department or its contractor in the Region where the participant will be residing and services provided based on a written individual service plan. (4-4-13)

**a.** The initial individual service plan is developed by the Department or its contractor, based on the UAI, in conjunction with: (4-4-13)

**i.** The waiver participant (with efforts made by the Department or its contractor to maximize the participant's involvement in the planning process by providing him with information and education regarding his rights); (4-4-13)

**ii.** The guardian, when appropriate; (3-30-07)

**iii.** The supervising nurse or case manager, when appropriate; and (3-19-07)

**iv.** Others identified by the waiver participant. (3-19-07)

**b.** The individual service plan must include the following: (3-19-07)

**i.** The specific type, amount, frequency, and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)

**ii.** Supports and service needs that are to be met by the participant's family, friends, neighbors,

- volunteers, church, and other community services; (3-30-07)
- iii. The providers of waiver services when known; (3-30-07)
  - iv. Documentation that the participant has been given a choice between waiver services and institutional placement; and (3-19-07)
  - v. The signature of the participant or his legal representative, agreeing to the plan. (3-19-07)
- c.** The individual service plan must be revised and updated at least annually, based upon treatment results or a change in the participant's needs. (3-19-07)
- d.** All services reimbursed under the Aged and Disabled Waiver must be authorized by the Department or its contractor prior to the payment of services. (4-4-13)
- e.** The individual service plan, which includes all waiver services, is monitored by the Personal Assistance Agency, participant, family, and the Department or its contractor. (4-4-13)
- 05. Service Delivered Following a Written Plan of Care.** All services that are provided must be based on a written plan of care. (3-30-07)
- a.** The plan of care is developed by the plan of care team which includes: (3-30-07)
    - i. The waiver participant with efforts made to maximize his participation on the team by providing him with information and education regarding his rights; (3-30-07)
    - ~~ii.~~ ~~The Department's administrative case manager;~~ ~~(3-30-07)~~
    - ~~ii.~~ The guardian when appropriate; (3-30-07)
    - ~~ii.~~ Service provider identified by the participant or guardian; and (3-30-07)
    - ~~iv.~~ May include others identified by the waiver participant. (3-30-07)
  - b.** The plan of care must be based on an assessment process approved by the Department. (3-30-07)
  - c.** The plan of care must include the following: (3-30-07)
    - i. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)
    - ii. Supports and service needs that are to be met by the participant's family, friends and other community services; (3-30-07)
    - iii. The providers of waiver services; (3-30-07)
    - iv. Goals to be addressed within the plan year; (3-30-07)
    - v. Activities to promote progress, maintain functional skills, or delay or prevent regression; and (3-30-07)
    - vi. The signature of the participant or his legal representative and the provider or providers responsible for implementation of the plan of care. Providers of adult day health, adult residential care services, attendant care, chore services, companion services, homemaker services, skilled nursing, residential habilitation, day habilitation, and supported employment are responsible for implementation of the plan of care. (3-30-07)( )
  - d.** The plan must be revised and updated by the plan of care team based upon treatment results or a

change in the participant's needs. A new plan must be developed and approved annually. (3-30-07)

e. The Department's case manager monitors the plan of care and all waiver services. (3-30-07)

f. The plan of care may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of care is subject to prior authorization by the Department. (3-30-07)

**06. Individual Service Plan and Written Plan of Care.** The development and documentation of the individual service plan and written plan of care must meet the person-centered planning requirements described in Sections 315 and 316 of these rules. ( )

**067. Provider Records.** Records will be maintained on each waiver participant. (3-19-07)

a. Each service provider must document each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)

i. Date and time of visit; (3-19-07)

ii. Services provided during the visit; (3-19-07)

iii. Provider observation of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)

iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the Department or its contractor determines that the participant is unable to do so, the service delivery will be verified by the participant as evidenced by their signature on the service record. (4-4-13)

b. The provider is required to keep the original service delivery record. A copy of the service delivery record will be maintained in the participant's living arrangement unless authorized to be kept elsewhere by the Department. Failure to maintain documentation according to these rules will result in the recoupment of funds paid for undocumented services. (4-4-13)

c. The individual service plan initiated by the Department or its contractor must specify which waiver services are required by the participant. The plan will contain all elements required by Subsection 328.04.a. of these rules and a copy of the most current individual service plan will be maintained in the participant's home and will be available to all service providers and the Department. A copy of the current individual service plan and UAI will be available from the Department or its contractor to each individual service provider with a release of information signed by the participant or legal representative. (4-4-13)

d. Record requirements for participants in residential care or assisted living facilities are described in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

e. Record requirements for participants in certified family homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

**078. Provider Responsibility for Notification.** The service provider is responsible to notify the Department or its contractor, physician or authorized provider, or case manager, and family if applicable, when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (4-4-13)

**089. Records Retention.** Personal Assistance Agencies, and other providers are responsible to retain their records for five (5) years following the date of service. (3-19-07)

**109. Requirements for an Fiscal Intermediary (FI).** Participants of PCS will have one (1) year from the date which services begin in their geographic region to obtain the services of an FI and become an employee in

fact or to use the services of an agency. Provider qualifications are in accordance with Section 329 of these rules. (3-19-07)

**329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**  
Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

**e.** To pay personal assistants and other waiver service providers for service; (3-19-07)

**f.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

**g.** To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

**h.** To maintain liability insurance coverage; (5-8-09)

**i.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

**j.** To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

**03. Provider Qualifications.** All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (4-4-13)

**a.** A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

**b.** For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)

**c.** Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**04. Quality Assurance.** Providers of Aged and Disabled waiver services are responsible for ensuring

that they provide quality services in compliance with applicable rules. ( )

a. The results of a quality assurance review conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. ( )

b. The provider must respond to the quality assurance review within forty-five (45) days after the results are received from the Department. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. ( )

05. HCBS Compliance. Providers of Aged and Disabled waiver services are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 311 through 316 of these rules, as applicable, and must comply with associated Department quality assurance activities. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. ( )

a. Providers of adult day health, day habilitation, residential habilitation, and supported employment must ensure that service delivery settings meet the HCBS setting qualities described in Section 312 of these rules. ( )

b. Providers of adult residential care must ensure that service delivery settings meet the HCBS setting qualities described in Section 312 of these rules in addition to the residential setting qualities described in Section 313 of these rules. ( )

**046. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**057. Skilled Nursing Service.** Skilled nursing service providers must be licensed in Idaho as a registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**068. Consultation Services.** Consultation services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (4-4-13)

**079. Adult Residential Care.** Adult residential care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," or IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**108. Home Delivered Meals.** Providers of home delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

**a.** Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

**b.** Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

**c.** Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (4-4-13)

**d.** The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments"; (4-4-13)

**e.** A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

**f.** Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (4-4-13)

**101. Personal Emergency Response Systems.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. (4-4-13)

**102. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

**a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (4-4-13)

**b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

**c.** Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**d.** Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**e.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

**f.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

**g.** All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**103. Non-Medical Transportation Services.** Providers of non-medical transportation services must: (4-4-13)

**a.** Possess a valid driver's license; (4-4-13)

**b.** Possess valid vehicle insurance; and (4-4-13)

**c.** Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**104. Attendant Care.** Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)



**135. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**146. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)

**157. Residential Habilitation Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-30-07)
  - i. Be at least eighteen (18) years of age; (3-30-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii. Have current CPR and First Aid certifications; (3-30-07)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" (4-4-13)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (4-4-13)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (4-4-13)
  - i. Purpose and philosophy of services; (3-30-07)
  - ii. Service rules; (3-30-07)
  - iii. Policies and procedures; (3-30-07)
  - iv. Proper conduct in relating to waiver participants; (3-30-07)
  - v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)

- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
  - iii. Feeding; (3-30-07)
  - iv. Communication; (3-30-07)
  - v. Mobility; (3-30-07)
  - vi. Activities of daily living; (3-30-07)
  - vii. Body mechanics and lifting techniques; (3-30-07)
  - viii. Housekeeping techniques; and (3-30-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (4-4-13)

**168. Day Habilitation.** Providers of day habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

- 179. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a.** Have received care giving instructions in the needs of the person who will be provided the service; (4-4-13)
  - b.** Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c.** Be free of communicable disease; and (4-4-13)
  - d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**1820. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meet State requirements to be a State-approved provider. Supported employment

service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a traumatic brain injury training course approved by the Department. (4-4-13)

**219. Chore Services.** Providers of chore services must meet the following minimum qualifications: (4-4-13)

**a.** Be skilled in the type of service to be provided; and (4-4-13)

**b.** Demonstrate the ability to provide services according to a plan of service. (4-4-13)

**c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**d.** Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**513. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PLAN OF SERVICE.**

In collaboration with the participant, the Department must assure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (3-29-12)

**01. Qualifications of a Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-19-07)

**02. Plan Development.** ~~With the aid of a facilitator. The~~ plan must be developed ~~with~~ by the participant. ~~With the participant's consent, the person-centered planning team~~ **Individuals invited to participate in the person-centered planning process will be identified by the participant and** may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals **and outcomes.** ( )

**a.** The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (3-19-07)( )

**b.** The plan development process must meet the person-centered planning requirements described in Section 315 of these rules. ( )

**03. Prior Authorization Outside of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-19-07)

**a.** Durable Medical Equipment (DME); (3-19-07)

- b. Transportation; and (3-19-07)
- c. Physical therapy, occupational therapy, and speech-language pathology services. (7-1-13)
- 04. No Duplication of Services.** The plan developer will ensure that there is no duplication of services. Duplicate services will not be authorized. (3-29-12)
- 05. Plan Monitoring.** The participant, service coordinator or plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-19-07)
- a. Review of the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (3-19-07)
- b. Contact with service providers to identify barriers to service provision; (3-19-07)
- c. Discuss with participant satisfaction regarding quality and quantity of services; and (3-19-07)
- d. Review of provider status reviews. (3-29-12)
- e. The provider will immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Department, the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (3-29-12)
- 06. Provider Status Reviews.** Service providers, with exceptions identified in Subsection 513.09 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: ~~(3-19-07)~~ ( )
- a. The status of supports and services to identify progress; (3-19-07)
- b. Maintenance; or (3-19-07)
- c. Delay or prevention of regression. (3-19-07)
- 07. Content of the Plan of Service.** The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-19-07)
- a. The written plan of service must meet the person-centered planning requirements described in Section 316 of these rules. ( )
- b. The written plan of service must be finalized and agreed to according to procedural requirements described in Section 704 of these rules. ( )
- c. The Department will distribute a copy of the plan of service to adult DD service providers defined in Sections 513 and 649 of these rules. Additionally, the plan developer will be responsible to distribute a copy of the plan of service, in whole or part, to any other developmental disability service provider identified by the participant during the person-centered planning process. ( )
- 08. Informed Consent.** Unless the participant has a guardian with appropriate full decision-making authority, the participant must make decisions regarding the type and amount of services required. Information and support must be given to the participant to maximize their ability to make informed choices regarding the services and supports they receive and from whom. During plan development and amendment, planning team members must

each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (3-19-07)( )

**09. Provider Implementation Plan.** Each provider of Medicaid services, ~~subject to prior authorization,~~ must develop an implementation plan that complies with home and community based setting requirements and identifies specific objectives that relate to goals finalized and agreed to in the participant's authorized plan of service. These objectives must demonstrate how the provider will assist the participant to meet the participant's goals, desired outcomes, and needs identified in the plan of service. (3-19-07)( )

- a. Exceptions. An implementation plan is not required for waiver providers of: (3-19-07)
- i. Specialized medical equipment; (3-19-07)
  - ii. Home delivered meals; (3-19-07)
  - iii. Environmental ~~modifications~~ accessibility adaptations; (3-19-07)( )
  - iv. Non-medical transportation; (3-19-07)
  - v. Personal emergency response systems (PERS); (3-19-07)
  - vi. Respite care; and (3-19-07)
  - vii. Chore services. (3-19-07)

b. Time for Completion. ~~The Implementation plans must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change of receipt of the authorized plan of service or the service start date, whichever is later.~~ of receipt of the authorized plan of service or the service start date, whichever is later. (3-19-07)( )

i. If the authorized plan of service is received after the service start date, service providers must support billing by documenting service provision as agreed to by the participant and consistent with Section 704 of these rules. ( )

ii. Implementation plan revision must be based on changes to the needs of the participant. ( )

c. Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title. (3-19-07)

**10. Home and Community Based Services Plan of Service Signature.** Upon receipt of the authorized plan of service, HCBS providers responsible for the implementation of the plan as identified in Section 316 of these rules must sign the plan indicating they will deliver services according to the finalized and authorized plan of service, and consistent with home and community based setting requirements. Each HCBS provider responsible for the implementation of the plan must maintain their signed plan in the participant's record. Provider signature will be completed each time an initial or annual plan of service is implemented. ( )

**101. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on a change to a cost, addition of a service or increase to a service, or a change of provider. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. (3-29-12)

~~**11. Community Crisis Supports.** Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family alteration, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a~~

~~documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period.~~ (3-19-07)

~~a. Emergency Room. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community.~~ (3-19-07)

~~b. Before Plan Development. Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future.~~ (3-19-07)

~~c. Crisis Resolution Plan. After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days.~~ (3-19-07)

**12. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (3-19-07)

**a. Plan Developer Responsibilities for Annual Reauthorization.** A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (3-19-07)

i. Notify the providers who appear on the plan of service of the annual review date. (3-19-07)

ii. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.14.d.06 of these rules. (3-19-07)( )

iii. Convene the person-centered planning team to develop a new plan of service: inviting individuals to participate that have been identified by the participant. (3-19-07)( )

**b. Evaluation and Prior Authorization of the Plan of Service.** The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 507 and 513 of these rules. (3-19-07)

**c. Adjustments to the Annual Budget and Services.** The annual budget and services may be adjusted by the Department based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (3-29-12)

**d. Annual Status Reviews Requirement.** If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Subsection 513.120 of these rules. (3-19-07)( )

**e. Reapplication After a Lapse in Service.** For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (3-19-07)

**f. Annual Assessment Results.** An annual assessment must be completed in accordance with Section 512 of these rules. (3-19-07)

**13. Complaints and Administrative Appeals.** (3-29-12)

**a.** Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid. (3-29-12)

b. A participant who disagrees with a Department decision regarding program eligibility and authorization of services under these rules may file an appeal. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**515. ADULT DEVELOPMENTAL DISABILITY SERVICES: QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may ~~terminate authorization of service for providers who do not comply with the corrective action plan~~ take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with the corrective action plan, any term or provision of the provider agreement, or any applicable state or federal regulation. (3-19-07)( )

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, participant experience related to home and community based setting qualities, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (3-19-07)( )

**03. Exception Review.** The Department will complete an exception review of plans or addendums requesting services that exceed the assigned budget authorized by the assessor. Requests for these services will be authorized when one (1) of the following conditions are met: (4-11-15)

a. Services are needed to assure the health and safety of participants who require residential high or intense supported living, and the services requested on the plan or addendum are required based on medical necessity as defined in Subsection 012.14 of these rules. (4-11-15)

b. Supported employment services as defined in Section 703 of these rules are needed for the participant to obtain or maintain employment. The request must be submitted on the Department-approved Exception Review Form and is reviewed and approved based on the following: (4-11-15)

i. A supported employment service recommendation must be submitted that includes: recommended amount of service, level of support needed, employment goals, and a transition plan. When the participant is transitioned from the Idaho Division of Vocational Rehabilitation (IDVR) services, the recommendation must be completed by IDVR. When a participant is in an established job, the recommendation must be completed by the supported employment agency identified on the plan of service or addendum; (4-11-15)

ii. The participant's plan of service was developed by the participant and his person-centered planning team and includes a goal for supported employment services. Prior to the submission of an exception review with an addendum, a comprehensive review of all services on the participant's plan must occur. The participant's combination of services must support the increase or addition of supported employment services; and (4-11-15)

iii. An acknowledgement signed by the participant and his legal guardian, if one exists, that additional budget dollars approved to purchase supported employment services must not be reallocated to purchase any other Medicaid service. (4-11-15)

**04. Concurrent Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, services support participant integration, autonomy, and participant rights are maintained, and services constitute appropriate care to warrant continued authorization or need for the service. (3-19-07)( )

**05. Abuse, Fraud, or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (3-19-07)

516. -- 519. (RESERVED)

**SUB-PART: CHILDREN'S DEVELOPMENTAL DISABILITIES PRIOR AUTHORIZATION  
(Sections 520 - 528)**

**520. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA).**

The purpose of the children's DD Prior Authorization is to ensure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of service, prior approval of services, and a quality improvement program. Prior authorization is intended to prevent the provision of unnecessary or inappropriate services and supports. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for HCBS as described in Section 310 through 316 of these rules, and for the specific services included on the plan. (7-1-11)(\_\_\_\_)

**521. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): DEFINITIONS.**

For the purposes of Sections 520 through 528 of these rules, the following terms are used as defined below. (7-1-11)

**01. Assessment.** A process that is described in Section 522 of these rules for program eligibility and in Section 526 of these rules for plan of service. (7-1-11)

**02. Baseline.** A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. (7-1-11)

**03. Child.** A person who is under the age of eighteen (18) years. (7-1-11)

**04. Family.** The participant and his parent(s) or legal guardian. (7-1-11)

**05. Family-Centered Planning Process.** A participant-focused planning process directed by the participant or legal guardian and facilitated by the plan developer, ~~by which the~~ The family-centered planning team collaborates with the participant to develop discusses the participant's strengths and needs and helps the participant make informed choices of the services and supports included on the plan of service. (7-1-11)(\_\_\_\_)

**06. Family-Centered Planning Team.** The planning group who helps inform the participant about available support services in order to develop the plan of service. This group includes, at a minimum, the child participant ~~(unless otherwise determined by the family-centered planning team),~~ the participant's parent or legal guardian, and the plan developer. The family-centered planning team ~~may~~ must include ~~others identified by people chosen by the participant and~~ the family, or agreed upon by the participant and the family ~~and the Department~~ as important to the process. (7-1-11)(\_\_\_\_)

**07. ICF/ID.** Intermediate care facility for persons with intellectual disabilities. (7-1-11)

**08. Individualized Family Service Plan (IFSP).** An initial or annual plan of service; ~~for providing early intervention services to children from birth to three (3) years of age (thirty-six (36) months old).~~ The plan is developed by the family-centered planning team that includes the parent or legal guardian and eligible child participant, other planning team members chosen by the parent or legal guardian, and the Department or its designee; ~~for providing early intervention services to children from birth up to three (3) years of age (36 months).~~ This plan IFSP must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C, and must be developed in accordance with Sections 315 through 316 of these rules. The IFSP may serve as the plan of service if it meets all of the components of the plan of service. The IFSP may also serve as a program implementation plan. (7-1-13)(\_\_\_\_)



**09. Level of Support.** The amount of services and supports necessary to allow the individual to live independently and safely in the community. (7-1-11)

**10. Medical, Social, and Developmental Assessment Summary.** A form used by the Department to gather a participant's medical, social and developmental history and other summary information. It is required for all participants receiving home and community-based services under a plan of service. The information is used in the assessment and authorization of a participant's services. (7-1-11)

**11. Plan Developer.** A paid or non-paid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports based on a family-centered planning process and meets the HCBS person-centered plan requirements as described in Section 316 of these rules. (7-1-11)(    )

**12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis and is identified on the participant's person-centered plan of service. (7-1-11)(    )

**13. Plan of Service.** An initial or annual plan of service, developed by the participant, parent or legal guardian, and the family-centered planning team, that identifies all services and supports based on a family-centered planning process, and which is developed for providing DD services to children birth ~~through seventeen~~ up to eighteen (1~~7~~8) years of age. This plan must be developed in accordance with Section 316 of these rules. (7-1-11)(    )

**14. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. (7-1-11)

**15. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by Sections 520 and 528 these rules. (7-1-11)

**16. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service, and demonstrates the continued need for the service. (7-1-11)

**17. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (7-1-11)

**18. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (7-1-11)

**19. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (7-1-11)

**20. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (7-1-11)

**21. Services.** Evaluation, diagnostic, therapy, training, assistance, and support services that are provided to persons with developmental disabilities. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**524. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid developmental disabilities services for children included in Section 310 of these rules: (7-1-11)(    )

**01. Children's Home and Community Based State Plan Option Services.** Children's home and community based state plan option services as described in Sections 660 through 666 of these rules; and (7-1-11)

**02. Children's DD Waiver Services.** Children's DD waiver services as described in Sections 680 through 686 of these rules. (7-1-11)

**525. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): PROCEDURAL REQUIREMENTS.**

Prior to the development of the plan of service, the plan developer will gather and make referrals for the following information to ~~guide~~ facilitate the family-centered planning process: (7-1-11)(    )

**01. Eligibility Determination Documentation.** Eligibility determination documentation completed by the Department or its contractor as defined in Subsection 522.03 of these rules. (7-1-11)

**02. History and Physical.** A current history and physical completed by a practitioner of the healing arts is required at least annually or more frequently as determined by the practitioner. For participants in Healthy Connections, the Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (7-1-11)

**03. Discipline-Specific Assessments.** Participants must be referred for an occupational therapy, physical therapy, or speech-language pathology assessment when the participant has a targeted need in one of these disciplines. The assessment is used to guide the provision of services identified on the plan of service. (7-1-11)

**04. Additional Information.** Gather assessments and information related to the participant's medical conditions, risk of deterioration, living conditions, individual goals, and behavioral or psychiatric needs. (7-1-11)

**526. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): PLAN OF SERVICE PROCESS.**

In collaboration with the participant, the Department must ensure that the participant has one (1) plan of service. This plan of service is developed within the individualized participant budget referred to in Section 527 of these rules and must identify all services and supports. The participant and his parent or legal guardian may develop their own plan or use a paid or non-paid plan developer to assist with plan development. The plan of service must identify services and supports if available outside of Medicaid-funded services that can help the participant meet desired goals. (7-1-11)

**01. Plan Development and Monitoring.** Paid plan development and monitoring must be provided by the Department or its contractor in accordance with Section 315 of these rules. Non-paid plan development and monitoring may be provided by the family, or a person of their choosing, in accordance with the Home and Community Based Services (HCBS) regulations in Section 315 of these rules, when this person is not a paid provider of services identified on the child's plan of service. (7-1-11)(    )

**02. Plan of Service Development.** The plan of service must meet the requirements described in Section 316 of these rules. The service plan must be developed with the parent or legal guardian, and the child participant, ~~(unless otherwise determined by the family-centered planning team)~~ and facilitated by the Department or its designee. With the parent or legal guardian's consent, the family-centered planning team may include other family members or individuals who are significant to the participant. (7-1-11)(    )

**a.** In developing the plan of service, the family-centered planning team must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. (7-1-11)

**b.** The plan of service must identify, at a minimum, the type of service to be delivered, goals and desired outcomes to be addressed within the plan year, strengths and preferences of the participant, target dates, and methods for collaboration. (7-1-11)(    )

**03. No Duplication of Services.** The plan developer must ensure that there is no duplication of services. (7-1-11)

**04. Plan Monitoring.** The family-centered planning team must identify the frequency of monitoring, which must be at least every six (6) months. The plan developer must meet face-to-face with the participant and his parent or legal guardian at least annually. Plan monitoring must include the following: (7-1-11)(    )

a. Review of the plan of service with the participant and his parent or legal guardian to identify the current status of programs and changes if needed; (7-1-11)(    )

b. Contact with service providers to identify barriers to service provision; (7-1-11)

c. Discuss with participant and his parent or legal guardian their satisfaction regarding quality and quantity of services; and (7-1-11)(    )

d. Review of provider status reviews. (7-1-11)

**05. Provider Status Reviews.** The service providers in Sections 664 and 684 of these rules must report to the plan monitor the participant's progress toward goals. The provider must complete a six (6) month and annual provider status review. The provider status review must be submitted to the plan monitor within forty-five (45) calendar days prior to the expiration of the existing plan of service. (7-1-11)

**06. Informed Consent.** The participant and his parent or legal guardian must make decisions regarding the type and amount of services required. During plan development and amendments, planning team members must ~~each~~ indicate whether they believe the plan is in accordance with the participant's choices of the services and supports identified in the meeting and indicate whether they believe the plan meets the needs of the participant, ~~and represents the participant's choice.~~ (7-1-11)(    )

**07. Program Implementation Plan.** Providers of children's waiver services listed under Section 684 of these rules must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (7-1-13)

a. The implementation plan must be completed within fourteen (14) calendar days after the initial provision of service, and revised whenever participant needs change. (7-1-11)

b. Documentation of implementation plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, and the signature of the person making the change complete with his title and the date signed. (7-1-11)

**08. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service requires a parent's or legal guardian's signature and may be subject to prior authorization by the Department. (7-1-11)

**09. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (7-1-11)

a. Annual Eligibility Determination Results. An annual determination must be completed in accordance with Section 522 of these rules. (7-1-11)

b. Plan Developer Responsibilities for Annual Reauthorization. A new plan of service must be provided to the Department by the plan developer at least ten (10) calendar days prior to the expiration date of the current plan. Prior to this, the plan developer must: (7-1-13)

i. Notify the providers who appear on the plan of service of the annual review date. (7-1-11)

ii. Obtain a copy of the current annual provider status review from each provider for use by the

family-centered planning team. Each provider status review must meet the requirements in Subsection 526.06 of these rules. (7-1-11)

iii. Convene the family-centered planning team to develop a new plan of service. (7-1-11)

c. Evaluation and Prior Authorization of the Plan of Service. The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 520 and 526 of these rules. (7-1-11)

d. Adjustments to the Annual Budget and Services. The annual budget may be adjusted when there are documented changes that may support placement in a different budget category as identified in Section 527 of these rules. Services may be adjusted at any time during the plan year. (7-1-13)

e. Reapplication After a Lapse in Service. For participants who are re-applying for service after at least a thirty (30) calendar day lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**528. CHILDREN'S DEVELOPMENTAL DISABILITIES PRIOR AUTHORIZATION (PA):  
DEPARTMENT'S QUALITY ASSURANCE AND IMPROVEMENT PROCESSES.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to ensure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) calendar days after the results are received. The Department may terminate authorization of service or the provider agreement for providers who do not comply with the corrective action plan. If the Department finds a provider's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may immediately terminate the provider agreement. (7-1-11)

**02. Quality Improvement.** The Department may gather and utilize information from participants and providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings lead to quality improvement activities to improve provider processes and outcomes for participants. (7-1-11)

**03. Plan of Service Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. (7-1-11)

**04. HCBS Compliance.** Providers of children's developmental disability services are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 312 through 317 of these rules, as applicable, and must comply with associated Department quality assurance activities. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**634. -- ~~648~~4. (RESERVED)**

**ADULT DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY BASED SERVICES (HCBS)  
STATE PLAN OPTION  
(Sections 645 - 659)**

**645. HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**

Home and community based services are provided through the HCBS State Plan option as allowed in Section 1915(i) of the Social Security Act for adults with developmental disabilities who do not meet the ICF/ID level of care. The HCBS state plan option services must comply with Sections 310 through 317, and Sections 647 through 659 of these rules. ( )

**646. COMMUNITY CRISIS SUPPORTS.**

Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment, or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. ( )

**647. COMMUNITY CRISIS SUPPORTS: ELIGIBILITY.**

Prior to receiving community crisis supports, an individual must be determined by the Department or its contractor to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code, be eighteen (18) years of age or older, and live in the community. ( )

**648. COMMUNITY CRISIS SUPPORTS COVERAGE AND LIMITATIONS.**

Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. ( )

**01. Emergency Room.** Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. ( )

**02. Before Plan Development.** Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. ( )

**03. Crisis Resolution Plan.** After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**651. DEVELOPMENTAL THERAPY: COVERAGE REQUIREMENTS AND LIMITATIONS.**

Developmental therapy must be recommended by a physician or other practitioner of the healing arts. (7-1-13)

**01. Requirements to Deliver Developmental Therapy.** Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. Developmental therapy must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on an assessment completed prior to the delivery of developmental therapy. (7-1-13)

**a.** Areas of Service. These services must be directed toward the rehabilitation or habilitation of physical or developmental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (7-1-13)

**b.** Age-Appropriate. Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate. (7-1-11)

**c.** Tutorial Activities and Educational Tasks are Excluded. Developmental therapy does not include

tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability. (7-1-11)

**d.** Settings for Developmental Therapy. Developmental Therapy may be provided in home and community based settings as described in Section 311 of these rules. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices. (7-1-11)(    )

**e.** Staff-to-Participant Ratio. When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. The community-based services must occur in integrated, inclusive settings and with no more than three (3) participants per qualified staff at each session. Additional staff must be added, as necessary, to meet the needs of each individual served. (7-1-13)

**02. Excluded Services.** The following services are excluded for Medicaid payments: (7-1-11)

**a.** Vocational services; (7-1-11)

**b.** Educational services; and (7-1-11)

**c.** Recreational services. (7-1-11)

**03. Limitations on Developmental Therapy.** Developmental therapy may not exceed the limitations as specified below. (7-1-13)

**a.** Developmental therapy must not exceed twenty-two (22) hours per week. (7-1-13)

**b.** Developmental therapy provided in combination with Community Supported Employment services under Subsection 703.04 of these rules, must not exceed forty (40) hours per week. (7-1-13)

**c.** When a participant receives adult day health as provided in Subsection 703.12 of these rules, the combination of adult day, health and developmental therapy must not exceed thirty (30) hours per week. (7-1-13)

**d.** Only one (1) type of therapy will be reimbursed during a single time period by the Medicaid program. Developmental therapy will not be reimbursed during periods when the participant is being transported to and from the agency. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**653. DEVELOPMENTAL THERAPY: PROCEDURAL REQUIREMENTS FOR INDIVIDUALS WITH AN IPP.**

**01. Eligibility Determination.** Prior to the delivery of developmental therapy, the person must be determined by the Department or its contractor to be eligible as defined under Section 66-402, Idaho Code, be eighteen (18) years of age or older, and live in the community. (7-1-13)

**02. Intake.** Individuals using the Home and Community-Based Services (HCBS) waiver for the Aged and Disabled (A&D) or State Plan Personal Care Services and only requesting DDA services, have the option to access services through an Individual Program Plan. Individuals who select this option are not required to have a developmental disability plan developer ~~or an Individual Service Plan.~~ Services delivered through an Individual Program Plan must be authorized by the Department or its contractor and be based on the Aged and Disabled written Individual Service Plan as defined in Section 328 of these rules. Prior to the delivery of developmental therapy, a DDA must complete an Individual Program Plan (IPP) that meets the standards described below. (7-1-13)(    )

**03. Individual Program Plan (IPP) Definitions.** The delivery of developmental therapy on a ~~plan~~

written plan of care must be defined in terms of the type, amount, frequency, and duration of the service.

(7-1-13)( )

- a. Type of service refers to the kind of service described in terms of: (7-1-11)
  - i. Group, individual, or family; and (7-1-11)
  - ii. Whether the service is home, community, or center-based. (7-1-11)
- b. Amount of service is the total number of service hours during a specified period of time. This is typically indicated in hours per week. (7-1-11)
- c. Frequency of service is the number of times service is offered during a week or month. (7-1-11)
- d. Duration of service is the length of time. This is typically the length of the plan year. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date. (7-1-11)

**04. Individual Program Plan (IPP).** (7-1-13)

a. The IPP must be developed following obtainment or completion of all applicable assessments consistent with the requirements of this chapter. (7-1-11)

b. The planning process must include the participant, his legal guardian if one exists, and others the participant or his legal guardian chooses. The participant and his legal guardian if one exists must sign the IPP indicating participation in its development they directed the person-centered planning process. The participant and his legal guardian if one exists must be provided a copy of the completed IPP by the DDA. ~~If the participant or his legal guardian is unable to participate, the reason must be documented in the participant's record.~~ A physician or other practitioner of the healing arts, the participant, and his legal guardian if one exists, must sign the IPP prior to initiation of any services identified within the plan. (7-1-13)( )

c. The planning process must occur at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the participant. Revisions to the IPP requiring a change in type, amount, or duration of the service provided must be recommended by the physician or other practitioner of the healing arts prior to implementation of the change. Such recommendations require written authorization by the participant, his legal guardian if one exists, and must be maintained in the participant's file. (7-1-13)

d. The IPP must be supported by the documentation required in the participant's record in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)" record requirements. (7-1-11)

e. The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, and contain objectives that are age-appropriate. The IPP must include: (7-1-11)

i. The participant's name and medical diagnosis; (7-1-11)

ii. The name of the assigned Developmental Specialist, the date of the planning meeting, and the names and titles of those present at the meeting; (7-1-11)

iii. The dated signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; (7-1-11)

iv. The type, amount, frequency, and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not deviate from the IPP more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of a participant-based reason; (7-1-11)

- v. A list of the participant's current personal goals and desired outcomes, interests, and choices; ~~(7-1-11)~~ ( )
- vi. An accurate, current, and relevant list of the participant's specific developmental and behavioral strengths and needs. The list will identify which needs are priority based on the participant's choices and preferences. An IPP objective must be developed for each priority need; (7-1-11)
- vii. A list of measurable behaviorally stated objectives, which correspond to the list of priority needs. A Program Implementation Plan must be developed for each objective; (7-1-11)
- viii. The Developmental Specialist responsible for each objective; (7-1-13)
- ix. The target date for completion of each objective; (7-1-11)
- x. The review date; and (7-1-11)
- xi. A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. (7-1-13)

**05. Documentation of Plan Changes.** Documentation of required Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum: (7-1-13)

- a. The reason for the change; (7-1-11)
- b. Documentation of coordination with other services providers, where applicable; (7-1-11)
- c. The date the change was made; and (7-1-11)
- d. The signature of the professional making the change complete with date, credential, and title. Changes to the IPP require documented notification of the participant and his legal guardian if one exists. Changes in type, amount, or duration of services must be recommended by a physician or other practitioner of the healing arts. Such recommendations require written authorization by the participant and his legal guardian if one exists prior to the change. If the signatures of the participant or his legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. (7-1-13)

**06. Home and Community Based Person-Centered Planning. Individual Program Plans completed by a DDA must meet the person-centered planning requirements described in Sections 315 and 316 of these rules and must be included in the participant's individual service plan as described in Section 328 of these rules.** ( )

**654. DEVELOPMENTAL THERAPY: PROCEDURAL REQUIREMENTS.**

**01. Assessment and Diagnostic Services.** DDAs must obtain assessments required under Sections 507 through 515 of these rules. Four (4) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation, or diagnostic services provided in any calendar year. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules: (7-1-13)

- a. Comprehensive Developmental Assessment; and (7-1-13)
- b. Specific Skill Assessment. (7-1-13)

**02. Comprehensive Developmental Assessments.** Assessments must be conducted by qualified professionals defined under Section 655 of these rules. (7-1-13)



- a.** Comprehensive Assessments. A comprehensive assessment must: (7-1-11)
- i. Determine the necessity of the service; (7-1-11)
  - ii. Determine the participant's needs; (7-1-11)
  - iii. Guide treatment; (7-1-11)
  - iv. Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and (7-1-11)
- b.** Date, Signature, and Credential Requirements. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. (7-1-11)
- c.** Requirements for Current Assessments. Assessments must accurately reflect the current status of the participant. To be considered current, assessments must be completed or updated at least every two (2) years for service areas in which the participant is receiving services on an ongoing basis. (7-1-13)
- d.** Comprehensive Developmental Assessment. A comprehensive developmental assessment must reflect a person's developmental status in the following areas: (7-1-13)
- i. Self-care; (7-1-11)
  - ii. Receptive and expressive language; (7-1-11)
  - iii. Learning; (7-1-11)
  - iv. Gross and fine motor development; (7-1-11)
  - v. Self-direction; (7-1-11)
  - vi. Capacity for independent living; and (7-1-11)
  - vii. Economic self-sufficiency. (7-1-11)
- 03. Specific Skill Assessments.** Specific skill assessments must: (7-1-13)
- a.** Further assess an area of limitation or deficit identified on a comprehensive assessment. (7-1-13)
  - b.** Be related to a goal on the IPP or ISP. (7-1-13)
  - c.** Be conducted by qualified professionals. (7-1-13)
  - d.** Be conducted for the purposes of determining a participant's skill level within a specific domain. (7-1-13)
  - e.** Be used to determine baselines and develop the program implementation plan. (7-1-13)
- 04. DDA Program Documentation Requirements.** Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. (7-1-11)
- a.** General Requirements for Program Documentation. For each participant the following program documentation is required: (7-1-11)
    - i. Daily entry of all activities conducted toward meeting participant objectives. (7-1-11)

- ii. Sufficient progress data to accurately assess the participant's progress toward each objective; and (7-1-11)
- iii. A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by the qualified professional. The review must include the qualified professional's dated initials. (7-1-11)
- iv. Documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of the participant's progress toward the achievement of therapeutic goals, and the reason(s) why he continues to need services. (7-1-13)
- v. Signed, authorized plan as described in Section 513 of these rules. ( )
- b. DDAs must also submit provider status reviews to the plan monitor in accordance with Sections 507 through 515 of these rules. (7-1-13)

**05. DDA Program Implementation Plan Requirements.** For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be ~~written and implemented~~ developed within fourteen (14) days ~~after the first day of ongoing programming~~ from the plan of service start date or receipt of the authorized plan of service and be revised whenever participant needs change. ~~If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant based documentation justifying the delay~~ If consistent with the timeframes above, a participant's annual Program Implementation Plan is completed after the start date of the annual plan of service, the provider will address goals and objectives as agreed to by the participant until the annual Program Implementation Plan is complete and must document service provision related to these interim goals and objectives consistent with Section 654 of these rules. The Program Implementation Plan must include the following requirements: (7-1-11)( )

- a. Name. The participant's name. (7-1-11)
- b. Baseline Statement. A baseline statement addressing the participant's skill level and abilities related to the specific skill to be learned. (7-1-11)
- c. Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives ~~previously identified on~~ finalized and agreed to in the required plan of service. (7-1-11)( )
- d. Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement, and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. (7-1-11)
- e. Service Environments. Identification of the type of environment(s) where services will be provided. (7-1-11)
- f. Target Date. Target date for completion. (7-1-11)
- g. Results of the Psychological or Psychiatric Assessment. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. (7-1-11)
- h. Home and Community Based Services Requirements. All program implementation plans must meet home and community based setting qualities defined in Section 312 of these rules. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**663. CHILDREN'S HCBS STATE PLAN OPTION: COVERAGE AND LIMITATIONS.**

All children's home and community based services must be identified on a plan of service ~~developed by the family-centered planning team, including~~ directed by the participant or legal guardian and facilitated by the plan developer, and must be recommended by a physician or other practitioner of the healing arts. The following services are reimbursable when provided in accordance with these rules: (7-1-11)(    )

**01. Respite.** Respite provides supervision to the participant on an intermittent or short-term basis because of the need for relief of the primary unpaid caregiver. Respite is available in response to a family emergency or crisis, or may be used on a regular basis to provide relief to the caregiver. Respite may be provided in the participant's home, the private home of the respite provider, a DDA, or in the community. Payment for respite services are not made for room and board. (7-1-11)

- a. Respite must only be offered to participants living with an unpaid caregiver who requires relief. (7-1-11)
- b. Respite cannot exceed fourteen (14) consecutive days. (7-1-11)
- c. Respite must not be provided at the same time other Medicaid services are being provided. (7-1-11)
- d. Respite must not be provided on a continuous, long-term basis as a daily service that would enable an unpaid caregiver to work. (7-1-11)
- e. The respite provider must not use restraints on participants, other than physical restraints in the case of an emergency. Physical restraints may be used in an emergency to prevent injury to the participant or others, and must be documented in the participant's record. (7-1-11)
- f. When respite is provided as group respite, the following applies: (7-1-11)
  - i. When group respite is center-based, there must be a minimum of one (1) qualified staff providing direct services to every six (6) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff-to-participant ratio must be adjusted accordingly. (7-1-11)
  - ii. When group respite is community-based, there must be a minimum of one (1) qualified staff providing direct services to every three (3) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff-to-participant ratio must be adjusted accordingly. (7-1-11)
- g. Respite cannot be provided as group- or center-based respite when delivered by an independent respite provider. (7-1-11)
- h. For Act Early waiver participants, the cost of respite services cannot exceed ten (10) percent of the child's individualized budget amount to ensure the child receives the recommended amount of intervention based on evidence-based research. (7-1-11)

**02. Habilitative Supports.** Habilitative Supports provides assistance to a participant with a disability by facilitating the participant's independence and integration into the community. This service provides an opportunity for participants to explore their interests, practice skills learned in other therapeutic environments, and learn through interactions in typical community activities. Integration into the community enables participants to expand their skills related to activities of daily living and reinforces skills to achieve or maintain mobility, sensory-motor, communication, socialization, personal care, relationship building, and participation in leisure and community activities. Habilitative Supports must: (7-1-11)

- a. Not supplant services provided in school or therapy, or supplant the role of the primary caregiver; (7-1-11)

**b.** Ensure the participant is involved in age-appropriate activities and is engaging with typical peers according to the ability of the participant; and (7-1-11)

**c.** Have a minimum of one (1) qualified staff providing direct services to every three (3) participants when provided as group habilitative supports. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. (7-1-11)

**03. Family Education.** Family education is professional assistance to families to help them better meet the needs of the participant. It offers education to the parent or legal guardian that is specific to the individual needs of the family and child as identified on the plan of service. Family education is delivered to families to provide an orientation to developmental disabilities and to educate families on generalized strategies for behavioral modification and intervention techniques specific to their child's diagnoses. (7-1-11)

**a.** Family education may also provide assistance to the parent or legal guardian in educating other unpaid caregivers regarding the needs of the participant. (7-1-11)

**b.** The family education providers must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. (7-1-11)

**c.** Family education may be provided in a group setting not to exceed five (5) participants' families. (7-1-11)

**04. Family-Directed Community Supports.** Families of participants eligible for the children's home and community based state plan option may choose to direct their individualized budget rather than receive the traditional services described in Subsections 663.01 through 663.03 of this rule when the participant lives at home with his parent or legal guardian. The requirements for this option are outlined in IDAPA 16.03.13 "Consumer-Directed Services." (7-1-11)

**05. Limitations.** (7-1-11)

**a.** HCBS state plan option services are limited by the participant's individualized budget amount. (7-1-11)

**b.** For the children's HCBS state plan option services listed in Subsections 663.01, 663.02, and 663.04 of this rule, the following are excluded for Medicaid payment: (7-1-11)

**i.** Vocational services; and (7-1-11)

**ii.** Educational services. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**680. CHILDREN'S WAIVER SERVICES.**

**01. Purpose of and Eligibility for Waiver Services.** Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible children to prevent unnecessary institutional placement, provide for the greatest degree autonomy and of independence possible, enhance the quality of life, encourage individual choice, and achieve and maintain community integration. For a participant to be eligible, the Department must find that the participant requires services due to a developmental disability that impairs his mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/ID. (7-1-13)( )

**02. Waiver Services Provided by a DDA or the Infant Toddler Program.** Services provided by a developmental disabilities agency or the Infant Toddler Program to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family

Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**683. CHILDREN'S WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

All children's DD waiver services must be identified on a plan of service ~~developed by the family-centered planning team, including~~ directed by the participant or legal guardian and facilitated by the plan developer, and must be recommended by a physician or other practitioner of the healing arts. In addition to the children's home and community based state plan option services described in Section 663 of these rules, the following services are available for waiver eligible participants and are reimbursable services when provided in accordance with these rules: (7-1-11)(    )

**01. Family Training.** Family training is professional one-on-one (1 on 1) instruction to families to help them better meet the needs of the waiver participant receiving intervention services. (7-1-11)

**a.** Family training is limited to training in the implementation of intervention techniques as outlined in the plan of service. (7-1-11)

**b.** Family training must be provided to the participant's parent or legal guardian when the participant is present. (7-1-11)

**c.** The family training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. (7-1-11)

**d.** The parent or legal guardian of the waiver participant is required to participate in family training when the participant is receiving rehabilitative interventions. The following applies for each waiver program: (7-1-11)

**i.** For participants enrolled in the Children's DD Waiver, the amount, duration, and frequency of the training must be determined by the family-centered planning team and the parent or legal guardian, and must be listed as a service on the plan of service. (7-1-11)

**ii.** For participants enrolled in the Act Early Waiver, the parent or legal guardian will be required to be present and actively participate during the intervention service session for at least twenty percent (20%) of the intervention time provided to the child. (7-1-11)

**02. Interdisciplinary Training.** Interdisciplinary training is professional instruction to the direct service provider. Interdisciplinary training must only be provided during the provision of a support or intervention service. Interdisciplinary training is provided to assist the direct provider to meet the needs of the waiver participant. (7-1-11)

**a.** Interdisciplinary training includes: (7-1-11)

**i.** Health and medication monitoring; (7-1-11)

**ii.** Positioning and transfer; (7-1-11)

**iii.** Intervention techniques; (7-1-11)

**iv.** Positive Behavior Support; (7-1-11)

**v.** Use of equipment; (7-1-11)

b. Interdisciplinary training must only be provided to the direct service provider when the participant is present. (7-1-11)

c. The interdisciplinary training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. (7-1-11)

d. Interdisciplinary training between a habilitative interventionist and a therapeutic consultant is not a reimbursable service. (7-1-11)

e. Interdisciplinary training between employees of the same discipline is not a reimbursable service. (7-1-11)

**03. Habilitative Intervention Evaluation.** The purpose of the habilitative intervention evaluation is to guide the formation of developmentally-appropriate objectives and intervention strategies related to goals identified through the family-centered planning process. The habilitative interventionist must complete an evaluation prior to the initial provision of habilitative intervention services. The evaluation must include: (7-1-11)

a. Specific skills assessments for deficit areas identified through the eligibility assessment; (7-1-11)

b. Functional behavioral analysis; (7-1-11)

c. Review of all assessments and relevant histories provided by the plan developer; and (7-1-11)

d. Clinical Opinion. Professional summary that interprets and integrates the results of the testing. This summary includes functional, developmentally appropriate recommendations to guide treatment. (7-1-11)

**04. Habilitative Intervention.** Habilitative intervention services must be consistent, aggressive, and continuous and are provided to improve a child's functional skills and minimize problem behavior. Services include individual or group behavioral interventions and skill development activity. Habilitative intervention must be based upon the well-known and widely regarded principles of evidence-based treatment. Evidence-based treatment (EBT) refers to the use of mental and behavioral health interventions for which systematic empirical research has provided evidence of statistically significant effectiveness as treatments for specific problems. As "promising practices" meet statistically significant effectiveness, they could be included as approved approaches. (7-1-11)

a. Habilitative intervention must be provided to meet the intervention needs of the participant by developing adaptive skills for all participants, and addressing maladaptive behaviors for participants who exhibit them. (7-1-11)

i. When goals to address maladaptive behavior are identified on the plan of service, the intervention must include the development of replacement behavior rather than merely the elimination or suppression of maladaptive behavior that interferes with the child's overall general development, community, and social participation. (7-1-11)

ii. When goals to address skill development are identified on the plan of service, the intervention must provide for the acquisition of skills that are functional. (7-1-11)

b. Habilitative intervention must be provided in the participant's home or community setting, and in addition may be provided in a center-based setting. (7-1-11)

c. Group intervention may be provided in the community and center. When habilitative intervention is provided as group intervention, the following applies: (7-1-11)

i. There must be a minimum of one (1) qualified staff providing direct services for every three (3) participants. As the number and severity of the participants with functional impairments or behavioral issues increases, the staff participant ratio must be adjusted accordingly. (7-1-11)

ii. When group intervention is community-based, the child must be integrated in the community in a natural setting with typically developing peers. (7-1-11)

iii. Group intervention must be directly related to meeting the needs of the child, and be identified as an objective in accordance with a plan of service goal. (7-1-11)

**05. Therapeutic Consultation.** Therapeutic consultation provides a higher level of expertise and experience to support participants who exhibit severe aggression, self-injury, and other dangerous behaviors. Therapeutic consultation is provided when a participant receiving habilitative intervention has been assessed as requiring a more advanced level of training and assistance based on the participant's complex needs. A participant requires therapeutic consultation when interventions are not demonstrating outcomes and it is anticipated that a crisis event may occur without the consultation service. (7-1-11)

**a.** The therapeutic consultant assists the habilitative interventionist by: (7-1-11)

i. Performing advanced assessments as necessary; (7-1-11)

ii. Developing and overseeing the implementation of a positive behavior support plan; (7-1-11)

iii. Monitoring the progress and coordinating the implementation of the positive behavioral support plan across environments; and (7-1-11)

iv. Providing consultation to other service providers and families. (7-1-11)

**b.** Telehealth resources may be used by a therapeutic consultant to provide consultation as appropriate and necessary. (7-1-11)

**c.** Therapeutic consultation providers are subject to the following limitations: (7-1-11)

i. Therapeutic consultation cannot be provided as a direct intervention service. (7-1-11)

ii. Participants must be receiving habilitative intervention services prior to accessing therapeutic consultation, with the exception of crisis situations. (7-1-11)

iii. Therapeutic consultation is limited to eighteen (18) hours per year per participant. (7-1-11)

iv. Therapeutic consultation must be prior authorized by the Department. (7-1-11)

**06. Crisis Intervention.** Crisis intervention services provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. The need for crisis intervention must meet the definition of crisis in Section 681 of these rules. This service may provide training and staff development related to the needs of a participant, and also provides emergency back-up involving the direct support of the participant in crisis. Children's crisis intervention services: (7-1-11)

**a.** Are provided in the home and community. (7-1-11)

**b.** Are provided on a short-term basis typically not to exceed thirty (30) days. (7-1-11)

**c.** Cannot exceed fourteen (14) days of out-of-home placement. (7-1-11)

**d.** Must be prior authorized by the Department. (7-1-11)

i. Authorization for crisis intervention may be requested retroactively as a result of a crisis, defined in Section 681 of these rules, when no other means of support is available to the participant. In retroactive authorizations, the crisis intervention provider must submit a request for crisis intervention to the Department within seventy-two (72) hours of providing the service. (7-1-11)

ii. If staying in the home endangers the health and safety of the participant, the family, or both, the provider may request short-term out of home placement for the participant. Out of home placement must be prior authorized by the Department. (7-1-11)

e. Must use positive behavior interventions prior to and in conjunction with the implementation of any restrictive intervention. (7-1-11)

f. Telehealth resources may be used by a crisis interventionist to provide consultation in a crisis situation. (7-1-11)

**07. Family-Directed Community Supports.** Families of participants eligible for the children's DD waiver may choose to direct their individualized budget rather than receive the traditional services described in Subsections 683.01 through 683.06 of this rule when the participant lives at home with the parent or legal guardian. The requirements for selecting and participating in this option are outlined in IDAPA 16.03.13 "Consumer Directed Services." Act Early Waiver participants do not have the option to choose the family-directed services path. The Act Early Waiver is intended to be a more structured program that requires increased involvement from families, and ensures children receive an intense amount of services based on evidence-based research. (7-1-11)

**08. Service limitations.** Children's waiver services are subject to the following limitations: (7-1-11)

a. Place of Service Delivery. Waiver services may be provided in the participant's personal residence, community, or DDA. The following living situations are specifically excluded as a place of service for waiver services: (7-1-11)

i. Licensed skilled or intermediate care facilities, certified nursing facility (NF) or hospital; and (7-1-11)

ii. Licensed Intermediate Care Facility for persons with Intellectual Disabilities (ICF/ID); and (7-1-11)

iii. Residential Care or Assisted Living Facility; (7-1-11)

iv. Additional limitations to specific services are listed under that service definition. (7-1-11)

b. According to 42 CFR 440.180, Medicaid Waiver services cannot be used to pay for special education and related services that are included in a child's Individual Educational Plan (IEP) under the provisions of Individuals with Disabilities Education Improvement Act of 2004 (IDEA), that are otherwise available through a local educational agency. (7-1-11)

c. Children's waiver services are limited by the participant's individualized budget amount, excluding crisis intervention. (7-1-11)

d. For the children's waiver services listed in Subsections 683.01 through 683.07 of these rules, the following are excluded for Medicaid payment: (7-1-11)

i. Vocational services; (7-1-11)

ii. Educational services; and (7-1-11)

iii. Recreational services. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**



**01. Residential Habilitation.** Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

i. Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

ii. Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

iii. Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

**b.** Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

**c.** Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home or to provide a clean, sanitary, and safe environment. (4-4-13)

**a.** Intermittent Assistance may include the following: (4-4-13)

i. Yard maintenance; (4-4-13)

ii. Minor home repair; (4-4-13)

iii. Heavy housework; (4-4-13)

- iv. Sidewalk maintenance; and (4-4-13)
  - v. Trash removal to assist the participant to remain in the home. (4-4-13)
  - b.** Chore activities may include the following: (4-4-13)
    - i. Washing windows; (4-4-13)
    - ii. Moving heavy furniture; (4-4-13)
    - iii. Shoveling snow to provide safe access inside and outside the home; (4-4-13)
    - iv. Chopping wood when wood is the participant's primary source of heat; and (4-4-13)
    - v. Tacking down loose rugs and flooring. (4-4-13)
  - c.** These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (4-4-13)
  - d.** In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)
- 03. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a developmental disabilities agency, or an adult day health facility. (4-4-13)
- 04. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (4-4-13)
- a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (4-4-13)
  - b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that are not directly related to a waiver participant's supported employment program. (4-4-13)
- 05. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)
- a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)
  - b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (4-4-13)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**07. Specialized Medical Equipment and Supplies.** (4-4-13)

**a.** Specialized medical equipment and supplies include: (4-4-13)

**i.** Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

**ii.** Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

**b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

**08. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

**a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)

**b.** Are alone for significant parts of the day; (4-4-13)

**c.** Have no caregiver for extended periods of time; and (4-4-13)

**d.** Would otherwise require extensive, routine supervision. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to a participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

**a.** Rents or owns a home; (4-4-13)

**b.** Is alone for significant parts of the day; (4-4-13)

**c.** Has no caregiver for extended periods of time; and (4-4-13)

- d. Is unable to prepare a meal without assistance. (4-4-13)

**10. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse, under the supervision of a registered nurse licensed to practice in Idaho. (4-4-13)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy and occupational therapy. (4-4-13)

**13. Self-Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in home and community settings as described in Section 311 of these rules. Approved places of services include the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: ~~(3-19-07)~~( )

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**723. TARGETED SERVICE COORDINATION: ELIGIBILITY: INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY.**

An individual is eligible to receive targeted service coordination if he meets the following requirements in Subsection 723.01 through 723.03 of this rule. ~~(5-8-09)~~( )

- 01. Age.** An adult eighteen (18) years of age or older. (3-29-10)

**02. Diagnosis.** Is diagnosed with a developmental disability, defined in Section 66-402, Idaho Code and Section 500 through 506 of these rules, that: (5-8-09)

a. Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (5-8-09)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (5-8-09)

**03. Need Assistance.** Requires and chooses assistance to access services and supports necessary to maintain his independence in the community. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**727. SERVICE COORDINATION: COVERAGE AND LIMITATIONS.**

Service coordination consists of services provided to assist individuals in gaining access to needed services. Service coordination includes the following activities described in Subsections 727.01 through 727.10 of this rule. (3-20-14)

**01. Plan Assessment and Periodic Reassessment.** Activities that are required to determine the participant's needs by development of a plan assessment and periodic reassessment as described in Section 730 of these rules. These activities include: (5-8-09)

**a.** Taking a participant's history; (5-8-09)

**b.** Identifying the participant's needs and completing related documentation; and (5-8-09)

**c.** Gathering information from other sources such as family members, medical providers, social workers, and educators, to form a complete assessment of the participant. (5-8-09)

**02. Development of the Plan.** Development and revision of a specific plan, described in Section 731 of these rules that includes information collected through the assessment and specifies goals and actions needed by the participant. The plan must be updated at least annually and as needed to meet the needs of the participant. (3-20-14)

**03. Referral and Related Activities.** Activities that help link the participant with service providers that are capable of providing needed services to address identified needs and achieve goals specified in the service coordination plan. (3-20-14)

**04. Monitoring and Follow-Up Activities.** Monitoring and follow-up contacts that are necessary to ensure the plan is implemented and adequately addresses the participant's needs. These activities may be with the participant, family members, providers, or other entities or individuals and conducted as frequently as necessary. These activities must include at least one face-to-face contact with the participant at least every ninety (90) days, to determine whether the following conditions are met: (5-8-09)

**a.** Services are being provided according to the participant's plan; (5-8-09)

**b.** Services in the plan are adequate; and (5-8-09)

**c.** Whether there are changes in the needs or status of the participant, and if so, making necessary adjustments in the plan and service arrangements with providers. (5-8-09)

**05. Crisis Assistance.** Crisis assistance is service coordination used to assist a participant to access community resources in order to resolve a crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. The need for all crisis assistance hours must meet the definition of crisis in Section 721 of these rules. (5-8-09)

**a.** Crisis Assistance for Children's Service Coordination. Crisis hours are not available until four and a half (4.5) hours of service coordination have already been provided in the month. Crisis hours for children's service coordination must be authorized by the Department. (5-8-09)

**b.** Crisis Assistance for Adults With a Developmental Disability. Crisis hours are not available until four and a half (4.5) hours of service coordination have already been provided in the month. Crisis assistance for adults with a developmental disability must be authorized by the Department and is based on community crisis supports as found in Section ~~507~~ 646 through ~~515~~ 648 of these rules. (~~5-8-09~~) ( )

**c.** Authorization for crisis assistance hours may be requested retroactively as a result of a crisis, defined in Section 721 of these rules, when a participant's service coordination benefits have been exhausted and no other means of support is available to the participant. In retroactive authorizations, the service coordinator must submit a request for crisis services to the Department within seventy-two (72) hours of providing the service. (5-8-09)

**06. Contacts for Assistance.** Service coordination may include contacts with non-eligible individuals only when the contact is directly related to identifying the needs and supports to help the participant access services. (5-8-09)

**07. Exclusions.** Service coordination does not include activities that are: (5-8-09)

**a.** An integral component of another covered Medicaid service; (5-8-09)

**b.** Integral to the administration of foster care programs; (5-8-09)

**c.** Integral to the administration of another non-medical program for which a participant may be eligible. This exclusion does not apply to case management provided as part of the individualized education program or individualized family service plan required by the Individuals with Disabilities Education Act. (5-8-09)

**08. Limitations on the Provision of Direct Services.** Providers of service coordination services may only provide both service coordination and direct services to the same Medicaid participant when the participant is receiving children's service coordination. The service coordination provider must document that the participant has made a free choice of service coordinators and direct service providers. (3-20-14)

**09. Limitations on Service Coordination.** Service coordination is limited to four and a half (4.5) hours per month. (3-20-14)

**10. Limitations on Service Coordination Plan Assessment and Plan Development.** Reimbursement for the annual assessment and plan development cannot exceed six (6) hours per year. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**731. SERVICE COORDINATION: PLAN DEVELOPMENT -- WRITTEN PLAN.**

The service coordination plan is developed using information collected through the assessment of the participant's service coordination needs. The plan must specify the goals and actions to address the service coordination needs of the participant identified in the assessment process. The plan must include goals developed using the person-centered planning process. (5-8-09)

**01. Plan Implementation.** The plan must identify activities required to respond to the assessed needs of the participant. (5-8-09)

**02. Plan Content.** Plans must include the following: (5-8-09)

**a.** A list of problems and needs identified during the assessment; (5-8-09)

- b.** Identification of each and any potential risk or substantiation that there are no potential risks. The plan must identify services and actions that will be implemented in case of a participant crisis situation. (5-8-09)
  - c.** Concrete, measurable goals and objectives to be achieved by the participant; (5-8-09)
  - d.** Reference to all services and contributions provided by the participant's supports including the actions, if any, taken by the service coordinator to develop the support system; (5-8-09)
  - e.** Documentation of who has been involved in the service planning, including the participant's involvement; (5-8-09)
  - f.** Schedules for service coordination monitoring, progress review, and reassessment; (5-8-09)
  - g.** Documentation of unmet needs and service gaps including goals to address these needs or gaps; (5-8-09)
  - h.** References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery; and (5-8-09)
  - i.** Time frames for achievement of the goals and objectives. (5-8-09)
- 03. Adult Developmental Disability Service Coordination Plan.** The plan for adults with developmental disabilities must comply with and be incorporated into the participant's developmental disability plan of service identified in Section 513 of these rules. ~~(5-8-09)~~ ( )

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-1501

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| <b>Monday, October 19, 2015<br/>10:00 a.m. (MDT)</b>   | <b>Monday, October 19, 2015<br/>2:00 p.m. (MDT)</b>  | <b>Tuesday, October 20, 2015<br/>1:30 p.m. (PDT)</b>   |
|--|--|--|
| <b>Medicaid Central Office<br/>3232 W. Elder Street<br/>Conference Room D -- West/East<br/>Boise, ID</b> | <b>Medicaid Region VII Office<br/>150 Shoup Ave., Suite 20<br/>Large Conference Room<br/>Idaho Falls, ID</b> | <b>Medicaid Region II Office<br/>1118 "F" Street<br/>2nd Floor Conference Room<br/>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:

These rule changes are needed to align with and implement new requirements in federal regulations that went into effect March 17, 2014, for Idaho's Home and Community Based Services (HCBS) offered through the State Plan, and under the authority of the HCBS 1915(c) waiver and the 1915(i) State Plan Option. The purpose of the regulations is to enhance participants' opportunities to receive services in the most appropriate integrated settings, and to increase their opportunities for choice and access to the benefits of community living.

New rules pertaining to Home and Community Based Services will be added to ensure that participants receiving HCBS services live in and receive services in settings that comply with required qualities of settings, service delivery methods, and person-centered planning processes.

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

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

This rulemaking has no fiscal impact to the state general fund. This rulemaking is intended to be cost-neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 47-48](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stephanie Perry at (208) 364-1878.

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 28, 2015.



DATED this 31st Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0313-1501  
(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

**01. Circle of Supports.** People who encourage and care about the participant and provide unpaid supports. (3-30-07)

**02. Community Support Worker.** An individual, agency, or vendor selected and paid by the participant to provide community support worker services. (3-30-07)

**03. Community Support Worker Services.** Community support worker services are those identified supports listed in Section 110 of these rules. (3-30-07)

**04. Consumer-Directed Community Supports (CDCS).** For the purposes of this chapter, consumer-directed supports include Self-Directed Community Supports (SDCS) and Family-Directed Community Supports (FDCS). (7-1-11)

**05. Family-Directed Community Supports (FDCS).** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver and the Children's Home and Community Based Services State Plan Option described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**06. Financial Management Services (FMS).** Services provided by a fiscal employer agent that include: (3-29-10)

**a.** Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (3-30-07)

**b.** Performing payroll services; and (3-30-07)

**c.** Handling billing and employment related documentation responsibilities. (3-30-07)

**07. Fiscal Employer Agent (FEA).** An agency that provides financial management services to participants who have chosen the CDCS option. The fiscal employer agent (FEA) is selected by the participant. The duties of the FEA are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). (7-1-11)

**08. Goods.** Tangible products or merchandise that are authorized on the support and spending plan. (3-30-07)

**09. Guiding Principles for the CDCS Option.** Consumer-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles: (7-1-11)

- a. Freedom for the participant to make choices and plan his own life; (3-30-07)
- b. Authority for the participant to control resources allocated to him to acquire needed supports; (3-30-07)
- c. Opportunity for the participant to choose his own supports; (3-30-07)
- d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and (3-30-07)
- e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. (3-30-07)

**10. Home and Community Based Services (HCBS). HCBS are those long-term services and supports available to assist eligible older adults and people with disabilities to remain in their home and community. ( )**

**101. Participant.** A person eligible for and enrolled in the Consumer-Directed Services Programs. (7-1-11)

**102. Readiness Review.** A review conducted by the Department to ensure that each fiscal employer agent is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (3-29-10)

**103. Self-Directed Community Supports (SDCS).** A program option for adults eligible for the Adult Developmental Disabilities (DD) Waiver described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**104. Support and Spending Plan.** A support and spending plan is a document that functions as a participant's plan of care when the participant is eligible for and has chosen a consumer-directed service option. This document identifies the goods or services, or both, selected by a participant, including those goods, services, and supports available outside of Medicaid-funded services that can help the participant meet desired goals, and the cost of each of the identified goods and services. The participant uses this document to manage his individualized budget. (3-29-12)

**105. Supports.** Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (3-30-07)

**106. Support Broker.** An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker Services. (3-30-07)

**107. Support Broker Services.** Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)

**108. Traditional Adult DD Waiver Services.** A program option for participants eligible for the Adult Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**109. Traditional Children's DD Waiver Services.** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**1020. Traditional Children's HCBS State Plan Option Services.** A program option for children eligible for the Children's Home and Community-Based Services (HCBS) State Plan Option consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

~~201.~~ **Waiver Services.** A collective term that refers to services provided under a Medicaid Waiver program. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. ELIGIBILITY.**

**01. Determination of Medicaid and Home and Community Based Services - DD Requirements.** In order to choose the CDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing DD waiver programs or HCBS State Plan Option requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-11)

**02. Participant Agreement Form.** The participant, and his legal representative, if one exists, must agree in writing using a Department-approved form to the following: (3-30-07)

**a.** Accept the guiding principles for the CDCS option, as defined in Section 010 of these rules; (7-1-11)

**b.** Agree to meet the participant responsibilities outlined in Section 120 of these rules; (3-30-07)

**c.** Take responsibility for and accept potential risks, and any resulting consequences, for their support choices: ~~and~~ (3-30-07) ( )

**d.** Acknowledge and follow the rules in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 310 through 316. ( )

**03. Legal Representative Agreement.** The participant's legal representative, if one exists, must agree in writing to honor the choices of the participant as required by the guiding principles for the CDCS option. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. PARTICIPANT RESPONSIBILITIES.**

With the assistance of the support broker and the legal representative, if one exists, the participant is responsible for the following: (3-30-07)

**01. Guiding Principles.** Accepting and honoring the guiding principles for the CDCS option found in Section 010 of these rules. (7-1-11)

**02. Person-Centered Planning.** ~~Participating in~~ Directing the person-centered planning process in order to identify and document paid and unpaid support and service needs, wants, and preferences. (3-29-12) ( )

**03. Rates.** Negotiating payment rates for all paid community supports he wants to purchase, ensuring rates negotiated for supports and services do not exceed the prevailing market rate, and that are cost-effective when comparing them to reasonable alternatives, and including the details in the employment agreements. (3-29-12)

**04. Agreements.** Completing and implementing agreements for the fiscal employer agent, the support broker and community support workers and submitting the agreements to the fiscal employer agent. These agreements must be submitted on Department-approved forms. (3-30-07)

**05. Agreement Detail.** Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the

qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third party; employees are under the direction and control of the participant; services must be delivered consistent with the rules in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 310 through 316; and no employer-related claims will be filed against the Department. (3-30-07)( )

**06. Plan.** Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

**07. Time Sheets and Invoices.** Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the timesheet or invoice. (3-29-10)

**08. Quality Assurance and Improvement.** Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his workers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. SUPPORT BROKER DUTIES AND RESPONSIBILITIES.**

**01. Support Broker Initial Documentation.** Prior to beginning employment for the participant, the support broker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. This packet must include documentation of: (3-30-07)

**a.** Support broker application approval by the Department; (3-30-07)

**b.** A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-30-07)

**c.** A completed employment agreement with the participant that identifies the specific tasks and services that are required of the support broker. The employment agreement must include the negotiated hourly rate for the support broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for support broker services established by the Department. (3-30-07)

**02. Required Support Broker Duties.** Support broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the support broker must: (3-30-07)

**a.** Participate in Assist in facilitating the person-centered planning process as directed by the participant and consistent with the rules in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 315 and 316; (3-30-07)( )

**b.** Develop a written support and spending plan with the participant that includes the paid and unpaid supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; (3-29-12)

**c.** Assist the participant to monitor and review his budget; (3-30-07)

**d.** Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (3-30-07)

**e.** Participate with Department quality assurance measures, as requested; (3-30-07)

**f.** Assist the participant to complete the annual re-determination process as needed, including

updating the support and spending plan and submitting it to the Department for authorization; (3-30-07)

**g.** Assist the participant, as needed, to meet the participant responsibilities outlined in Section 120 of these rules and assist the participant, as needed, to protect his own health and safety; (7-1-11)

**h.** Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and how health and safety will be protected; and (7-1-11)

**i.** Assist children enrolled in the Family-Directed Community Supports (FDCS) Option as they transition to adult DD services. (7-1-11)

**j.** Sign the written support and spending plan as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 316. ( )

**03. Additional Support Broker Duties.** In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: (3-30-07)

**a.** Assist the participant to develop and maintain a circle of support; (3-30-07)

**b.** Help the participant learn and implement the skills needed to recruit, hire, and monitor community supports; (3-30-07)

**c.** Assist the participant to negotiate rates for paid community support workers; (3-30-07)

**d.** Maintain documentation of supports provided by each community support worker and participant's satisfaction with these supports; (3-30-07)

**e.** Assist the participant to monitor community supports; (3-30-07)

**f.** Assist the participant to resolve employment-related problems; *and* ~~(3-30-07)~~( )

**g.** Assist the participant to identify and develop community resources to meet specific needs; *and* ~~(3-30-07)~~( )

**h.** Assist the participant in distributing the support and spending plan to community support workers or vendors as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 316. ( )

**04. Termination of Support Broker Services.** If a support broker decides to end services with a participant, he must give the participant at least thirty (30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. SUPPORT AND SPENDING PLAN DEVELOPMENT.**

**01. Support and Spending Plan Requirements.** The participant, with the help of his support broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department and must include the following: (3-30-07)

- a.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (3-30-07)
- b.** Paid or non-paid consumer-directed community supports that focus on the participant's wants, needs, and goals in the following areas: (7-1-11)
- i.** Personal health and safety including quality of life preferences; (3-30-07)
  - ii.** Securing and maintaining employment; (3-30-07)
  - iii.** Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (3-30-07)
  - iv.** Learning and practicing ways to recognize and minimize interfering behaviors; and (3-30-07)
  - v.** Learning new skills or improving existing ones to accomplish set goals. (3-30-07)
- c.** Support needs such as: (3-30-07)
- i.** Medical care and medicine; (3-30-07)
  - ii.** Skilled care including therapies or nursing needs; (3-30-07)
  - iii.** Community involvement; (3-30-07)
  - iv.** Preferred living arrangements including possible roommate(s); and (3-30-07)
  - v.** Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (3-30-07)
- d.** Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (3-30-07)
- e.** Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; ~~and~~ ~~(3-30-07)~~( )
- f.** The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment; ~~and~~ ~~(3-30-07)~~( )
- g.** Additional HCBS person-centered plan requirements as defined in IDAPA 16.03.10. "Medicaid Enhanced Plan Benefits." Sections 315 and 316. ( )

**02. Support and Spending Plan Limitations.** Support and spending plan limitations include: (3-30-07)

- a.** Traditional Medicaid waiver and traditional rehabilitative or habilitative services must not be purchased under the CDCS option. Because a participant cannot receive these traditional services and consumer-directed services at the same time, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when moving between traditional services and the CDCS option; (7-1-11)

b. Paid community supports must not be provided in a group setting with recipients of traditional Medicaid waiver, rehabilitative or habilitative services. This limitation does not preclude a participant who has selected the consumer-directed option from choosing to live with recipients of traditional Medicaid services; (7-1-11)

c. All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. The support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; (3-29-12)

d. Support and spending plans that exceed the approved budget amount will not be authorized; and (3-30-07)

e. Time sheets or invoices that are submitted to the fiscal employer agent for payment that exceed the authorized support and spending plan amount will not be paid by the fiscal employer agent. (3-30-07)

**161. -- 169. (RESERVED)**

**170. PERSON-CENTERED PLANNING.**

**01. Participation in Direction of the Person-Centered Planning Process.** The participant agrees to ~~participate in~~ direct the person-centered planning process in order to identify and document his support and service needs, wants, and preferences. (~~3-30-07~~)(    )

**02. Participant Choice.** The participant decides who he wants to participate in the planning sessions in order to ensure the participant's choices are honored and promoted. (3-30-07)

**03. Facilitation of Person-Centered Planning Meetings.** The participant may ~~direct~~ facilitate his person-centered planning meetings, or these meetings may be facilitated by the chosen support broker. (~~3-30-07~~)(    )

**04. Focus of Person-Centered Planning.** The person-centered planning should focus on identifying strengths, capacities, preferences, needs, and desired goals of the participant for all life areas. (3-30-07)

**05. Timeframes of Person-Centered Planning.** The person-centered planning should be completed as timely as possible in order to provide the necessary information required to develop the participant's support and spending plan. Time limitations are not currently mandated in order to allow for extensive, comprehensive planning and thoughtful support and spending plan development. (3-30-07)

**06. HCBS Person-Centered Planning Requirements.** The person-centered planning process must meet all HCBS requirements as defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 315.(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. QUALITY ASSURANCE.**

The Department will implement quality assurance processes to assure: access to consumer-directed services, participant direction of plans and services, participant choice and direction of providers, safe and effective environments, and participant satisfaction with services and outcomes. (7-1-11)

**01. Participant Experience Survey (PES).** Each participant will have the opportunity to provide feedback to the Department about his satisfaction with consumer-directed services utilizing the PES. (7-1-11)

**02. Participant Experience Outcomes.** Participant experience information will be gathered at least annually in an interview by the Department, and will address the following participant outcomes: (3-30-07)

a. Access to care; (3-30-07)

- b. Choice and control; (3-30-07)
- c. Respect and dignity; (3-30-07)
- d. Community integration; and (3-30-07)
- e. Inclusion. (3-30-07)

**03. Fiscal Employer Agent Quality Assurance Activities.** The fiscal employer agent must participate in quality assurance activities identified by the Department such as readiness reviews, periodic audits, maintaining a list of criminal history check waivers, and timely reporting of accounting and satisfaction data. (3-30-07)

**04. Community Support Workers and Support Brokers Quality Assurance Activities.** Community support workers and support brokers must participate and comply with quality assurance activities identified by the Department including performance evaluations, satisfaction surveys, quarterly review of services provided by a legal guardian, if applicable, and spot audits of time sheets and billing records. (3-30-07)

**05. Participant Choice of Paid Community Support Worker.** Paid community support workers must be selected by the participant, or his chosen representative, and must meet the qualifications identified in Section 150 of this rule. (3-30-07)

**06. Complaint Reporting and Tracking Process.** The Department will maintain a complaint reporting and tracking process to ensure participants, workers, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. (3-30-07)

**07. Quality Oversight Committee.** A Quality Oversight Committee consisting of participants, family members, community providers, and Department designees will review information and data collected from the quality assurance processes to formulate recommendations for program improvement. (3-30-07)

**08. Quarterly Quality Assurance Reviews.** On a quarterly basis, the Department will perform an enhanced review of services for those participants who have waived the criminal history check requirement for a community support worker or who have their legal guardian providing paid services. These reviews will assess ongoing participant health and safety and compliance with the approved support and spending plan. (3-30-07)

**09. Home and Community Based Service Specific Reviews.** The Department will implement quality assurance and improvement activities to ensure compliance with the rules in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 310 through 316. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: CONSUMER-DIRECTED COMMUNITY SUPPORTS.**

**01. Federal Tax ID Requirement.** The fiscal employer agent must obtain a separate Federal Employer Identification Number (FEIN) specifically to file tax forms and to make tax payments on behalf of program participants under Section 3504 of the Internal Revenue Code (26 USC 3504). In addition, the provider must: (3-29-10)

**a.** Maintain copies of the participant's FEIN, IRS FEIN notification letter, and Form SS-4 Request for FEIN in the participant's file. (3-29-10)

**b.** Retire participant's FEIN when the participant is no longer an employer under consumer-directed community supports (CDCS). (7-1-11)



**02. Requirement to Report Irregular Activities or Practices.** The provider must report to the Department any facts regarding irregular activities or practices that may conflict with federal or state rules and regulations; (3-29-10)

**03. Procedures Restricting FMS to Adult and Children's DD Waiver and Children's HCBS State Plan Option Participants.** The provider must not act as a fiscal employer agent and provide fiscal management services to a DD waiver or Children's HCBS State Plan Option participant for whom it also provides any other services funded by the Department. (7-1-11)

**04. Policies and Procedures.** The provider must maintain a current manual containing comprehensive policies and procedures. The provider must submit the manual and any updates to the Department for approval. (3-29-10)

**05. Key Contact Person.** The provider must provide a key contact person and at least (2) two other people for backup who are responsible for answering calls and responding to e-mails from Department staff and ensure these individuals respond to the Department within one (1) business day. (3-29-10)

**06. Face-to-Face Transitional Participant Enrollment.** The provider must conduct face-to-face transitional participant enrollment sessions in group settings or with individual participants in their homes or other designated locations. The provider must work with the regional Department staff to coordinate and conduct enrollment sessions. (3-29-10)

**07. SFTP Site.** The provider must provide an SFTP site for the Department to access. The site must have the capability of allowing participants and their employees to access individual specific information such as time cards and account statements. The site must be user name and password protected. The provider must have the site accessible to the Department upon commencement of the readiness review. (3-29-10)

**08. Required IRS Forms.** The provider must prepare, submit, and revoke the following IRS forms in accordance with IRS requirements and must maintain relevant documentation in each participant's file including: (3-29-10)

- a. IRS Form 2678; (3-29-10)
- b. IRS Approval Letter; (3-29-10)
- c. IRS Form 2678 revocation process; (3-29-10)
- d. Initial IRS Form 2848; and (3-29-10)
- e. Renewal IRS Form 2848. (3-29-10)

**09. Requirement to Obtain Power of Attorney.** The provider must obtain an Idaho State Tax Commission Power of Attorney (Form TC00110) from each participant it represents and must maintain the relevant documentation in each participant's file. (3-29-10)

**10. Requirement to Revoke Power of Attorney.** The provider must revoke the Idaho State Tax Commission Power of Attorney (Form TC00110) when the provider no longer represents the participant and must maintain the relevant documentation in the participant's file. (3-29-10)

**11. Home and Community Based Person-Centered Service Plan Requirements.** The provider must sign the written support and spending plan as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 316. ( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.02 - IDAHO TELECOMMUNICATION SERVICE ASSISTANCE PROGRAM RULES

DOCKET NO. 16-0402-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-901, Idaho Code, and 47 CFR Sections 54.101 through 54.422.

**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 21, 2015.

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

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

This rule change is needed to align these rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Telecommunication Service Assistance Program in Idaho. These rules remove outdated information, and update definitions to reflect current practices.

**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:

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and aligns rules with federal limits.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sara Herring at (208) 334-5752.

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 28, 2015.

DATED this 28th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0402-1501  
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

**01. Assistance Rate Discount.** A monthly discount to eligible “lifeline” subscribers for basic local service under the Idaho Telecommunication Service Assistance Program (ITSAP) authorized in Sections 56-901 through 56-904, and 62-610, Idaho Code. (4-4-13)

~~02. **Community Action Agency.** A private, non profit organization serving the low income population in specified counties of the state which meet the requirements to be designated as a community action agency according to the Community Services Block Grant Act, and has entered into a contract with the Idaho Department of Health and Welfare for the provision of ITSAP services. (4-4-13)~~

~~032. **Department.** The Idaho Department of Health and Welfare or its designee. (3-5-91)( )~~

**043. Eligibility Application.** The current Participant Assessment Application form or the Application for Assistance (AFA) form. (7-1-99)

**054. Eligible Basic Local Service.** A single telecommunication service at the eligible subscriber household. (3-20-14)

**065. Federal Poverty Guidelines (FPG).** The poverty guidelines issued annually by the Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services at <http://aspe.hhs.gov/poverty>. (4-4-13)

**076. Head of Household.** The adult member of a household responsible for payment of at least fifty percent (50%) of the cost of the basic local service. (4-4-13)

**087. Household.** A household is either an individual living alone or a group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen (18) years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him, both people shall be considered part of the same household. Children under the age of eighteen (18) living with their parents or guardians are considered to be part of the same household as their parents or guardians. (4-4-13)

~~098. **Income.** Income is the gross amount of money actually received in the recipients household from all sources. (4-4-13)~~

~~109. **ITSAP.** Idaho Telecommunication Service Assistance Program. (4-4-13)~~

~~110. **Lifeline.** ITSAP component that provides a monthly discount rate to eligible subscribers on their basic local service costs. (4-4-13)~~

~~121. **Provider.** The eligible telecommunication carrier providing basic local service to Idaho residents. (4-4-13)~~

~~132. **Recipient.** A person who is determined eligible for ITSAP. (4-4-13)~~

**143. Subscriber.** A person applying for basic local service or, in whose name the basic local service is listed. The subscriber does not need to be the head of the household. (4-4-13)

011. -- 099. (RESERVED)

**100. ASSISTANCE ELIGIBILITY REQUIREMENTS.**

**01. Head of Household.** A recipient must be the head of the household. (4-4-13)

**02. Application.** A person must complete an application ~~with the Department or Community Action Agency~~ on behalf of ~~his~~ the household, listing all members. The application may be completed by a person other than the head of the household. ~~(7-1-99)~~ ( )

**03. Income Limit.** The household's gross income must be at or below one hundred and thirty-five percent (135%) of the Federal Poverty Guideline (FPG). Households receiving any type of state or federal assistance with income limits at or below one hundred and thirty-five percent (135%) of the FPG are income eligible for ITSAP. (4-4-13)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.13 - RULES GOVERNING THE EMERGENCY FOOD ASSISTANCE PROGRAM

DOCKET NO. 16-0413-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code, and Sections 201 through 212 of Public Law 98-8 as amended.

**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 21, 2015.

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

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

This rule change is needed to align these rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Emergency Food Assistance Program in Idaho. These rules remove outdated information and update definitions and references to reflect current practices.

**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:

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and aligns rules with federal limits.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sara Herring at (208) 334-5752.

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 28, 2015.

DATED this 28th Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0413-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. DEFINITIONS.**

For the purpose of these rules the following terms are used, as defined herein: (9-1-85)

**01. Allocation.** The state of Idaho's share of the Emergency Food Assistance Program monies as determined by the funding formula contained in 7 CFR 250, 251, the Emergency Food Assistance Program. (10-1-94)

**02. Applicant Household.** A household which has made application to receive USDA surplus commodities and has not been determined an eligible recipient. (4-5-00)

**03. Application.** The action by which a household completes in writing an application form to be considered for receipt of USDA surplus commodities. (10-1-94)

**04. Commodities.** Surplus and purchased food items made available by the Commodity Credit Corporation for distribution to low-income households. (10-1-94)

**05. Community Action Agency.** A private non-profit organization serving the low-income population in specified counties of the state ~~with which the Department has entered into a contract for the provision of services for purposes of TEFAP~~ which has been designated as an eligible entity according to the Community Services Block Grant Act 42 USC 9901 et seq. (4-5-00)( )

**06. Community Action Program.** A program of services offered by an office or offices for the Community Action Agency. (9-1-85)

**07. Department.** The Idaho Department of Health and Welfare or its designee. (12-31-91)( )

**08. Eligible Entities.** Agencies eligible to administer the TEFAP at the local level who have entered into a contract with the Department and include the following: (4-5-00)

**a.** Community Action Agencies; (9-1-85)

**b.** Community Action Programs operating programs funded under the Community Services Block Grant Act; (9-1-85)

**c.** Other incorporated non-profit agencies; (4-5-00)

**d.** Government agencies; or (4-5-00)

**e.** Disaster Relief Programs. (4-5-00)

**09. Eligible Household.** A household which meets the standard of eligibility set forth in these rules. (9-1-85)

**10. Emergency Feeding Organization (EFO).** Organizations who have entered into an agreement with an eligible entity for the purposes of distributing USDA Commodities. (4-5-00)

**11. Household.** A household is one (1) of the following: (4-5-00)

**a.** An individual living alone; or (9-1-85)

**b.** A group of individuals living together in common living quarters who share the cost and preparation of meals. (9-1-85)

- 12. Income.** Total household income. (4-5-00)
- 13. Earnings from Self-Employment.** Earnings from self-employment include net income plus any depreciation and depletion previously deducted as expenses. This includes farm or business income. (4-5-00)
- 14. Poverty Guideline.** The official poverty guideline established by the Secretary of Health and Human Services in accordance with the Omnibus Reconciliation Act, Section 673(2). (10-1-94)
- 15. Program Year.** October 1st through September 30th. (2-11-88)
- 16. Proof of Income.** Written self-declaration of total household income. (4-5-00)
- 17. Service Area.** The state of Idaho is divided into the following seven (7) service areas for the purpose of fund distribution: (9-1-85)
- a.** Region I -- Kootenai County, Shoshone County, Benewah County, Bonner County, and Boundary County. (9-1-85)
  - b.** Region II -- Nez Perce County, Clearwater County, Idaho County, Latah County, and Lewis County. (9-1-85)
  - c.** Region III -- Canyon County, Adams County, Gem County, Payette County, Washington County, Valley County, and Boise County. (9-1-85)
  - d.** Region IV -- Ada County, Elmore County, and Owyhee County. (9-1-85)
  - e.** Region V -- Twin Falls County, Blaine County, Cassia County, Gooding County, Camas County, Jerome County, Lincoln County, and Minidoka County. (9-1-85)
  - f.** Region VI -- Bannock County, Bear Lake County, Bingham County, Caribou County, Franklin County, Oneida County, and Power County. (9-1-85)
  - g.** Region VII -- Bonneville County, Butte County, Clark County, Fremont County, Jefferson County, Lemhi County, Madison County, and Teton County. (9-1-85)
- 18. State Distribution Rate.** The amount of commodities an eligible household can receive based on the number of persons in their household. (9-1-85)

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. CASE RECORD.**

The [CAA Department](#) will maintain accurate and complete records on a household's participation. This record must be kept [in a permanent CAA file](#) for a period of at least three (3) years. (~~4-5-00~~) ( )

**007. APPLICANT RIGHTS.**

Households applying for TEFAP surplus commodities have certain rights. These rights include, but are not limited to, the following: (9-1-85)

**01. Right to Apply.** Any household wishing to apply must be given the opportunity to apply for TEFAP surplus commodities. All applications must be in writing on forms prescribed by DHW. (9-1-85)

**02. Civil Rights.** The rights of applicant households must be respected under the U.S. and Idaho Constitutions, the Social Security Act, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant provisions of federal and state law, including the avoidance of practices which violate a person's privacy or subject him to harassment. (~~9-1-85~~) ( )

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-1501

#### 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 Low-Income Home Energy Assistance Act of 1981, 42 U.S.C Sections 8621 to 8629, and by provisions of Section 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 21, 2015.

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

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

This rule change is needed to align these rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Low Income Home Energy Assistance Program in Idaho. These rules remove outdated information, update definitions and references to reflect current practices.

**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:

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and aligns rules with federal limits.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sara Herring at (208) 334-5752.

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 28, 2015.

DATED this 28th Day of August, 2015.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5564; Fax: (208) 334-6558  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0414-1501  
(Only Those Sections With Amendments Are Shown.)

**004. INCORPORATION BY REFERENCE.**

~~The following document is incorporated by reference in this chapter of rule: Low Income Home Energy Assistance Program (LIHEAP) Intake Manual, 2006. The manual is available on the Internet at <http://www.healthandwelfare.idaho.gov/>. The manual is also available at the mailing address listed in Section 005 of this rule, and at Community Action Agencies.~~ **No documents are incorporated by reference into this chapter of rules.** (3-30-07)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

~~Definitions applicable to~~ **For purposes of** this chapter of rules, **the following terms apply.** (3-30-07)(    )

~~**01. Community Action Agency.** A private non-profit organization serving the low income population in specified counties of the state with which the Department has entered into a contract for the provision of services for purposes of LIHEAP.~~ (3-30-07)

**021. Crisis Assistance.** Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. (3-30-07)

~~**032. Department.** The Department of Health and Welfare or its designee.~~ (3-30-07)

**043. Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services website at: <http://aspe.hhs.gov/poverty/>. (3-29-12)

~~**054. Fraud.** Recipient fraud is indicated where there appears to be a deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts.~~ (7-1-99)

**065. Head of Participant Household.** The person designated by the household members to receive energy assistance benefit in behalf of the household and in whose favor the energy assistance warrant is written. (7-1-99)

~~**076. Income.** Income is the gross amount of moneys actually received in the participant household from all sources.~~ (4-5-00)

~~**087. Intake Manual.** Manual used by ~~community action agencies~~ **the Department** for procedural policy and benefit calculation factors, ~~which is published annually by the Department.~~ (3-30-07)(    )~~

~~**098. Participant.** An individual or group of individuals who has made application for the Low Income Home Energy Assistance Program from the state of Idaho.~~ (3-30-07)

~~**109. Participant Household.** A participant household is one (1) of the following:~~ (3-30-07)

**a.** An individual who lives alone; or (3-30-07)

**b.** A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or they make undesignated payments for energy in the form of rent. (3-30-07)

~~170.~~ **Primary Fuel.** The type of fuel declared by the participant household to be the major source of their home heating. (7-1-99)

~~121.~~ **Undocumented Resident.** Individuals who enter the United States illegally and who have not obtained legal resident status. (3-30-07)

~~132.~~ **Vendor.** A utility company or other provider of fuel utilized for home heating. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. PARTICIPANT RIGHTS.**

The participant has rights protected by federal and state laws and Department rules. The Department *or their designee* must inform the participant of their rights during the application process and eligibility determination, as follows: (7-1-99)(    )

**01. Right to Apply.** Any participant household wishing to apply must be given the opportunity, without delay, to apply for LIHEAP benefits. All participants must apply in writing. (7-1-99)

**02. Right to a Hearing.** Rules governing hearing rights are contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-01)

**03. Civil Rights.** The rights of participant households must be respected under the U.S. and Idaho Constitutions, the Social Security Act, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant provisions of federal and state law, including the avoidance of practices which violate a person's privacy or subjection to harassment. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. INTAKE PROCESS.**

Low-income participants *may* **must** complete an application for LIHEAP benefits *at a CAA and submit the application to the Department*. The *CAA will submit the* participant's household information contained on the application *will be entered in* to the Department's on-line computer system for issuance of eligibility notification. (7-1-99)(    )

**201. APPLICATION PROCESS.**

A participant must be provided a prompt opportunity to complete an application for assistance. Application forms must contain a statement which clearly explains participant's civil and criminal liability for the truthfulness of the information included on the forms; and their right to a hearing according to Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." (7-1-99)

**01. Date of Application.** The participant application process begins the date the completed and signed application and all supporting forms are received by the *CAA Department*. (7-1-99)(    )

**02. Participant Representation.** A participant household may be assisted by a person or persons of their choice and, when accompanied by such persons, may be represented by them. (7-1-99)

**03. Signature.** The application must be signed by the participant designated at the head of household, or their designee. (7-1-99)

**a.** Applications signed by a designee must have a letter of authorization or power of attorney from the participant included in the file. (3-15-02)

b. Employees of the ~~C&A~~ or the Department must not be designated to sign the application. (7-1-99)( )

**04. Signature by Mark.** A signature by mark requires two (2) witnesses. The signatures and addresses of the witnesses must appear on the application, followed by the word “witness.” (7-1-99)

**05. Assistance with Application.** When completing the application forms or obtaining required documentation, each participant must be provided assistance from the ~~C&A~~ Department, including the provision for interpreters for participant households with limited or non-English speaking skills. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. BENEFIT DETERMINATION.**

Eligible participant households will have their LIHEAP benefit determined as follows: (3-20-04)

**01. Actual Consumption Method.** The actual consumption method is used if the eligible participant household heats its residence with either natural gas or electricity and has resided in the residence for one (1) year or longer. Household benefit is calculated by multiplying the energy consumption cost by an annual benefit calculation factor. Annual minimum and maximum benefits per household are published each year in the Intake Manual used for LIHEAP. (3-20-04)

**02. Average Annual Cost Method.** The average annual cost method is used when the eligible participant household’s actual consumption cost is unknown, or it uses a heating source other than electricity or natural gas. Average cost is determined by information provided by energy suppliers throughout the state and is published as the Annual Heating Cost Chart which is available from the Department of Health and Welfare. The average cost is specific to county of residence and the household’s heating source. Household benefit is calculated by multiplying the Average Annual Cost by an annual benefit calculation factor. (3-20-04)

**03. Annual Benefit Calculation Factor.** Annual benefit calculation factors are determined each year based on the amount of federal funding for the upcoming program year. The particular factor used for a household’s benefit calculation is determined by the household’s energy cost burden (high, medium or low) expressed as a percentage of annualized income. A heating burden of zero percent (0%) to five percent (5%) is low, six percent (6%) to ten percent (10%) is medium, and eleven percent (11%) or greater is high. Benefit calculation methodology and the current benefit calculation factors are published in the Intake Manual used for LIHEAP, available at the Department ~~or on its website, and at community action agencies.~~ (3-30-07)( )

**04. Adjusting LIHEAP Benefit.** Households containing at least one (1) of the following may be eligible for an adjusted benefit. The adjusted benefit amounts and eligibility levels will be published annually in the Intake Manual used for LIHEAP, available at the Department ~~or on its website, and at community action agencies.~~ (3-30-07)( )

a. Child under six (6) years of age. (4-5-00)

b. Individual with disabilities as declared on the LIHEAP application form. (4-5-00)

c. Individual sixty (60) years of age or older. (4-5-00)

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

**16.04.16 - WEATHERIZATION ASSISTANCE PROGRAM IN IDAHO**

**DOCKET NO. 16-0416-1501**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code; also to Part A of the Weatherization Assistance for Low-Income Persons, 42 U.S.C. 6861-6872, and the Department of Energy Organization Act, 42 U.S.C. 7101.

**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 21, 2015.

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

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

This rule change is needed to align these rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Weatherization Assistance Program in Idaho. These rules remove outdated information, update definitions and reference to reflect current practices.

**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:

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature and aligns rules with federal limits.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sara Herring at (208) 334-5752.

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 28, 2015.

DATED this 28th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0416-1501  
(Only Those Sections With Amendments Are Shown.)

**010. DEFINITIONS AND ABBREVIATIONS.**

For purposes of this chapter of rules, the following terms and abbreviations ~~are used as defined apply.~~ (5-8-09) ( )

~~01. Community Action Agency (CAA). A private corporation or public agency established according to the Economic Opportunity Act of 1964, 42 USC 2701, et seq., which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance, and oversee anti-poverty programs.~~ (5-8-09)

**021. Contractor.** A weatherization project entity at the sub-state level which receives a contract from the Department to carry out activities of this program. (5-8-09)

~~032. Cosmetic Items.~~ Items which, when installed, will not reduce energy costs in a cost effective manner, such as finishes, decorative materials, elevation materials, aluminum siding, board and bat, clapboard, brick, shakes, or asphalt siding. (5-8-09)

~~043. Department.~~ The Idaho Department of Health and Welfare or its designee. (5-8-09)

~~054. DOE.~~ The U.S. Department of Energy. (5-8-09)

**065. Dwelling Unit.** A house, including a stationary mobile home, an apartment, a group of rooms or a single room occupied as separate living quarters. (5-8-09)

a. Rental Dwelling Unit. A dwelling unit occupied by a person who pays rent for use of the dwelling unit. (5-8-09)

b. Single-Family Dwelling Unit. A structure containing no more than one (1) dwelling unit. (5-8-09)

~~076. Elderly Person.~~ A person who is sixty (60) years of age or older. (5-8-09)

~~087. EPA.~~ The U.S. Environmental Protection Agency. (5-8-09)

~~098. Family Unit.~~ All persons living together in a dwelling unit. (5-8-09)

~~109. Grantee.~~ The Idaho Department of Health and Welfare. (5-8-09)

~~110. Household.~~ All persons living together in a dwelling unit. (5-8-09)

**121. Heating or Cooling Sources.** A device which raises or lowers the temperature within a dwelling unit that is part of the permanent heating, ventilating and air-conditioning system installed in the dwelling unit. Examples of a heating or cooling system are: furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air-conditioners, fans, or solar devices. (5-8-09)

~~132. Low-Income.~~ Income as it relates to family size which is: (5-8-09)

a. Determined using criteria established by the Director of the Office of Management and Budget, unless a higher level has been established by the Secretary and is necessary to carry out the purpose of this part and is consistent with the eligibility criteria established for the weatherization program under Section 222(a)(12) of the Economic Opportunity Act of 1964; (3-29-10)

b. The basis on which cash assistance payments have been paid during the preceding twelve (12)

month period under Titles IV and XVI of the Social Security Act, 42 USC 301, or applicable state or local law; or (5-8-09)

c. The basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981. (3-29-10)

~~143.~~ **Mechanical Equipment.** A control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit, and which will permanently be affixed to an existing heating or cooling source, such as flue dampers, clock thermostats, filters, and replacements limit switches. (5-8-09)

~~154.~~ **Occupants.** A single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements. (5-8-09)

~~165.~~ **Persons with Disabilities.** Any individual who is: (5-8-09)

a. Handicapped as defined in Section 7(6) of the Rehabilitation Act of 1973; (5-8-09)

b. Under a disability as defined in Section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in Section 102(7) of the Developmental Disabilities Services and Facilities Construction Act; or (5-8-09)

c. Receiving benefits under Chapter 11 or 15 of Title 38, U.S.C. (5-8-09)

~~176.~~ **Regional Representative.** A Regional Representative of the U.S. Department of Energy. (5-8-09)

~~187.~~ **Secretary.** The Secretary of the U.S. Department of Energy. (5-8-09)

~~198.~~ **Separate Living Quarters.** Living quarters in which the occupants do not live and eat with any other persons in the structure and have direct access from the outside of the building or through a common hall or complete kitchen facilities for the exclusive use of the occupants. The occupants may be related or unrelated persons who share living arrangements, and includes shelters for homeless persons. (5-8-09)

~~2019.~~ **Shelter.** A dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. (5-8-09)

~~210.~~ **Subgrantee.** An entity managing a weatherization project which receives a grant or contract of funds awarded under this program from the Department ~~or CAA.~~ ~~(5-8-09)~~ ( )

~~221.~~ **Weatherization Project.** A project conducted in a single geographical area which undertakes to weatherize dwelling units which are energy inefficient. (5-8-09)

~~232.~~ **Weatherization Materials.** Items used to improve the heating or cooling efficiency of a dwelling unit, such as: (5-8-09)

a. Caulking and weatherstripping of doors and windows; (5-8-09)

b. Furnace efficiency modifications which include replacement burners, furnaces, or boilers or any combination thereof; (5-8-09)

c. Devices for minimizing energy loss through heating system, chimney, or venting devices; (5-8-09)

d. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and (5-8-09)

e. Cooling efficiency modifications that include replacement air conditioners, ventilation equipment, screening and window films, and shading devices. (5-8-09)

**011. -- 049. (RESERVED)**

**050. FEDERAL REQUIREMENTS.**

**01. Record Keeping.** Each subgrantee receiving federal financial assistance under the Weatherization Assistance Program must keep records as required by the DOE, which include the following: (5-8-09)

- a. Records that fully disclose the amount and disposition by subgrantee of the funds received; (5-8-09)
- b. The total cost of a weatherization project; (5-8-09)
- c. The total expenditure to implement the weatherization plan for which such assistance was given or used; (5-8-09)
- d. The source and amount of funds for such project or program not supplied by DOE and corresponding records; (5-8-09)
- e. Documentation of the average costs incurred in weatherization of individual dwelling units; (5-8-09)
- f. Documentation of the average size of the dwelling being weatherized; (5-8-09)
- g. Documentation of the average income of households receiving assistance; and (5-8-09)
- h. Records and documentation DOE finds necessary for an effective audit and performance evaluation as determined by the DOE Financial Assistance Rule, 10 CFR Part 600, and any requirements of 10 CFR Part 440, Direct Final Rule and EPA Title 40 Part 745.86. (5-8-09)( )

~~**02. Reports.** Each subgrantee receiving financial assistance under the Weatherization Assistance Program must provide the Department with: (5-8-09)~~

~~**a.** A monthly program performance report on Form EIA-29A "Low-Income Weatherization Quarterly Report Supplement," and (5-8-09)~~

~~**b.** A monthly financial report on Form EIA-298 "Financial Status Report." (5-8-09)~~

~~**032. Matching Funds.** Financial assistance under the Weatherization Assistance Program will be used to supplement, and not to supplant, local funds, and to the maximum extent practicable as determined by DOE, to increase the amounts of local funds that would be made available in the absence of federal funds provided under the Program. (5-8-09)~~

~~**043. Program Coordination.** To the maximum extent practicable, the use of weatherization assistance must be coordinated with other federal, state, local, or privately funded programs in order to improve energy efficiency and to conserve energy. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. WEATHERIZATION MATERIALS STANDARDS AND ENERGY AUDIT PROCEDURES.**

**01. Approved Weatherization Materials.** Only weatherization materials which meet or exceed standards prescribed in Appendix A to 10 CFR Part 440 may be purchased. However, unlisted materials may be approved by the state upon application from any ~~CAA~~ subgrantee. Such application must be made to DOE by the state. (5-8-09)( )

**02. Cost Effective Materials.** Except for materials to eliminate health and safety hazards allowable under 10 CFR Part 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. (5-8-09)

**03. Energy Audit.** The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to 10 CFR Part 440. (5-8-09)

**301. -- 499. (RESERVED)**

**500. OVERSIGHT, TRAINING, AND TECHNICAL ASSISTANCE.**

**01. Audit Frequency.** The Department will ensure that audits by or on the behalf of subgrantees are conducted ~~with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less frequently than every two (2) years, in accordance with 10 CFR Part 600, and OMB Circular 110, Attachment F, as applicable~~ according to DOE requirements. (5-8-09)( )

**02. Monitoring.** The Department, as grantee for the U.S. Department of Energy Weatherization Assistance Grants, will monitor and evaluate the operation of projects carried out by the subgrantees through on-site inspections and other means to insure the effective provision of weatherization assistance in a nondiscriminatory manner for dwelling units of low-income residents of the State of Idaho. (5-8-09)



# IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

## 17.02.06 - EMPLOYERS' REPORTS

### DOCKET NO. 17-0206-1501

#### 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, 72-432, and 72-602, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Commission intends to proceed with implementation of EDI Claims Release 3.0 ("EDI"), a secured, electronic interchange of documents. EDI would allow the submission of all relative worker's compensation claims information to be reported electronically to the Commission and would alleviate repetitive data entry.

The rule change removes the Summary of Payments ("SOP"), IC Form 6 in rule and directs constituents to the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov) to obtain a similar format for electronic submission of an SOP.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 64](#).

**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 Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000 / Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0206-1501  
(Only Those Sections With Amendments Are Shown.)

021. SUMMARIES OF PAYMENT.

**01. Authority and Definitions.** Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

~~h~~**a.** "Closure," means that the file will be retired following an audit by the Commission. (2-20-95)

~~h~~**b.** "Commission," means the Idaho Industrial Commission. (2-20-95)

~~f~~**c.** "Death claim," means the injured worker died as a result of a work-related injury or occupational disease. (2-20-95)

~~g~~**d.** "Employer" is defined in Section 72-102(11), Idaho Code, and includes agents of employers such as attorneys, sureties, and adjusters. (2-20-95)

~~e~~**e.** "Impairment rated claim," means those claims in which a provider establishes an impairment rating for the injured worker. (2-20-95)

~~f~~**f.** "Medical Only Claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)

~~g~~**g.** "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)

~~h~~**h.** "Termination of disability," means the date upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. (4-11-15)

**02. Summaries Requirement.** A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within one hundred twenty (120) days of termination of disability for all time-loss claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. If all claim information has been provided via Electronic Data Interchange as prescribed by Commission rules, no hard copy summary of payment need be filed. In the case of medical only and related benefits only cases, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any summary of payment filed with the Commission. (~~3-30-07~~)(    )

**03. Form.** ~~The summary of payment forms are available, pre-printed, from the Industrial Commission, which has designated the form as IC Form 6.~~ The summary of payment shall be submitted ~~on eight and one-half by~~

~~eleven inch (8 1/2" X 11") paper in a format substantially similar to the following:~~ in a format substantially similar to IC Form 6, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov).  
(2-20-95)( )

**a.** For death claims:

**SUMMARY OF PAYMENTS**

**FATAL CASE**

Surety No. \_\_\_\_\_ I.C. No. \_\_\_\_\_  
Injured Person: \_\_\_\_\_ Employer: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_ Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Character of Injury: \_\_\_\_\_  
Date of Accident: \_\_\_\_\_ Actual Weekly Wages: \_\_\_\_\_

**DEPENDENTS**

| Name of Dependent | Relationship | Date of Birth<br>(if under 18) |
|-------------------|--------------|--------------------------------|
|-------------------|--------------|--------------------------------|

**AWARDS OF PAYMENTS**

**COMPENSATION**

| Payments % AWSW              | Amount | Weeks | Total | Remarks |
|------------------------------|--------|-------|-------|---------|
| Total Compensation Payments: |        |       |       |         |

**BURIAL AND OTHER EXPENSES**

Payment for funeral expenses \$ \_\_\_\_\_ Payment to hospital(s) \$ \_\_\_\_\_  
Payment to doctor(s) \$ \_\_\_\_\_ Payment for misc. \$ \_\_\_\_\_  
Total Medical Expenses (do not include funeral expenses) \$ \_\_\_\_\_  
COMMENTS:

Claims Examiner \_\_\_\_\_

Date \_\_\_\_\_

**INDUSTRIAL COMMISSION APPROVAL**

APPROVED: \_\_\_\_\_, 20\_\_\_\_

BY: \_\_\_\_\_

(2-20-95)

**b.** For time-loss claims

**SUMMARY OF PAYMENTS**

**TIME LOSS CASE**

Surety No. \_\_\_\_\_ I.C. No. \_\_\_\_\_  
Injured Person: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_ Employer: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Character of Injury: \_\_\_\_\_

*Date of Accident:*  
*Date Able to Resume Work:*  
*Rate:*  
*Actual Time Lost:*  
*Date of First Payment:*

*Actual Weekly Wages:*  
*Compensation*

*Weeks* *Days*

**~~AWARDS OF PAYMENTS~~**

|                                    |              |               |                       |                        |
|------------------------------------|--------------|---------------|-----------------------|------------------------|
| <i>Payments of Compensation</i>    |              | <i>Amount</i> |                       | <i>Type (TT or PP)</i> |
| <i>Begin</i>                       | <i>Weeks</i> | <i>Days</i>   | <i>Return to Work</i> |                        |
| <i>Payment of Medical Benefits</i> |              | <i>Amount</i> |                       |                        |
| <i>Doctor(s)</i>                   |              |               |                       |                        |
| <i>Hospital(s)</i>                 |              |               |                       |                        |
| <i>Physical Therapy</i>            |              |               |                       |                        |
| <i>Mileage</i>                     |              |               |                       |                        |
| <i>Miscellaneous</i>               |              |               |                       |                        |
| <i>Comments:</i>                   |              |               |                       |                        |
| <i>Claims Examiner</i>             |              | <i>Date</i>   |                       |                        |

**~~INDUSTRIAL COMMISSION APPROVAL~~**

~~APPROVED:-~~ \_\_\_\_\_, 20

~~BY:-~~

(2-20-95)

**04. Approval.** Within ninety (90) days of receipt of Summary of Payment as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster that such summary has been approved or shall notify of its inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive either an approval or request for additional information within the ninety (90) day period, the Employer/Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the fifteen (15) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (3-30-07)

**05. Changes in Status.** In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within one hundred twenty (120) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. (4-11-15)

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.07 - PROCEDURES TO OBTAIN COMPENSATION

DOCKET NO. 17-0207-1501

#### 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, 72-432, 72-602, and 67-5229, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Commission intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate repetitive data entry.

The rule amendments would allow the Commission to adopt and incorporate by reference in rule the industry standard of the current International Association of Industrial Accident Boards and Commissions (“IAIABC”) EDI Claims Release 3.0 Implementation Guide, published January 1, 2015 (“EDI Implementation Guide”) and located on the IAIABC website; and Version 1.2 of the Idaho Industrial Commission Claims EDI Implementation Guide and Tables (“EDI Guide and Tables”). Updates to the EDI Guide and Tables would be made available on the IIC website. The rule amendments would further set forth the requirements of sureties to provide information in accordance with EDI reporting standards.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 65](#).

**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 International Association of Industrial Accidents Boards and Commissions (“IAIABC”) provides national standards for EDI Claims Release 3.0. Incorporation by reference is necessary to ensure that state rules are consistent with these national standards by incorporating the IAIABC EDI Claims Release 3.0 Implementation Guide. To clarify which national standards Idaho adopts, the Idaho-specific standards are contained in the Idaho Industrial Commission EDI Claims Implementation Guide and Trading Partner Tables, which is also incorporated by reference. The information for obtaining a copy of the Idaho Industrial Commission EDI Claims Implementation Guide and Trading Partner Tables and the IAIABC EDI Claims Release 3.0 Implementation Guide are included in the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000 / Fax: (208) 334-5145

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0207-1501  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The Idaho Industrial Commission hereby adopts and incorporates by reference the following: ( )

**01. EDI Guide and Tables.** Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables, Version 1.2 (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available at the Commission’s website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide - January 1, 2015 Publication (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 Implementation Guide is available at the IAIABC website at [www.iaiaabc.org](http://www.iaiaabc.org). ( )

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

Idaho Industrial Commission office hours are Monday through Friday, 8:00 am to 5:00 pm. The mailing address for filing documents is: Idaho Industrial Commission, PO BOX 83720, Boise, ID 83720-0041. The Commission’s 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. ( )

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

**010. DEFINITIONS.**

The following definitions shall be applicable to these rules. (7-1-97)

**01. Adjuster.** An individual who adjusts workers’ compensation claims. ( )

**02. Claim.** Means The making of a request with the Commission for benefits payable under the Idaho Workers’ Compensation Act, either by filing Industrial Commission (IC) Form 1A-1 entitled “Workers Compensation First Report of Injury or Illness.” If or by filing an application for hearing, referred to as a Complaint in the Judicial Rules, ~~has been filed~~ with the Commission, ~~the IC Form 1A-1 is not required.~~ (7-1-97)( )

**053. Claimant.** Means a worker who is seeking to recover benefits under the Workers’ Compensation Law. (7-1-97)( )

~~04.~~ **Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )

~~045.~~ **Commission.** ~~Means~~ The Idaho Industrial Commission. (7-1-97)( )

~~046.~~ **Employer.** ~~As~~ defined in Section 72-102(44), Idaho Code, and, for the purposes of these rules, includes sureties and adjusters. (7-1-97)( )

~~07.~~ **IAIABC EDI Release 3.0.** The IAIABC authored EDI Release 3.0 standards that cover the transmission of Claims (FROI and SROI), information through electronic reporting. ( )

~~08.~~ **Legacy Claim.** A First Report of Injury that was filed prior to the date specified in Subsection 012.02.b. of these rules. ( )

~~039.~~ **Notice.** ~~Means~~ both the employer's actual and constructive knowledge of the accident, injury, or occupational disease. (7-1-97)( )

~~10.~~ **Trading Partner.** An insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Commission. ( )

~~11.~~ **Trading Partner Agreement.** An agreement between the Idaho Industrial Commission and a trading partner that sets out the terms and conditions for the electronic reporting of information to the Commission. ( )

**011. ABBREVIATIONS.**

~~01.~~ **EDI.** Electronic Data Interchange -- a computer-to-computer exchange of data in a standardized format. ( )

~~02.~~ **FROI.** The First Report of Injury -- the first filing of information with the Industrial Commission that a reportable workplace injury has occurred or an occupational disease has been manifested, as required by Section 72-602(1), Idaho Code; filed in accordance with these rules. ( )

~~03.~~ **IAIABC.** International Association of Industrial Accidents Boards and Commissions -- a not-for-profit trade association whose members are industrial accident, workers' compensation or other governmental bodies as well as associate members comprised of other industry-related organizations and individuals. ( )

~~04.~~ **SROI.** The filing of a Supplemental or Subsequent Report of Injury -- the filing of additional information with the Industrial Commission, regarding benefits paid or changes in the status or condition of an injured worker, of a claim for benefits, as required by Sections 72-602(2), (3), and (4), Idaho Code; filed in accordance with these rules. ( )

~~0142.~~ **SUBMISSION OF FIRST REPORTS OF INJURY AND CLAIMS FOR COMPENSATION TO THE INDUSTRIAL COMMISSION.**

~~01.~~ **Purpose.** The Industrial Commission seeks to develop a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. This will allow for more timely entry of information into the database system from which statistical reports are generated by the Commission, reduce the paper that the Commission currently receives, and is expected to reduce the cost of reporting for ~~sureties~~ insurance carriers, employers and the Commission. (7-1-97)( )

~~02.~~ **Procedure for Submitting Claims.** ~~In order to comply with Section 72-602, Idaho Code, Form IA-1 shall be submitted to the Commission in substantially the same form as set forth below. At such time as the Commission institutes a system for on-line reporting of claims, claims may be submitted electronically. Fields that require clarification are listed below with explanations and/or applicable coding information:~~ (7-1-97)( )

- ~~a. Dates: Use MM/DD/YYYY format. (7-1-97)~~
- ~~b. SIC Code: Code that represents the nature of employer's business as it is contained in the Standard Industrial Classification Manual published by the Federal Office of Management and Budget. (7-1-97)~~
- ~~c. Carrier: The surety issuing a contract of insurance and assuming financial responsibility on behalf of the employer of the claimant. In the case of a self-insured, the self-insured's information should be submitted. (7-1-97)~~
- ~~d. Claims Administrator: The name of the surety, adjuster, state fund, or self-insured responsible for administering the claim. (7-1-97)~~
- ~~e. Employment status: This is the claimant's work status. The valid choices are full-time, not employed, disabled, unknown, part time apprentice, seasonal, part time, on strike, retired, full time apprentice, volunteer, or piece worker. (7-1-97)~~
- ~~f. Date disability began: The first day on which the claimant lost time from work due to the injury or disease. (7-1-97)~~
- ~~g. Type of injury/illness: Brief description of nature of injury or illness or the appropriate National Council on Compensation Insurance (NCCI) Detailed Claim Information (DCI) code. (7-1-97)~~
- ~~h. Part of body affected: Brief description or the appropriate DCI code(s). (7-1-97)~~
- ~~i. Department or location where accident or illness exposure occurred: Enter requested information or, if the accident or illness exposure did not occur on the employer's premises, enter address or location as specifically as possible. (7-1-97)~~
- ~~j. Nature of injury: Brief description or the appropriate DCI code(s). (7-1-97)~~
- ~~k. Work process the employee was engaged in when accident or illness exposure occurred: Describe the work process the employee was engaged in when the accident or illness exposure occurred, such as building maintenance. Enter "NA" for not applicable if employee was not engaged in a work process. (7-1-97)~~

a. FROI Reporting Prior to EDI Mandate. Prior to July 1, 2017, all FROI information shall be submitted to the Commission on single-sided eight and one-half inch by eleven inch (8½" x 11") white paper in a format substantially similar to Form 1A-1. Form 1A-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). At the Commission's discretion, claims may be submitted electronically in accordance with EDI Release 1.0 standards and any additional requirements of the Commission. ( )

b. FROI & SROI EDI Reporting. The Commission will require electronic submission of a First Report of Injury (FROI), effective July 1, 2017, and a Supplemental or Subsequent Report of Injury (SROI), effective July 1, 2017, in accordance with IAIABC EDI Release 3.0 and the Commission's EDI Guides and Tables, for insurance carriers, in-state Claims Administrators, and self-insured employers, as those entities are not otherwise exempted by these rules. ( )

c. Trading Partner Agreements. Before commencing electronic reporting, self-insured employers and insurance carriers shall sign a Trading Partner Agreement with the Commission, which must be approved by the Commission prior to initial data submission. This agreement will provide the effective date to send and receive electronic reports, which may be earlier but not later than the date above in Paragraph 012.02.b., the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. To ensure the accuracy of reported data, the Commission may make periodic audits of insurance carrier and self-insured employer files. In the event that a Trading Partner Agreement is entered into by a claims administrator, notice to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. ( )

d. FROI. Each electronic First Report of Injury (FROI) must comply with the formatting requirements



of the IAIABC EDI Claims Release 3.0 Implementation Guide and Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. ( )

e. SROI. Each electronic Supplemental or Subsequent Report of Injury (SROI) must comply with the formatting requirements of the IAIABC EDI Claims Release 3.0 Implementation Guide and the Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. ( )

f. Report Form and Content for Parties Exempt from EDI Requirements: ( )

i. Individual injured workers, injured workers' legal counsel, and employers that are not insured are not required to comply with IAIABC EDI requirements for filing of the FROI and SROI. SROIs filed on legacy claims will not be accepted via IAIABC EDI Release 3.0 standards. ( )

ii. Employers that are not insured, individual injured workers, and injured workers' legal counsel shall submit all FROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form IA-1. Form IA-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

iii. Employers that are not insured, individual injured workers, and injured workers' legal counsel, shall submit all SROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form SROI-1. Form SROI-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**03. Retaining Claims Files.** All employers insurance carriers and their claims administrators shall maintain their respective claim files in accordance with IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers," Section 051. IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation -- Self-Insured Employers," Section 051. Upon request of the Commission, insurance carriers, claims administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. (7-1-97)( )

**a.** All insurance carriers, claims administrators, or employers shall retain complete copies of claims files for the life of the claim or a minimum of five (5) years from the date of closure, whichever is shorter. (7-1-97)( )

**b.** For time-loss claims, closure will be the date upon which the insurance carrier, claims administrator, or employer files the final summary of payments, either as an appropriate EDI transaction, or as a hardcopy document for legacy claims. The Commission recommends that an insurance carrier, claims administrator, or employer retain a closed claim file for a minimum of five (5) years. (7-1-97)( )

**04. Filing Not an Admission.** Filing a claim is not an admission of liability and is not conclusive evidence of any fact stated therein. If a claim is submitted electronically, no signatures are required. (7-1-97)

**05. Filing Considered Authorization.** Filing of a claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the claimant is seeking compensation. (7-1-97)

~~**06. Report Form and Content.**~~ (7-1-97)

~~**a.** The Notice of Injury and Claim for Benefits required by this rule shall be submitted on eight and one half by eleven inches (8 1/2" X 11") paper in a format substantially similar to that which follows. If the employer seeks to request additional information, the employer shall submit the proposed changes to the Commission for approval. Changes shall not be implemented prior to the receipt of the Commission's approval.~~ (7-1-97)

~~**b.** Employers wishing to report electronically shall sign a written information sharing agreement with~~

~~the Commission. This agreement will provide the effective date to send and receive electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. The agreement must be signed by the employer and approved by the Commission prior to initial data submission. To ensure the accuracy of reported data, the Commission may make periodic audits of employer files. (7-1-97)~~

**076. Timely Response Requirement.** When the Commission requests additional information in order to process the Claim, the claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. (7-1-97)(    )

**0123. -- 999. (RESERVED)**

# IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

## 17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1501

### 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, and 72-806, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Commission intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The rule change would allow the electronic submission of a notice of change of status (“COS”) in a worker’s compensation claim be submitted to the Commission through EDI, rather than submission in the current paper form.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, 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:

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 Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000 / Fax: (208) 334-5145

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.**

**01. Notice of Change of Status.** As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition. (4-7-11)

**02. By Whom Given.** Any notice to a worker required by Idaho Code, Section 72-806 shall be given by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. (4-7-11)

**03. Form of Notice.** Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given in a format substantially similar to IC Form 8, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-11-15)

**04. Medical Reports.** As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. (4-7-11)

**05. Copies of Notice.** The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. The party giving notice may supply the copy to the Industrial Commission in accordance with the Commission's rule on electronic submission of documents. (~~4-7-11~~)(    )

# IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

## 17.02.09 - MEDICAL FEES

### DOCKET NO. 17-0209-1502

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 clarifies how outpatient hospital procedures are to be paid in the presence or absence of Comprehensive Ambulatory Payment Classification (C-APC) codes including status indicator J1. The coding guidelines published by Centers for Medicare & Medicaid Services (CMS) and the American Medical Association (AMA) are adopted as a standard reference for facility charges. The standard for reimbursement of rehabilitation hospitals will be changed to the same as other non-Critical Access Hospitals (CAH).

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, 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: 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 28, 2015.

DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000 / Fax: (208) 334-5145

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0209-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**030. DEFINITIONS.**

Words and terms used in this rule are defined in the subsections which follow. (4-7-11)

**01. Charge.** Expense or cost. For hospitals and ASCs, “charge” shall mean the total charge. (4-7-11)

**a.** “Acceptable charge.” The charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is lower, or the charge agreed to pursuant to a written contract. (4-7-11)

**b.** “Customary charge.” A charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (4-7-11)

**c.** “Reasonable charge.” A charge that does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined in this rule. (4-7-11)

**d.** “Usual charge.” The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (4-7-11)

**02. Ambulatory Payment Classification (APC).** A payment system adopted by the Center for Medicare and Medicaid Services (CMS) for outpatient services. (4-7-11)

**03. Ambulatory Surgery Center (ASC).** A facility providing medical services on an outpatient basis only. (4-7-11)

**04. Average Wholesale Price (AWP).** The average wholesale price for medicine obtained from pricing data provided by the original manufacturer of that medicine to industry-wide compilers of drug prices, e.g., Red Book and Medi-Span. (7-1-13)

**05. Critical Access Hospital.** A hospital currently designated as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS). (4-7-11)

**06. Hospital.** An acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. (~~4-7-11~~)(    )

**07. Implantable Hardware.** Objects or devices that are made to support, replace or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. (4-7-11)

**08. Medical Service.** Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply, as set forth in Section 72-102, Idaho Code. (4-7-11)

**09. Medicare Severity - Diagnosis Related Group (MS-DRG).** A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. (4-7-11)

**10. Payor.** The legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (4-7-11)

**11. Pharmacy.** Any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public. (7-1-13)

**12. Physician.** A member of any healing profession licensed or authorized to provide medical services by the statutes of this state, as set forth in Section 72-102, Idaho Code. (4-7-11)

**13. Provider.** Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which is compensable under the Idaho's Workers' Compensation Law, as set forth in Section 72-102, Idaho Code. (4-7-11)

~~**14. Rehabilitation Hospital.** A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. (4-7-11)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY HOSPITALS AND AMBULATORY SURGERY CENTERS UNDER THE IDAHO WORKERS' COMPENSATION LAW.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by hospitals and ambulatory surgery centers under the Idaho Workers' Compensation Law. (1-1-12)

**01. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. (1-1-12)

**02. Adoption of Standards for Hospitals and ASCs.** The following standards shall be used to determine the acceptable charge for hospitals and ambulatory surgery centers. (1-1-12)

**a. Critical Access ~~and Rehabilitation Hospitals.~~** The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access ~~or rehabilitation~~ hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). ~~(1-1-12)( )~~

**b. Hospital Inpatient Services.** The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access ~~and rehabilitation~~ hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand two hundred dollars (\$10,200). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). ~~(7-1-15)( )~~

**c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services.** The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access ~~and rehabilitation~~ hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the Medicare Hospital Outpatient Prospective Payment System (OPPS) APC weight in effect on the first day of January of the current calendar year. The base rate for hospital outpatient services is one hundred forty dollars and seventy-five cents (\$140.75). The base rate for ASC services is ninety-one dollars and fifty cents (\$91.50). ~~(7-1-15)( )~~

**i.** Medical services for which there is no APC weight listed shall be reimbursed at seventy-five percent (75%) of the reasonable charge. (7-1-12)

**ii.** Status code N items or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment except as provided in Subsection 032.02.c.ii.(1). or 032.02.c.ii.(2). of this rule. (7-1-15)

(1) Implantable Hardware may be eligible for separate payment under Subsection 032.02.e.iii. of this rule. (7-1-15)

(2) Outpatient laboratory tests provided with no other hospital outpatient service on the same date, or outpatient laboratory tests provided on the same date of service as other hospital outpatient services that are clinically unrelated may be paid separately if billed with modifier L1. Payment shall be made in the same manner that services with no APC weight are paid under Subsection 032.02.c.i. of this rule. (7-1-15)

iii. When no medical services with a status code J1 appears on the same claim, two (2) or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). When a medical service with a status code J1 appears on the same claim, all medical services with a status code T shall be paid at fifty percent (50%). (1-1-12)( )

iv. When no medical services with a status code J1 appears on the same claim, status code Q items with an assigned APC weight will not be discounted. When a medical service with a status code J1 appears on the same claim, status code Q items shall be paid at fifty percent (50%). (1-1-12)( )

d. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no hospital fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. (1-1-12)

e. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access ~~or rehabilitation~~ hospital) meets the following standards, additional payment shall be made for that service, as indicated. (1-1-12)( )

i. Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Subparagraph 032.02.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. (1-1-12)

ii. Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MSDRG payment for invoiced implantable hardware where the aggregate invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed three thousand dollars (\$3,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the aggregate invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed one thousand dollars (\$1,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

**03. 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. ( )

**034. Disputes.** The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 035 of this rule. (1-1-12)

**045. Adjustment of Hospital and ASC Base Rates.** The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. (1-1-12)



## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1501

#### 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, 72-404, 72-707, 72-735, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Commission intends to proceed with implementation of EDI Claims Release 3.0 ("EDI"), a secured, electronic interchange of documents that would allow the submission of all relative worker's compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The proposed rule amendment defines a Claims Administrator who adjusts workers' compensation claims in the state of Idaho; and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission.

The rule amendment would be necessary to comply with EDI rules; and "mirrors" the proposed amendments of 17.02.11.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 69](#).

**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 Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
Phone: (208) 334-6000 / Fax: (208) 334-5145

700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Adjuster.** An individual who adjusts workers' compensation claims. ( )

**02. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )

**03. 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)

**04. Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

**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 claims administrator or administrators employing an Idaho resident licensed resident adjuster or adjusters or the insurance carrier's own in-house Idaho adjusting staff with authority to make compensation payments and adjustments of claims arising under the Act. Each claims administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. If more than one (1) adjuster claims administrator is utilized in Idaho, a list of every such adjuster claims administrator 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)

**013. 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 013.01.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 012.02.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. (3-20-14)

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 a claims administrator employing an Idaho licensed, resident adjuster or adjusters, or ~~the carrier's~~ the carrier's own adjusting offices or officers resident in Idaho who have been appointed and have been given full authority to make claims adjusting decisions and to authorize the payment of all compensation due 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 Employer Compliance 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). (3-20-14)

**05. Comply with Industrial Commission Reporting Requirements.** Each insurance carrier shall, within the time prescribed, file such reports and respond to such information requests as the Industrial Commission may require from time to time 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, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

b. As an alternative to Subsection 013.06.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. (3-20-14)

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, 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. (3-20-14)

**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](http://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. (3-20-14)

**11. 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" 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). 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. (3-20-14)

**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)

**12. 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)

**014. -- 050. (RESERVED)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** (4-7-11)

**a.** All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (4-7-11)

**b.** The insurance carrier shall authorize and require a member of its in-state staff or a resident licensed resident claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: (4-7-11)( )

i. Investigate and adjust all claims for compensation; (4-7-11)

ii. Pay all compensation benefits due; (4-7-11)

iii. 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)

iv. Enter into compensation agreements and lump sum settlements with Claimants; and (4-7-11)

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

**c.** As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) claims administrator for each policy of workers' compensation insurance. (4-7-11)( )

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

**a.** First Report of Injury and Claim for Benefits; (4-7-11)

**b.** Copies of bills for medical care; (4-7-11)

**c.** Copy of lost-time computations, if applicable; (4-7-11)

**d.** Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

**e.** Employer's Supplemental Report; and (4-7-11)

**f.** Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed authorized from and maintained at in-state offices. (4-7-11)( )

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (4-7-11) ( )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. (4-7-11)

**b.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1501

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Commission intends to proceed with implementation of EDI Claims Release 3.0 ("EDI"), a secured, electronic interchange of documents that would allow the submission of all relative worker's compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The proposed rule amendment defines a Claims Administrator who adjusts workers' compensation claims in the state of Idaho; and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission.

The rule amendment would be necessary to comply with EDI rules; and "mirrors" the proposed amendments of 17.02.10.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 70](#).

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

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 Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.



DATED this 2nd Day of September, 2015.

Mindy Montgomery, Director  
Industrial Commission  
Phone: (208) 334-6000 / Fax: (208) 334-5145

700 S. Clearwater Lane  
PO Box 83720  
Boise, Idaho 83720-0041

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Adjuster.** An individual who adjusts workers' compensation claims. ( )

**02. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )

**03. Compensation.** All benefits payable under the provisions of the Idaho Workers Compensation Law. (3-29-12)

**04. 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). However, if the applicant is approved to apply under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government, the employer must have an annual Idaho payroll of at least four million dollars (\$4,000,000) as of the effective date of the Commission's approval to act as a self-insured employer in Idaho. (4-11-15)

**02. Application.** Submit a completed application, available from the Industrial Commission's Fiscal Bureau, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Bureau, telephone (208) 334-6000. (3-20-14)

**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. Claims Adjusting.** Designate in writing a claims administrator employing an Idaho licensed, ~~Idaho~~ resident adjuster including name and address. Each claims administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. (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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

**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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

**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 fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000) 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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

**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). (3-20-14)

**13. 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), unless the applicant was approved by the Commission as qualified

under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. 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. (4-11-15)

**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), unless the applicant was approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. 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. 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. (4-11-15)

**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. (3-20-14)

**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 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). (3-20-14)

**03. Continue or Provide Guaranty Agreement.**

(3-20-14)

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. (3-20-14)

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). (3-20-14)

**04. Maintain a Licensed Resident Adjuster.** Maintain ~~a resident~~ an Idaho licensed resident claims adjuster located within the state of Idaho who shall have full authority to ~~service~~ make decisions and to authorize the payment of all compensation on 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)

**05. 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," 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. (3-20-14)

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 within the time prescribed such other reports ~~to~~ and respond to such information requests as the Commission ~~as it~~ may require ~~in reference to~~ from time to time

concerning matters under the Workers' Compensation Law.

~~(4-7-11)~~( )

**06. 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. (3-20-14)

**07. 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)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate and require an idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. ~~(4-7-11)~~( )

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a. First Report of Injury and Claim for Benefits; (4-7-11)
- b. Copies of bills for medical care; (4-7-11)
- c. Copy of lost-time computations, if applicable; (4-7-11)
- d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)
- e. Employer's Supplemental Report; and (4-7-11)
- f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed authorized from and maintained at in-state offices. ~~(4-7-11)~~( )

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of

the self-insured employer. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ~~(4-7-11)~~ ( )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

**b.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1501

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

Statute authorizes the Board of Nursing to develop standards and criteria to evaluate the continued competency of licensed nurses. This rulemaking establishes those standards and criteria. For public safety, the rulemaking will require registered and licensed practical nurses seeking to renew their licenses to demonstrate their continued competence to practice nursing in Idaho. The rule establishes several methods for nurses to comply with this obligation.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Vol. 15-6, page 52](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 334-3110.

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 28, 2015.

DATED this 2nd Day of September, 2015.

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: (208) 334-3110 ext. 2476  
Fax: (208) 334-3262



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**061. CONTINUED COMPETENCE REQUIREMENTS FOR RENEWAL OF AN ACTIVE LICENSE.**

**01. Learning Activities.** In order to renew an LPN or RN license, a licensee shall complete or comply with at least two (2) of any of the learning activities listed below in Paragraphs 061.01.a., b., or c. within the two (2)-year renewal period:

**a. Practice:**

**i. Current nursing specialty certification as defined in Section 402 of these rules; or**

**ii. One hundred (100) hours of practice or simulation practice, paid or unpaid, in which the nurse applies knowledge or clinical judgment in a way that influences patients, families, nurses, or organizations;**

**b. Education, Continuing Education, E-learning, and In-service:**

**i. Fifteen (15) contact hours of continuing education, e-learning, academic courses, nursing-related in-service offered by an accredited educational institution, healthcare institution, or organization (a contact hour equals not less than fifty (50) minutes); or**

**ii. Completion of a minimum of one (1) semester credit hour of post-licensure academic education relevant to nursing practice, offered by a college or university accredited by an organization recognized by the U.S. Department of Education; or**

**iii. Completion of a Board-recognized refresher course in nursing or nurse residency program; or**

**iv. Participation in or presentation of a workshop, seminar, conference, or course relevant to the practice of nursing and approved by an organization recognized by the Board to include, but not limited to:**

**(1) A nationally recognized nursing organization;**

**(2) An accredited academic institution;**

**(3) A provider of continuing education recognized by another board of nursing;**

**(4) A provider of continuing education recognized by a regulatory board of another discipline; or**

**(5) A program that meets criteria established by the Board;**

**c. Professional Engagement:**

**i. Acknowledged contributor to a published nursing-related article or manuscript; or**

**ii. Teaching or developing a nursing-related course of instruction; or**

**iii. Participation in related professional activities including, but not limited to, research, published professional materials, nursing-related volunteer work, teaching (if not licensee's primary employment), peer reviewing, precepting, professional auditing, and service on nursing or healthcare related boards, organizations, associations or committees.**

**02. APRN Continued Competence Requirements.** Registered nurses who also hold an active license as an APRN shall only meet the requirements of Section 300 of these rules.

**03. First Renewal Exemption.** A licensee is exempt from the continued competence requirement for the first renewal following initial licensure by examination. ( )

**04. Extension.** The Board may grant an extension for good cause for up to one (1) year for the completion of continuing competence requirements. Such extension shall not relieve the licensee of the continuing competence requirements. ( )

**05. Beyond the Control of Licensee Exemption.** The Board may, in the exercise of its sound discretion, grant an exemption for all or part of the continuing competence requirements due to circumstances beyond the control of the licensee. ( )

**06. Disciplinary Proceeding.** Continued competence activities or courses required by Board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal. ( )

**07. Compliance Effective Dates.** Compliance with the continuing competence requirements of Sections 061 and 062 will be necessary to renew an LPN license beginning with 2018 renewals and an RN license beginning with 2019 renewals. ( )

**062. DOCUMENTING COMPLIANCE WITH CONTINUED COMPETENCE REQUIREMENTS.**

**01. Retention of Original Documentation.** All licensees are required to maintain original documentation of completion for a period of two (2) years following renewal and to provide such documentation within thirty (30) days of a request from the Board for proof of compliance. ( )

**02. Documentation of Compliance.** Documentation of compliance shall be as follows: ( )

**a.** Evidence of national certification shall include a copy of a certificate that includes the name of licensee, name of certifying body, date of certification, and date of certification expiration. Certification shall be initially attained during the licensure period, have been in effect during the entire licensure period, or have been recertified during the licensure period. ( )

**b.** Evidence of post-licensure academic education shall include a copy of the transcript with the name of the licensee, name of educational institution, date(s) of attendance, name of course, and number of credit hours received. ( )

**c.** Evidence of completion of a Board-recognized refresher course shall include certificate or written correspondence from the provider with the name of the licensee, name of provider, and verification of successful completion of the course. ( )

**d.** Evidence of completion of research or a nursing project shall include an abstract or summary, the name of the licensee, role of the licensee as principal or contributing investigator, date of completion, statement of the problem, research or project objectives, methods used, and summary of findings. ( )

**e.** Evidence of contributing to a published nursing-related article, manuscript, paper, book, or book chapter shall include a copy of the publication to include the name of the licensee and publication date. ( )

**f.** Evidence of teaching a course for college credit shall include documentation of the course offering indicating instructor, course title, course syllabus, and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competence requirement unless the course offering and syllabus has changed in a material or significant fashion. ( )

**g.** Evidence of teaching a course for continuing education credit shall include a written attestation from the director of the program or authorizing entity including the date(s) of the course and the number of hours awarded. ( )

**h.** Evidence of hours of continuing learning activities or courses shall include the name of the

licensee, title of activity, name of provider, number of hours, and date of activity. ( )

i. Evidence of one hundred (100) hours of practice in nursing shall include the name of the licensee and documentation satisfactory to the Board of the number of hours worked during review period validated by the employer/recipient agency. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency. ( )

**06~~4~~3. LICENSE REINSTATEMENT (NON-DISCIPLINE).**

**01. Within One Year.** A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-30-07)

- a. Filing a completed renewal application; and (3-30-01)
- b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)

**02. After One Year.** After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-30-07)

- a. Filing a completed reinstatement application; and (3-30-01)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)
- d. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)

**03. After Three Years.** After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-30-07)

- a. Filing a completed reinstatement application; and (3-30-07)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)
- d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)
- e. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)

**04. Reinstatement of Emeritus License to Current Status.** A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)

- a. Submitting a completed application for reinstatement; and (4-2-03)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Providing evidence, satisfactory to the Board, of the applicant's current competency to practice. (3-30-07)

**0624. REINSTATEMENT AFTER DISCIPLINE.**

**01. Submission of Application Materials.** A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: (4-7-11)

- a. Submitting a completed application for reinstatement; and (4-7-11)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (4-7-11)
- c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (4-7-11)
- d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (4-7-11)
- e. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)

**02. Appearance Before Board.** Applicants for reinstatement may be required to appear before the Board. (3-15-02)

**03. Evaluation of Applications.** In considering applications for reinstatement, the Board will evaluate: (3-15-02)

- a. The nature and severity of the act which resulted in discipline; (4-7-11)
- b. The conduct of the applicant subsequent to the discipline; (4-7-11)
- c. The lapse of time since discipline; (4-7-11)
- d. The degree of compliance with all terms and conditions the Board may have set forth as a prerequisite for reinstatement; (3-15-02)
- e. Any intervening circumstances that may have altered the need for compliance; (3-15-02)
- f. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; (11-28-84)
- g. The applicant's adherence to or violation of any applicable law or rule regulating the practice of nursing; and (4-6-05)
- h. The applicant's criminal background information as evidenced by a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**04. Board Action Possible.** After evaluation, the Board may deny a reinstatement, grant a reinstatement, or issue a license permitting the applicant to practice nursing under specified terms and conditions. (3-15-02)

**05. Assessment of Costs.** As a condition of withdrawing, reversing, modifying, or amending a prior disciplinary order, the applicant may be required to pay all or any part of the costs incurred by the Board in the proceedings in which the order was entered. (4-7-11)

**06. Application for Reinstatement After Revocation.** Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. (3-15-02)

**0635. -- 075. (RESERVED)**

## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1503

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Board of Nursing rule on specialized practice is inadequate and the Board has received requests to update the rule. This rulemaking amends Board of Nursing Rule 402 (IDAPA 23.01.01.402) to update and clarify provisions regarding registered nurses functioning in a specialty area of nursing.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015 Idaho Administrative Bulletin, [Vol. 15-6, page 54](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 334-3110.

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 28, 2015.

DATED this 2nd Day of September, 2015.

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: (208) 334-3110 ext. 2476  
Fax: (208) 334-3262

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1503  
(Only Those Sections With Amendments Are Shown.)

402. LICENSED REGISTERED NURSE FUNCTIONING IN SPECIALITY AREAS.

**01. Extended Functions.** A licensed registered nurse may carry out functions beyond the basic educational preparation described in Sections 600 through 681 of these rules under certain conditions. ~~(7-1-96)~~( )

**02. Conditions for Licensed Registered Nurses Functioning in Specialty Practice Areas.** A licensed registered nurse may carry out functions ~~beyond the educational preparation described in Sections 600 through 681 of these rules~~ defined within parameters of a nursing specialty that meets criteria approved by the American Board of Nursing Specialties (ABNS) or the National Commission for Certifying Agencies (NCCA) of the National Organization for Competency Assurance (NOCA) when the nurse: ~~(3-30-07)~~( )

a. ~~In addition to~~ Can document successful completion of ~~the curriculum requirements~~ additional education through an organized program of study including supervised clinical experience or equivalent demonstrated competence consistent with provisions of Sections ~~600 through 681~~ 400 of these rules, ~~has completed any specific education, training, and supervised practice as may be required in the Nursing Practice Act or rules; and~~ ~~(3-30-07)~~( )

b. Conforms to recognized nursing specialty practice parameters, characters, and standards for practice of the specialty. ~~and~~ ~~(5-3-03)~~( )

~~e. Follows written protocols approved by medical staff, nursing administration, and the employing agency administration. (5-3-03)~~

**02. Recognized Specialty Practice Areas.** Additional education, training, and practice: (5-3-03)

~~a. Flight/Transport Nurse. A flight/transport nurse is a licensed registered nurse who provides critical care services with a duly licensed transporting agency. (5-3-03)~~

~~i. Basic qualifications include at least two (2) years (four thousand (4,000) hours) of critical care nursing experience in the specialty area pertinent to the type of service being provided. (5-3-03)~~

~~ii. Licensed registered nurses who regularly provide care in the pre-hospital setting must maintain emergency medical technician credentialing. (5-3-03)~~

~~iii. Individual educational requirements commensurate with the specialty care being provided may include, but are not limited to: Neonatal Resuscitation Program ("NRP"), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), Trauma Nurse Core Curriculum (TNCC) or Flight Nurse Advanced Trauma Course (FNATC) and radio communications. (5-3-03)~~

~~iv. Flight nurses must also have course work in flight physiology, aircraft safety and survival. (5-3-03)~~

~~v. A flight/transport nurse must have received a minimum of forty (40) hours of supervised clinical experience before functioning independently. (5-3-03)~~

~~b. Surgical First Assistants. A surgical first assistant is a licensed registered nurse who, under direct supervision, assists the operating surgeon. (5-3-03)~~

~~i. Nurses acting as surgical first assistants may not concurrently serve as scrub or instrument nurses. (5-3-03)~~

~~ii. A licensed registered nurse surgical first assistant in cardiovascular surgery may harvest saphenous veins after completing additional educational instruction acceptable to the Board and supervised practice under direct supervision of the operating physician. (5-3-03)~~

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.00.01 - LICENSING BOARDS SERVED BY THE BUREAU OF OCCUPATIONAL LICENSES**

#### **DOCKET NO. 24-0001-1500 (FEE RULE)**

#### **OMNIBUS 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 67-2614 (Bureau of Occupational Licenses), and 54-2406 (Drinking Water/Wastewater); 54-3717 (Occupational Therapists); 54-3003 (Landscape Architects); 54-2206 (Physical Therapists); 54-4106 (Real Estate Appraisers); 54-5310 (Liquid Petroleum Gas Dealers); 54-5403 (Driving Businesses); 54-4007 (Massage Therapists) 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 21, 2015.

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

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

During the 2015 regular legislative session, the Legislature passed House Bill (HB) 117 which amended Section 67-2614, Idaho Code, the Idaho Bureau of Occupational License's (IBOL) section on renewal or reinstatement of licenses or registrations. HB 117 simplified and standardized the license renewal process for licensing boards served by the Bureau. While boards have the option of maintaining their individual licensing requirements, eight (8) boards have decided to amend their rules to align them with the Bureau's statute. Other boards are in the process of amending their statutes to allow them to align their rules, and the statutes and rules of other boards are already in synch with the Bureau's statute. The changes contained in this rule were discussed and decided upon by each board at a properly noticed open board meeting.

The 8 Board rules affected by this proposed rulemaking action include:

- 24.05.01 - Rules of the Board of Drinking Water and Wastewater Professionals;
- 24.06.01 - Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants;
- 24.07.01 - Rules of the Idaho State Board of Landscape Architects;
- 24.13.01 - Rules Governing the Physical Therapy Licensure Board;
- 24.18.01 - Rules of the Real Estate Appraiser Board;
- 24.22.01 - Rules of the Idaho State Liquefied Petroleum Gas Safety Board;
- 24.25.01 - Rules of the Idaho Driving Businesses Licensure Board; and
- 24.27.01 - Rules of the Idaho State Board of Massage Therapy.

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

The boards listed above operate solely on dedicated funds derived primarily from licensing and registration fees. This rulemaking increases the reinstatement fee for five boards from \$25 to \$35, will have no effect on one board, and will reduce the fee for two other boards from \$75 and \$50 to \$35. The number of annual renewal fees collected will be capped at just one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. The statute authorizing the reinstatement fee is Section 67-2614, 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:

There will be no fiscal impact to the state general fund since licensing and registration fees collected are dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because regulatory boards discussed and decided to propose this rule at properly noticed open meetings to



which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P O Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph / (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF THE OMNIBUS NOTICE  
OF RULEMAKING FOR FEE DOCKET NO. 24-0001-1500  
(Only Those Sections With Amendments Are Shown.)**

**IDAPA 24  
TITLE 05  
CHAPTER 01**

**24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS**

**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. (3-20-14)

**03. Endorsement Fee.** Endorsement fee -- thirty dollars (\$30). (3-20-14)

**04. Original License Fee.** Original license fee -- thirty dollars (\$30). (3-20-14)

05. **Annual Renewal Fee.** Annual renewal fee -- thirty dollars (\$30). (3-20-14)
06. **Reinstatement Fees.** Reinstatement fee -- ~~twenty-five dollars (\$25)~~ is as provided in Section 67-2614, Idaho Code. ~~(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)

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**IDAPA 24  
TITLE 06  
CHAPTER 01**

**24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS**

**041. FEES.**

01. **Fees.** Necessary fees shall accompany applications. Fees shall not be refundable. (3-29-10)
02. **Initial Licensure.** The fee for initial licensure of occupational therapists shall be one hundred dollars (\$100) and the fee for occupational therapy assistants shall be seventy-five dollars (\$75). (4-6-15)
03. **Limited Permit or Temporary License.** The fee for a limited permit or temporary license shall be twenty-five dollars (\$25). (4-6-15)
04. **Active License Renewal Fee.** The annual renewal fee for an active license shall be fifty-five dollars (\$55) for occupational therapists and thirty-five dollars (\$35) for occupational therapy assistants. (4-6-15)
05. **Reinstatement Fee.** The fee to reinstate an lapsed expired license ~~shall be thirty-five dollars (\$35)~~ is as provided in Section 67-2614, Idaho Code. ~~(3-29-10)~~ ( )
06. **Inactive License Renewal Fee.** The annual renewal fee for an inactive license shall be twenty-five dollars (\$25) for occupational therapists and occupational therapy assistants. (4-6-15)
07. **Inactive to Active License Fee.** The fee for reinstating an inactive license to an active license is the difference between the current inactive and active license renewal fees. (4-7-11)

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**IDAPA 24**  
**TITLE 07**  
**CHAPTER 01**

**24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS**

**400. FEES (RULE 400).**

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements. (7-1-93)

**01. Application Fee.** Application Fee: One hundred dollars (\$100). (3-20-14)

**02. Landscape Architect-in-Training Application Fee.** Landscape architect-in-training application fee: Twenty-five dollars (\$25). (3-26-08)

**03. Examination Fees.** Examination fees will be as established by the Council of Landscape Architectural Registration Boards. (3-20-04)

**04. Original License and Annual License Fee.** Original license and annual license fee: One hundred fifty dollars (\$150). (3-21-07)

**05. Reinstatement Fee.** Reinstatement fee: ~~Twenty-five dollars (\$25)~~ is as provided in Section 67-2614, Idaho Code. (7-1-93)( )

***BREAK IN TITLES***

**IDAPA 24**  
**TITLE 13**  
**CHAPTER 01**

**24.13.01 - RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD**

**200. FEES (RULE 200).**

**01. License Fee.** (3-19-07)

**a.** The fee for the initial licensure and the annual renewal of a physical therapist shall be twenty-five dollars (\$25). (3-20-14)

**b.** The fee for the initial licensure and the annual renewal of a physical therapist assistant shall be twenty dollars (\$20). (3-20-14)

**02. Examination Fee.** The fee for examination shall be that set by the examination entity approved by the Board and shall include an additional administrative fee of twenty dollars (\$20). (3-20-14)

**03. Reinstatement Fee.** ~~Reinstatement fee shall be twenty five dollars (\$25) and satisfactory proof of successful completion of the continuing education requirement is as provided in Section 67-2614, Idaho Code.~~ ~~(4-9-09)~~ ( )

**04. Application Fee.** The application fee shall be twenty-five dollars (\$25) and shall accompany all applications. Fees shall not be refundable. (3-20-14)

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**IDAPA 24  
TITLE 18  
CHAPTER 01**

**24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD**

**150. FEES (RULE 150).**

Fees are established in accord with Section 54-4113, Idaho Code as follows: (7-1-93)

- 01. Application.** Application fee for License - two hundred fifty dollars (\$250). (4-11-06)
- 02. Original License.** Original License - one hundred forty dollars (\$140\*). (3-21-12)
- 03. License Renewal.** License renewal - three hundred sixty-five dollars (\$365\*). (3-21-12)
- 04. Reinstatement.** Reinstatement fees ~~are~~ is as provided in Section 67-2614, Idaho Code ~~twenty five dollars (\$25).~~ ~~(7-1-93)~~ ( )
- 05. Application for Reciprocity.** Application for reciprocity - two hundred fifty dollars (\$250\*). (3-30-01)
- 06. Original License Via Reciprocity.** Original License via reciprocity - one hundred dollars (\$100\*). (3-21-12)
- 07. Temporary Permit.** Temporary permit - one hundred dollars (\$100). (7-1-93)
- 08. Trainee Registration Fee.** Trainee registration fee - fifty dollars (\$50). (3-13-02)
- 09. Examination and Reexamination Fees.** Examination and Reexamination fees will be calculated based on the actual cost of the examination. Successful applicants will be notified of the fees at the time they are scheduled for examination. (7-1-97)
- 10. Continuing Education Provider Application Fee.** Continuing Education Provider Application fee - one hundred dollars (\$100). (3-21-12)
- 11. Fees are Non-Refundable.** Fees are non-refundable. (7-1-93)
- 12. Fees Followed By Asterisk (\*) Means.** Proposed fees for these categories marked with an asterisk (\*) include forty dollars (\$40) to be submitted by the state to the federal government. Title XI, Section 1109 of the

FIRREA as amended requires each state to submit a roster listing of state licensed appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council “no less than annually.” The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of “not more than eighty-five dollars (\$85),” such fees to be transmitted by the state to the federal government on an annual basis. This fee is subject to change by the Appraisal Subcommittee. (3-21-12)

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**IDAPA 24**  
**TITLE 22**  
**CHAPTER 01**

**24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD**

**175. FEES (RULE 175).**

Applications should not be filed unless the applicant can meet all requirements. (3-30-06)

**01. Application Fee.** Application fee - thirty dollars (\$30). (3-30-06)

**02. Original Individual License and Annual Renewal Fee.** License fee - seventy-five dollars (\$75). (3-29-10)

**03. Dealer-in-Training License Fee.** License fee - fifty dollars (\$50). (4-7-11)

**04. Original Facility License Fee and Annual Renewal Fee.** Facility with ten thousand (10,000) gallon or less storage capacity - one hundred dollars (\$100). (3-29-10)

**05. Original Bulk Storage Facility Fee and Annual Renewal Fee.** Bulk Storage Facility with more than ten thousand (10,000) gallon storage capacity - four hundred dollars (\$400). (3-29-10)

**06. Endorsement Fee.** Endorsement fee - seventy-five dollars (\$75). (3-29-10)

**07. Reinstatement Fee.** Reinstatement fee ~~fifty dollars (\$50)~~ is as provided in Section 67-2614, Idaho Code. ~~(3-30-06)~~ ( )

**08. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (3-30-06)

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**IDAPA 24**  
**TITLE 25**  
**CHAPTER 01**

**24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD**

**175. FEES (RULE 175).**

- 01. Fees.** The following fees are established by the Board: (4-7-11)
- a.** Initial application processing fee - fifty dollars (\$50). (4-7-11)
  - b.** Original instructor license fee and renewal fee - fifty dollars (\$50). (4-7-11)
  - c.** Instructor apprentice permit fee - fifty dollars (\$50). (4-7-11)
  - d.** Original business license fee and renewal fee - five hundred dollars (\$500). (4-7-11)
  - e.** Reinstatement fee ~~twenty five dollars (\$25)~~ is as provided in Section 67-2614, Idaho Code.  
(4-7-11)( )
- 02. Refund of Fees.** All fees are non-refundable. (4-7-11)

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**IDAPA 24**  
**TITLE 27**  
**CHAPTER 01**

**24.27.01 - RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY**

**250. FEES.**

- Fees are established in accordance with Section 54-4008, Idaho Code, as follows: (3-27-13)
- 01. Application Fee.** Application fee is fifty dollars (\$50). (3-27-13)
  - 02. Original License Fee.** Original license fee is seventy-five dollars (\$75). (3-27-13)
  - 03. Annual Renewal Fee.** Annual renewal fee is seventy-five dollars (\$75). (3-27-13)
  - 04. License by Endorsement Fee.** License by endorsement fee is seventy-five dollars (\$75). (3-27-13)
  - 05. Duplicate License Fee.** Duplicate license fee is ten dollars (\$10). (3-27-13)
  - 06. Reinstatement Fee.** Reinstatement fee is ~~twenty five dollars (\$25)~~ as provided in Section 67-2614.

Idaho Code.

~~(3-27-13)~~( )

**07. Examination Fee.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator, and shall be paid directly to the administrator by the applicant. (3-27-13)

**08. Refund of Fees.** All fees are non-refundable except that, if a license is not issued, the license fee will be refunded. (3-27-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. RENEWAL OR EXPIRATION OF LICENSE.**

A license expires on the license holder's birth date. The individual must annually renew the license before the license holder's birth date. Licenses not so renewed will be immediately cancelled in accordance with Section 67-2614, Idaho Code. (3-27-13)

**01. Renewal.** A license must be renewed before it expires by submitting a complete application for renewal on forms approved by the Board together with the renewal fee. As part of a complete renewal application, the licensee will attest to completion of the required continuing education pursuant to Section 500 of these rules. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. (3-27-13)

**02. Reinstatement.** A license that has been cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (3-27-13)

**a.** Within five (5) years of cancellation, an applicant seeking reinstatement must submit to the Board evidence that the applicant has completed the required continuing education together with a complete renewal application and appropriate fee(s). (3-27-13)

**i.** The applicant must submit evidence of completion of continuing education hours totaling the hours required at the time of cancellation and for each year the license was cancelled. (3-27-13)

**ii.** The applicant must pay a reinstatement fee as set forth in Section 250 of these rules ~~in addition to the renewal fee for each year the license was cancelled.~~ ~~(3-27-13)~~( )

**b.** After five (5) years of cancellation, the applicant will be treated as a new applicant, and application shall be made on the same forms and in the same manner as an application for an original license in accordance with Section 200 of these rules. (3-27-13)

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS**  
**DOCKET NO. 24-0301-1501**  
**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 54-707, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 20 is being amended to remove the words “in all their forms” and to make sure everyone understands that clinical nutritional methods cannot exceed the scope of practice set forth in 54-704(2), 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the revisions to this rule are simple in nature. This proposal was discussed during noticed, open meetings of the Board with interested parties in attendance.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
208 334-3233 ph  
(208) 334-3945 fax



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0301-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**020. SCOPE OF PRACTICE (RULE 20).**

Clinical nutritional methods as referenced in Section 54-704, Idaho Code, include, but are not limited to, the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes and glandular extracts, and durable and non-durable medical goods and devices ~~in all their forms~~. Nothing herein shall allow any deviation from Section 54-704(2), Idaho Code. ~~(4-2-08)( )~~

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS**

**DOCKET NO. 24-0501-1501**

#### **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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 experience requirements for Class III and Class IV operator licenses are being clarified to eliminate confusion on the acceptable experience. The Board is establishing a Code of Ethics and Standards of Conduct for Back Flow Assembly Testers.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because amendments to these rules and the addition of the Backflow Assembly Tester Code of Ethics and Standards of Conduct has been discussed in several noticed open meetings of the Board and worked on with interested parties for the past two years.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
208 334-3233 ph  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0501-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**335. REQUIREMENTS FOR A CLASS III OPERATOR LICENSE (RULE 335).**

To qualify for a Class III license an applicant must meet the following requirements: (3-21-12)

**01. Education.** Possess a high school diploma or GED and two (2) years of post-high school education in the environmental control field, engineering or related science; and (3-21-12)

**02. Experience.** Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, of a Class I or higher system for collection or distribution or Class II or higher system for treatment, ~~including two (2) years of responsible charge of a major segment of a system in the same or next lower class~~; and ~~(3-21-12)~~( )

**03. Examination.** Pass the relevant Class III examination. (3-21-12)

**336. -- 339. (RESERVED)**

**340. REQUIREMENTS FOR A CLASS IV OPERATOR LICENSE (RULE 340).**

To qualify for a Class IV license an applicant must meet the following requirements; (3-21-12)

**01. Education.** Possess a high school diploma or GED and four (4) years of post-high school education in the environmental control field, engineering or related science; and (3-21-12)

**02. Experience.** Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, at a Class I or higher system for collection or distribution or Class III or higher system for treatment, ~~including two (2) years of responsible charge of a major segment of a system in the same or next lower class~~; and ~~(3-21-12)~~( )

**03. Examination.** Pass the relevant Class IV examination. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**650. BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT (RULE 650).**

All backflow assembly tester licensees shall comply with the Idaho Backflow Assembly Tester Code of Ethics and Standards of Conduct as approved by the Board and attached to these rules as Appendix A. ( )

**651. -- 699. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**APPENDIX A**  
**IDAHO BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT**

The purpose of this rule is to protect public health by setting minimum requirements and standards for licensed Backflow Assembly Testers in Idaho who inspect and field test backflow assemblies, backflow prevention devices and air gaps that protect public water systems.

**1. Code of Ethics --** A licensed Backflow Assembly Tester shall:

**a.** At all times, act in accordance with his/her primary obligation to perform his/her duties with due care and diligence to protect the safety, health and welfare of the public;

**b.** Comply with the laws and rules governing Backflow Assembly Testers and all applicable state and federal laws and regulations relating to backflow assembly testing;

**c.** Perform only those duties consistent with and appropriate to his/her experience, training, skills, abilities, and licensure; and

**d.** Be objective and truthful in all professional reports, statements, or testimony and include all relevant and pertinent information in such reports, statements or testimony.

**2. Definitions:**

**a.** Backflow Prevention Assembly: an approved assembly such as a Double Check Valve Assembly (DCVA), a Pressure Vacuum Breaker Assembly (PVBA), a Reduced Pressure Backflow Assembly (RPBA), or a Spill-Resistant Pressure Vacuum Breaker Assembly (SVBA) used for the protection of the public water supply according to the provisions of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," as administered by DEQ.

**b.** Backflow Prevention Device: an approved device such as an Atmospheric Vacuum Breaker (AVB), which does not contain valves or test ports, or a method, such as an air gap, that is utilized to prevent cross connections to a public water supply.

**c.** Calibration/Verification: the annual verification, calibration, or both of a backflow assembly field test kit by an instrument calibration laboratory/facility or by a person qualified to verify and calibrate a field test kit such as a manufacturer, dealer licensed to calibrate or verify field test kits, or calibration technician.

**d.** Customer: means the owner of the property or his/her authorized or appointed agent.

**e.** Field Test Kit: an instrument, either mechanical or electronic in design, and all related fittings, tools, equipment and appurtenances necessary to perform field verification tests on backflow prevention assemblies.

**3. Standards of Conduct**

**a.** Principle 1 -- A Backflow Assembly Tester shall act only within the scope of practice as set forth in the Board's laws and rules. A Backflow Assembly Tester must use due care and diligence in performing his/her duties.

**b.** Principle 2 -- When conducting inspections and field tests of backflow prevention assemblies, a Backflow Assembly Tester must use test procedures that comply with standard field test procedures.

**c.** Principle 3 -- The Backflow Assembly Tester shall observe or inspect existing installations of backflow prevention assemblies to identify whether the assembly is properly installed and whether, in the opinion of the Backflow Assembly Tester, the assembly is adequate and appropriate for the degree of hazard posed to the Public Water System having jurisdiction over the assembly.

**i.** A Backflow Assembly Tester must report improperly installed assemblies to the customer and the Public Water System having jurisdiction over the backflow prevention assembly and also must note the discrepancy on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

ii. A Backflow Assembly Tester must note discrepancies regarding inadequate or inappropriate backflow prevention assemblies on the test report and submit the test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

d. Principle 4 -- A Backflow Assembly Tester shall use a properly working and calibrated field test kit that meets the requirements of the Pacific Northwest Section of the American Water Works Association Cross Connection Control Manual, Seventh Edition, November 2012. When requested by a Public Water System, a Backflow Assembly Tester shall submit the most recent calibration report that verifies the accuracy of the field kit. When requested by a Public Water System, a Backflow Assembly Tester shall submit proof of current licensure in Idaho as a Backflow Assembly Tester.

e. Principle 5 -- The Backflow Assembly Tester must competently use a field test kit, all tools, and other equipment and appurtenances necessary to inspect and field test backflow prevention assemblies, inspect air gaps and backflow prevention devices.

f. Principle 6 -- When a backflow prevention assembly passes a field test, the Backflow Assembly Tester shall submit within fifteen (15) business days of performing the field test a passing test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

g. Principle 7 -- When a backflow prevention assembly is defective or fails to pass the field test, the Backflow Assembly Tester shall submit immediately, if possible, but no later than within two (2) business days, a failing field test report to the customer and the Public Water System having jurisdiction over the backflow prevention assembly.

h. Principle 8 -- The Backflow Assembly Tester shall complete a test report for each backflow prevention assembly for which the Backflow Assembly Tester conducts a field test. A test report must be legible and contain all relevant and pertinent information pertaining to the field test including, at a minimum, the make, model, size, serial number, orientation, and test results for each test conducted.

i. A Backflow Assembly Tester shall record data and sign test reports only for backflow prevention assemblies for which the Backflow Assembly Tester has personally conducted the field test.

ii. A Backflow Assembly Tester shall not falsify the results of a backflow prevention assembly field test or inspection.

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS**

**DOCKET NO. 24-0601-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

Due to the passage of House Bill 24 in the 2015 session, which deleted Professional Development Units (PDU's), the rules need to be amended to delete references to PDU's. The rule changes clarify the time when continuing education is required for renewal of licenses. The rule changes also decrease the number of supervised clinical hours required for deep thermal and electrotherapeutic modalities and wound care from 160 to 40 hours.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the passage of House Bill 24. Revisions to this rule bring the rule into compliance with the statute regarding continuing education. There is also a reduction in the required number of supervised clinical training hours for deep thermal and electrotherapeutic modalities and wound care. These rules 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
208 334-3233 ph  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0601-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

*The "PDU Activities Chart" on pages 14-17 of the document titled National Board for Certification in Occupational Therapy (NBCOT), Inc. Certification Renewal Handbook, 2012, as published by the NBCOT, Inc. and copyrighted to NBCOT, Inc. in 2012, which is referenced in Subsection 025.01.b. of these rules. All documents incorporated by reference are available at the Board's office and through the Board's website There are no documents incorporated by reference into this rule. ~~(4-4-13)~~( )*

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. DEEP THERMAL AND ELECTROTHERAPEUTIC MODALITIES, AND WOUND CARE.**

**01. Qualifications.** Except as provided in Subsection 012.02 of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic modalities or perform wound care management unless the person is licensed by the Board as an occupational therapist and certified by the Hand Therapy Commission. In lieu of being certified by the Hand Therapy Commission, the person must have obtained education and training as described in Paragraphs 012.01.a. through 012.01.c. of this rule. (4-7-11)

**a.** If the person utilizes techniques involving deep thermal, electrotherapeutic modalities, the person must have successfully completed three (3) continuing education units in the application of deep thermal and electrotherapeutic modalities, along with ~~one hundred sixty (160)~~ forty (40) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to such modalities. ~~(4-7-11)~~( )

**b.** If the person manages wound care, the person must have successfully completed one and one-half (1.5) continuing education units in wound care management, along with ~~one hundred sixty (160)~~ forty (40) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to wound care management. ~~(4-7-11)~~( )

**c.** If the person utilizes both deep thermal, electrotherapeutic modalities and manages wound care, the person's forty (40) hours of supervised, on-the-job or clinical internship or affiliation training for each may have overlapped, so that the one hundred sixty (160) hours for each were be obtained concurrently through the same forty (40) hours of supervised, on-the-job or clinical internship or affiliation, provided that such internship or training includes both the use of deep thermal, electrotherapeutic modalities and the management of wound care. ~~(4-7-11)~~( )

**02. Obtaining Education and Supervised Training.** A student occupational therapist, graduate occupational therapist, and an occupational therapist may utilize deep thermal, electrotherapeutic modalities or manage wound care while working towards obtaining the education and supervised training described in Section 012 of these rules. The supervisor must provide at least direct supervision to the student occupational therapist, and at least routine supervision to the graduate occupational therapist or occupational therapist. An occupational therapy assistant may apply deep thermal and electrotherapeutic modalities under routine supervision if the occupational therapy assistant has obtained an advanced level of skill as described in Subsection 011.01 of these rules and the education and training described in Subsection 012.01 of these rules. Otherwise, the occupational therapy assistant must work under direct supervision while applying such modalities. (4-7-11)

**03. Supervised Training by Qualified Individual.** The supervised training described in Section 012 of these rules must be provided by an occupational therapist who is qualified as specified in this Subsection 012.01, or by another type of licensed health care practitioner whose education, training, and scope of practice enable the practitioner to competently supervise the person as to the modalities utilized and wound care management provided.

(4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. LICENSE EXPIRATION AND RENEWAL.**

**01. Expiration Date.** An individual's license expires on the individual's birth ~~day~~ *date*. The individual must annually renew the license before the individual's birth ~~day~~ *date* in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. ~~(3-29-10)~~ *( )*

**02. Reinstatement.** A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. (4-7-11)

**03. Application for Renewal.** In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**025. CONTINUING EDUCATION.**

In order to protect public health and safety and promote the public welfare, the Board has adopted the following continuing education requirement ~~consisting of both continuing education units (CEUs) and professional development units (PDUs) of all licensees:~~ *(3-29-10)* *( )*

**01. Requirement.** ~~Every two (2) years, a licensee must complete at least two (2) CEUs approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs). The licensee's initial two (2) year period shall begin on the date on which this Board issues the licensee a license and end on the date on which the licensee submits the licensee's second renewal application. Thereafter, the two (2) year period shall begin to run from the date of each renewal application in which the licensee was required to verify the completion of continuing education~~ Until January 1, 2018, each licensee shall successfully complete, in the two (2) years preceding renewal of the license, a minimum of two (2) Board-approved continuing education units (CEUs). ~~(4-13)~~ *( )*

**a.** Effective January 1, 2018 each licensee shall successfully complete, in the two (2) years prior to the license expiration date, a minimum of two (2) Board-approved CEUs. *( )*

**b.** A CEU is a measurement of the licensee's participation in a Board-approved continuing education activity. One (1) CEU requires ten (10) contact hours of participation in a Board-approved continuing education program, excluding meals and breaks. One (1) contact hour equals one (1) clock hour for purpose of obtaining CEUs. (3-29-10)

~~**b.** A PDU is a measurement of the licensee's participation in a professional development activity. One (1) contact hour of participation in Board-approved professional development activity equals one (1) PDU, one (1) academic credit equals ten (10) PDUs, and one (1) CEU equals ten (10) PDUs. If a licensee counts a CEU towards fulfilling the PDU requirement in a given two-year period, the CEU unit will not count towards fulfilling the CEU requirement. Accepted PDU activities and their associated PDU values are set forth in the PDU Activities Chart at pages 14-17 of the NBCOT Certification Renewal Handbook, as incorporated by reference in Section 004 of these rules.~~ *(3-29-10)*

**c.** The Board shall waive the continuing education requirement for the first two (2) license renewals after initial licensure. *( )*

**02. Verification.** The licensee must verify to the Board, as part of the annual license renewal process, that the licensee is in compliance with the continuing education requirement. (3-29-10)



**03. Courses and Activities.** At least one (1) CEU ~~and five (5) PDUs~~ must directly relate to the delivery of occupational therapy services. The remaining ~~PDUs and~~ CEUs must be germane to the practice of occupational therapy and relate to other areas of a licensee's practice. A licensee may take online or home study courses, as long as a course completion certificate is provided. (3-29-10)(    )

**a.** CEUs ~~and PDUs~~ acceptable to the Board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Idaho Occupational Therapy Association (IOTA); post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria: (3-29-10)(    )

- i. The program or activity contributes directly to professional knowledge, skill, and ability; (3-29-10)
- ii. The program or activity relates directly to the practice of occupational therapy; and (3-29-10)
- iii. The program or activity must be objectively measurable in terms of the hours involved. (3-29-10)

**b.** Partial credit will not be given for CEUs ~~and PDUs~~. (3-29-10)(    )

**c.** The delivery of occupational therapy services may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. (3-29-10)

**d.** Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice (3-29-10)

**04. Carry Over and Duplication.** CEUs ~~and PDUs~~ cannot be carried over to the next reporting period. The same course taken more than once during a reporting cycle will only be counted once. (3-29-10)(    )

**05. Documentation.** A licensee need not submit documentation of CEUs ~~and PDUs~~ when the licensee renews a license. However, a licensee must maintain documentation verifying that the licensee has completed the continuing education requirement for a period of four (4) years. A licensee must submit the verification documentation to the Board if the licensee is audited by the Board. A percentage of occupational therapists and certified occupational therapy assistants will be audited every year. Documentation for all activities must include licensee's name, date of activity or when course was completed, provider name, course title, description of course/activity, and number of CEUs. (3-29-10)(    )

~~**a.** Documentation for all activities must include licensee's name, date of activity or when course was completed, provider name, course title, description of course/activity, and number of PDUs and CEUs. (3-29-10)~~

~~**b.** Records showing participation in each professional development activity must be maintained by the licensee. Acceptable documentation for specific activities includes: (3-29-10)~~

~~**i.a.** Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)~~

~~**i.b.** In-service training. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)~~

~~**i.c.** Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)~~

~~**i.d.** Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. (3-29-10)~~

- ~~v~~e.** Publications. The required documentation for this activity is a copy of the publication. (3-29-10)
  - ~~v~~f.** Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. (3-29-10)
  - ~~v~~g.** Interactive online courses. The required documentation for this activity is a certificate or documentation of completion. (3-29-10)
  - ~~v~~h.** Development of instructional materials incorporating alternative media such as video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. (3-29-10)
  - ~~v~~i.** Professional manuscript review. The required documentation for this activity is a letter from publishing organization verifying review of manuscript. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - ~~v~~j.** Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor. (3-29-10)
  - ~~v~~k.** Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - ~~v~~l.** Self study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two (2) page synopsis of each item written by the licensee. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - ~~v~~m.** Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maximum of ten (10) hours per supervisor is allowed per reporting period for this category. (3-29-10)
- 06. Exemptions.** A licensee may request an exemption from the continuing education requirement for a particular two-year (2) period under the following circumstances. The licensee must provide any information requested by the Board to assist in substantiating the licensee's need for a claimed exemption: (3-29-10)
- a.** During the continuing education period the licensee was residing in another country for one (1) year or longer, reasonably preventing completion of the continuing competency requirements; (3-29-10)
  - b.** The licensee was absent from Idaho because of military service for a period of one (1) year or longer during the continuing education period, preventing completion of the continuing competency requirements; or (3-29-10)
  - c.** The licensee should be exempt from the continuing ~~competency~~ education requirements for reasons of health or other good cause. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. INACTIVE STATUS.**

- 01. Request for Inactive Status.** Occupational Therapists and Occupational Therapy Assistants requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (4-7-11)
- 02. Inactive License Status.** (4-7-11)

- a. Licensees may not practice in Idaho while on inactive status. (4-7-11)
- b. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho, subject to Subsection 030.03 of these rules. (4-7-11)
- c. Inactive license renewal notices and licenses will be marked “Inactive.” (4-7-11)
- 03. Reinstatement to Full Licensure from Inactive Status.** An inactive licensee may reinstate to active status by submitting a completed, Board-approved application and paying the appropriate fee. The licensee’s application must demonstrate, to the Board’s satisfaction, that during the two (2) years immediately preceding the application, the licensee completed at least two (2) CEUs ~~recommended by the Idaho Occupational Therapy Association and approved by~~ acceptable to the Board, ~~along with at least ten (10) Board approved professional development units (PDUs), as specified in Section 025 of these rules.~~ (4-7-11) ( )

# **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

## **24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS**

**DOCKET NO. 24-0801-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

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

The rule is being amended to allow for the termination of an application upon written notice when there has been no activity for 12 months. The rule amendment will also require a walk-through inspection for establishments to be arranged and completed within 6 months of the Board's review of the 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revisions are simple in nature. The changes 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0801-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**200. APPLICATION AND PHOTOGRAPH (RULE 200).**

Application must be postmarked sixty (60) days prior to the date of examination, and must be accompanied by an unmounted passport photograph of the applicant, taken within three (3) months preceding the date of application. (3-13-02)

**01. Lack of Activity.** If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. FUNERAL ESTABLISHMENT AND CREMATORY ESTABLISHMENT (RULE 450).**

All applicants for establishment license shall submit a completed application on a form approved by the Board. All newly licensed establishments and all branch or satellite facilities must meet the same requirements for licensure. A walk-through inspection of the establishment must be arranged and completed within six (6) months of the Board's review of the application or the application will be deemed denied and will be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. (~~4-2-08~~)( )

**01. Contents of Application.** Each applicant for a license to operate a funeral establishment or crematory establishment in Idaho shall document the following: (4-2-08)

- a. Name and address of owner whether individual or entity; and (4-2-08)
- b. Notarized signature of applicant or authorized agent; and (4-2-08)
- c. Name and license number of responsible licensee; and (4-2-08)
- d. Other such information as the board may require. (4-2-08)

**02. Change in Ownership or Location.** Any change in the ownership or location of a funeral establishment shall constitute a new funeral establishment for the purposes of licensure. (7-1-93)

**03. Funeral Establishment.** All funeral establishments shall be required to provide each of the following: (4-2-08)

- a. An operating room and necessary equipment for embalming; (4-2-08)
- b. A selection room for caskets and merchandise which may include video, catalogs, and electronic depiction of caskets and merchandise; (4-2-08)
- c. A chapel where funeral or other religious ceremonies may be held; and (4-2-08)
- d. A room for viewing and visitation. (4-2-08)

**04. Funeral Firm.** Every funeral firm in the state of Idaho and/or licensee thereof shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of the dead human body at the time of said arrangements and prior to rendering that service or providing that merchandise, a written statement showing to the extent then known the following: (7-1-93)

- a.** The price of the service that the person or persons have selected and what is included therein. (7-1-93)
- b.** The prices of each of the supplementary items of service and/or merchandise requested. (7-1-93)
- c.** The amount involved for each of the items for which the firm will advance monies as an accommodation for the family. (7-1-93)
- d.** The method of payment. (7-1-93)
- e.** If the quoted price includes a basic component of a funeral or a part thereof which is not desired, then a credit thereof should be granted. (7-1-93)
- 05. Crematory Establishment.** All crematory establishments shall be required to provide each of the following: (4-2-08)

  - a.** Detailed information regarding each retort, specifically documenting that each retort and accompanying equipment is listed by an approved testing agency as listed in the Uniform Fire Code or in the case of alkaline hydrolysis, a pressurized vessel heated to 150 C (330 F) for a minimum recommended period of thirty (30) minutes, thereby meeting or exceeding the United States Center for Disease Control (CDC) requirements for the complete destruction of human pathogens; and (3-20-14)
  - b.** One (1) set of blueprints for the proposed new construction or remodeling where the retort is to be located. The blueprints must be approved by the local building department as being in compliance with applicable building codes and ordinances. (4-2-08)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS**

#### **DOCKET NO. 24-1201-1501 (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 54-2305, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

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

The Idaho State Board of Psychologist Examiners is updating the incorporation by reference and is adopting the amendments to the Ethical Principle of Psychologists and Code of Conduct adopted by its national association. The Board is also decreasing fees. The reinstatement fee is being changed to establish that reinstatement is in accordance with Section 67-2614, Idaho Code, in response to the passage of House Bill 117 in 2015. The endorsement qualification is being changed to allow five years of experience to be within the last seven years which provides more flexibility in meeting this qualification. Finally, the continuing education required for reinstatement of an expired license is being clarified.

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

Rule 150 is being amended to decrease the annual renewal fee from \$300 to \$250; the annual renewal fee for inactive license from \$150 to \$125; original application for licensure by exam from \$200 to \$150; original application for licensure by endorsement from \$300 to \$250; and to change the reinstatement fee from \$25 to be in accordance with Section 67-2614, 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:

This rulemaking is anticipated to reduce the amount of dedicated fund fees collected by the Board by approximately \$19,825.00.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revision to the rules are simple in nature and the proposed fees confer a benefit to the licensees and applicants. This proposal was discussed during noticed, open meetings of the Board.

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

The Idaho State Board of Psychologist Examiners is adopting the amendments to the Ethical Principle of Psychologists and Code of Conduct adopted by its national association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
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700 W State St.  
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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1201-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The document titled "Ethical Principles of Psychologists and Code of Conduct," published by the American Psychological Association and dated June 1, 2003 with the 2010 amendments effective June 1, 2010, as referenced in Section 350, is herein incorporated by reference and is available from the Board's office and on the Board web site.

~~(3-20-04)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. FEES (RULE 150).**

**01. Annual Renewal Fee.** Annual renewal fee -- ~~three~~ two hundred fifty dollars (~~\$300~~ 250).

~~(3-19-07)~~( )

**02. Annual Renewal Fee for Inactive License.** Annual renewal fee - one hundred ~~fifty~~ twenty-five dollars (~~\$150~~ 125).

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

**03. Original Application Fee For Licensure by Exam.** Application fee - ~~two~~ one hundred fifty dollars (~~\$200~~ 150).

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

**04. Original Application Fee For Licensure by Endorsement/Senior Psychologist.** Original application fee for licensure by endorsement/senior psychologist fee - ~~three~~ two hundred fifty dollars (~~\$300~~ 250).

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

**05. Service Extender Application Fee.** Application fee - one hundred dollars (\$100). (3-19-07)

**06. Service Extender Annual Renewal Fee.** Annual renewal fee - one hundred dollars (\$100).

(3-19-07)

**07. Examination and Reexamination Fee.** Examination and reexamination fees are those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). (5-3-03)

**08. Examination and Reexamination in Addition to Application Fee.** The examination or reexamination fee are in addition to the application fee and must accompany the application. (3-19-07)

**09. Reinstatement Fee.** ~~Any license cancelled for failure to renew may be reinstated upon payment of twenty-five dollars (\$25), together with the renewal fee for each year thereafter up to the time of r~~ Reinstatement fee is as provided in Section 67-2614, Idaho Code. ~~(3-29-10)~~( )



10. **Fees are Non-Refundable.** All fees are non-refundable. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. ENDORSEMENT (RULE 250).**

**01. Eligibility for Endorsement.** An applicant who is in possession of a valid statutory license or statutory certificate from another state or Canada may apply for licensing under the endorsement section of this law. (3-15-02)

**02. Requirements for Endorsement.** An applicant under the endorsement section shall have: (3-15-02)

- a. A valid psychology license or certificate issued by the regulatory entity of another jurisdiction; and (3-15-02)
- b. A current certificate of professional qualification in Psychology as defined in these rules; or (3-15-02)
- c. A registration with the National Register of Health Service Providers in Psychology; or (3-29-10)
- d. A certification by American Board of Professional Psychology; or (3-29-10)
- e. Graduated from an accredited college or university with a doctoral degree in psychology and two (2) years of supervised experience acceptable to the Board, one (1) year of which may include a pre-doctoral practicum or internship and one (1) year of which must be post-doctoral; or (3-29-10)
- f. Graduated from an accredited college or university with a doctoral degree in a field related to psychology, provided experience and training are acceptable to the Board; and (3-29-10)
- g. A record of practicing Psychology at the independent level for the five (5) years of the last seven (7) years immediately prior to application; and ~~(3-29-10)~~ ( )
- h. A history of no disciplinary action in any jurisdiction. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. CONTINUING EDUCATION REQUIREMENTS FOR RELICENSURE IN PSYCHOLOGY (RULE 401).**

**01. Number of Hours Required.** All licensed psychologists, in order to renew their license, must have accumulated twenty (20) hours per year of continuing education credits. At the time of renewal of the psychologists' licenses, they will certify that they are aware of the requirements for continuing education and that they have met those requirements for the preceding year. At the time of reinstatement of a psychologist's license, they shall provide proof that they have met the requirements for continuing education for the preceding year. A minimum of four (4) hours credit in ethics, standards of care, and/or review of laws pertaining to the practice of psychology is required every three (3) years. Areas covered may include practice, consultation, research, teaching, and/or supervision. These units may be used as part of the continuing education credit required. ~~(5-8-09)~~ ( )

**02. Professional Level of Continuing Education -- Time Period Records Kept - Audit.** This continuing education experience must be at an appropriate level for professional training in psychology. The licensees have responsibility for demonstrating the relevance and adequacy of the educational experience they select. The licensees are also responsible for keeping an accurate record of their own personal continuing education hours

for a period of five (5) years. A random audit may be conducted to insure compliance. (7-1-93)

**03. Newly Licensed Individuals.** Newly licensed individuals will be considered to have satisfied the continuing education requirements for the remainder of the year in which their license is granted. (7-1-93)

**04. Certificates of Satisfactory Attendance and Completion.** Certificates of satisfactory attendance and completion, cancelled checks, participant lists, transcripts from universities, letters of certification on instructor's letterhead, and other reasonably convincing proof of the submitted activities may serve as documentation when persons audited are required to submit proof of continuing education. (7-1-93)

**05. Licensees Who Do Not Fulfill the Continuing Education Requirements.** Licensees who do not fulfill the continuing education requirements may be subject to disciplinary action. (7-1-93)

**06. Carryover of Continuing Education Hours.** Continuing education courses not claimed for CE credit in the current renewal year, may be credited for the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year. (5-3-03)

**07. Special Exemption.** The Board has the authority to make exceptions for reasons of individual hardship including health, when certified by a medical doctor, or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. Request for special exemption must be made prior to licensure renewal. (3-29-10)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

**DOCKET NO. 24-1501-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 American Association for Marriage and Family Therapy (AAMFT) Code of Ethics was updated January 1, 2015 and the Board has adopted the updated code. The counselor supervisor registration requirements are being amended to limit approvals to five years and to create a renewal process. The clinical professional counselor requirements are being clarified, the marriage and family therapists supervisor requirements are being amended to align with the requirements for a counselor supervisor and to create a renewal process.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

The AAMFT Code of Ethics was updated January 1, 2015 and the Board has adopted the updated code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
208 334-3233 ph  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1501-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

**01. ACA Code of Ethics.** “ACA Code of Ethics,” as published by the American Counseling Association (ACA), effective 2014, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-11-15)

**02. AAMFT Code of Ethics.** The document titled “AAMFT Code of Ethics,” as published by the American Association for Marriage and Family Therapy (AAMFT), effective ~~July~~ January 1, 201~~2~~5 and referenced in Subsections 239, 350, ~~and 450-01~~, and 525 is herein incorporated by reference and is available from the Board’s office and on the Board web site. ~~(4-11-15)~~ ( )

**03. Guidelines.** The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2007 referenced in Subsection 239.03.a. of these rules, is herein incorporated by reference and is available from the Board’s office and on the Board web site at <http://www.ibol.idaho.gov>. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).**

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide supervision for those individuals pursuing licensure in Idaho as a counselor. (3-29-12)

**01. Requirements for Registration.** (4-2-03)

**a.** Document at least two (2) years experience as a licensed counselor. (3-30-07)

**b.** Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

**c.** Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

**d.** Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (4-2-03)

**02. Registration.** A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

**a.** Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. The applicant shall include a copy of the informed consent form used to ensure clients are aware of the roles of the supervisor and supervisee, (3-29-12)

**b.** A supervisor’s registration shall be valid only so long as the individual supervisor’s counselor license remains current and in good standing. is not disciplined, and is renewed as provided in these rules. ~~(4-2-03)~~ ( )

**03. Supervision.** (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors set forth in the ACA Code of Ethics. (3-29-12)

b. Unless the primary work role of an individual is as a clinical supervisor a Registered Counselor Supervisor shall not provide supervision to more than six (6) supervisees concurrently. (3-29-12)

c. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. ( )

04. Renewal. Subject to the conditions in Paragraph 200.04.c. of this rule, a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal prior to the expiration of the current registration on forms approved by the Board and meet the following requirements: ( )

a. Hold an active Idaho counselor license which has not been subject to discipline and is current and in good standing; and ( )

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. ( )

c. For supervisors registered prior to the effective date of Subsection 200.04 of this rule, the following renewal requirements and conditions apply: ( )

i. A registered supervisor who has been registered for at least five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2018. ( )

ii. A registered supervisor who has been registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020. ( )

201. -- 224. (RESERVED)

**225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).**

Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully passed the required examination and have met the following requirements: (3-29-12)

01. **License.** Hold a valid licensed professional counselor license that is current and in good standing; and (3-29-12)( )

02. **Experience.** Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (3-29-12)

a. All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor registered as a supervisor with the Board. The remainder of the supervision may be provided by licensed Psychiatrists, Licensed Psychologists, Licensed Clinical Social Workers registered as supervisors with the Board of Social Work Examiners, or Marriage and Family Therapists registered as supervisors with the Board. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for license and supervision are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. (3-29-12)( )

b. One (1) hour of clinical supervision for every thirty (30) hours of direct client contact is required. Individual supervision is defined as one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. (3-29-12)( )

- c. No more than one-half (1/2) of group supervision shall be allowed. (3-30-07)
- 03. **Examination.** Successful passage of the required written examination. (3-29-12)
- 04. **Recommendation of the Supervisor(s).** The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**239. MARRIAGE AND FAMILY THERAPIST SUPERVISOR REQUIREMENTS (RULE 239).**

Effective July 1, 2004, licensed marriage and family therapists in Idaho shall be registered with the board to provide supervision for those individuals pursuing licensure in the state of Idaho as a marriage and family therapist. (3-20-04)

- 01. **Requirements for Registration.** (3-20-04)
  - a. Possess two (2) years experience as a licensed marriage and family therapist and document at least two thousand (2,000) hours of direct client contact with couples and families. (3-20-04)
  - b. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (3-20-04)
  - c. Have not been subject to discipline for five (5) years prior to registration. (3-20-04)
- 02. **Registration.** A marriage and family therapist shall fully complete the application form as established by the board and submit the designated fee as adopted by board rule. (3-20-04)

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. The applicant shall include a copy of the informed consent form used to ensure clients are aware of the roles of the supervisor and supervisee. ( )

b. A supervisor's registration shall be valid only so long as the supervisor's marriage and family therapist license remains current and in good standing, is not disciplined, and is renewed as provided in these rules. ( )

- 03. **Supervision.** (3-20-04)
  - a. A registered marriage and family therapist supervisor shall provide supervision in conformance with the guidelines for supervisors adopted by the American Association for Marriage and Family Therapists and the guidelines set forth in the AAMFT Code of Ethics. ~~(3-20-04)~~ ( )
  - b. Unless the primary work role of an individual is as a clinical supervisor a registered marriage and family therapist shall not supervise more than six (6) supervisees, either in one-to-one or group supervision, at any time regardless of the modality (individual, dyad, or group) of supervision. (3-29-12)

c. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a ~~face-to-face setting provided by a~~ secure live electronic connection between the supervisor and supervisee. ~~(3-29-12)~~ ( )

04. Renewal. Subject to the conditions in Paragraph 239.04.c. of this rule, a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal prior to the expiration of the current registration on forms approved by the Board and meet the following requirements: ( )

a. Hold an active Idaho marriage and family therapist license which has not been subject to discipline and is current and in good standing; and ( )

**b.** Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. ( )

**c.** For supervisors registered prior to the effective date of Subsection 239.04 of this rule, the following renewal requirements and conditions apply: ( )

**i.** A registered supervisor who has been registered for at least five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2018. ( )

**ii.** A registered supervisor who has been registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020. ( )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE**

**DOCKET NO. 24-1701-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4705, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

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

The rule is being amended to clarify the continuing education needed to reinstate an expired license and the Board is adding continuing education credit, with limitations, for licensees who teach Board-approved courses.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is being amended to clarify the continuing education needed to reinstate an expired license and the Board is adding continuing education credit for teaching. The proposed changes to these rules 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph  
(208) 334-3945 fax



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1701-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**301. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 301).**

**01. Expiration Date.** All Acupuncture licenses and certificates expire and must be renewed annually on forms approved by the Board together with the required fee in accordance with Section 67-2614, Idaho Code. As part of a complete renewal application, the licensee will certify by signed affidavit completion of the required continuing education pursuant to Sections 305 through 307 of these rules. Licenses and certificates not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (4-4-13)

**02. Reinstatement.** Any license or certificate cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250) and the applicant shall submit proof of having met the ~~required~~ continuing education ~~for each year the license or certificate was cancelled.~~ required of licensees by Section 305 through 307 of these rules as follows: (5-3-03)( )

**a.** For licenses or certificates expired for one (1) year or less, one (1) year of continuing education: ( )

**b.** For licenses or certificates expired for more than one (1) year, two (2) years of continuing education. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. CONTINUING EDUCATION REQUIREMENTS (RULE 305).**

In order to further protect the public health and to facilitate the administration of the Acupuncture Act, the Board has adopted the following requirements: (4-4-13)

**01. Requirement.** All practitioners, for renewal of their license or certificate, shall be required to complete a minimum of fifteen (15) hours of continuing education within the preceding twelve (12) months. Beginning July 1, 2014, a minimum of ten (10) hours of continuing education must be from Category I topics, and a maximum of five (5) hours of continuing education may be from Category II topics, as set forth in Sections 306 and 307 of these rules. (4-4-13)

**02. Verification of Attendance.** It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended by the applicant. This verification shall be maintained by the licensee for no less than seven (7) years and provided to the Board upon the request of the Board or its agent. (5-3-03)

**03. Distance Learning and Independent Study.** The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the applicant in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses shall be eligible for continuing education credits if approved by NCCAOM or upon approval of the Board. (4-6-05)

**04. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (4-6-05)

**05. Carryover.** A continuing education course taken in a renewal year, but not claimed for continuing

education credit in that year, may only be claimed for credit in the following renewal year. (4-4-13)

**06. Credit for Teaching.** Licensees may earn continuing education credit by teaching Board-approved courses. A licensee will earn one (1) credit hour for every two (2) hours of teaching. Credit for teaching will not exceed five (5) hours of the total continuing education hours required for a renewal period and will be credited to the category of the topic taught. ( )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD**

**DOCKET NO. 24-1801-1501**

#### **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 54-4106, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 in response to an Idaho Certified Appraiser's concern that certain parts of the rules are ambiguous and in conflict. The rule is being amended to eliminate the uniform standards of professional appraisal practice that do not apply to real estate appraisals. The definitions are being amended to eliminate the definition of Specialized Appraisal Services which is not otherwise used in the rules.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes to the rules 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:

The Uniform Standards of Professional Appraisal Practice (USPAP) are the appraisal standards established by federal law for state licensed and certified appraisers.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1801-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)," 2014-2015 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2014, 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. ~~(3-20-14)~~( )

**(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. (3-20-14)

**02. 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)

**03. 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)

**04. Appraiser Qualifications Board.** Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. (7-1-97)

**05. 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)

**06. 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)

**07. Chief.** The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-93)

**08. 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)

**09. 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)

**10. 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. (3-20-14)

**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)~~

~~**154. 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)~~

~~**165. 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)**

**700. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE/CODE OF ETHICS (RULE 700).**

The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, as published by the Appraisal Foundation and referenced in Section 004, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers licensed under Title 54, Chapter 41, Idaho Code, and these rules. (3-13-02)( )

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.21.01 - RULES OF THE IDAHO STATE CONTRACTORS BOARD**  
**DOCKET NO. 24-2101-1501 (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 54-5207, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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's expenses have been exceeding its revenues. This change will help balance the Board's annual budget while maintaining the services necessary to protect the public.

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

Rule 175 is being amended in accordance with Sections 54-5210 and 54-5211, Idaho Code, to increase the application fee from \$30 to \$35; the reciprocal fee from \$25 to \$35; the renewal fee from \$25 to \$35; and the reinstatement fee from \$25 to \$35.

**FISCAL IMPACT:** The following is a specific 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 rule will have no impact on general funds. The rule change will result in an annual increase of approximately \$156,020.00 in the Board's dedicated fund, based on the current number of licensees and an estimate of original applications received in a year.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho State Contractors Board operates on dedicated funds and negotiating the fees was not feasible. The proposed rule is needed because the Board's expenses have been exceeding its revenues. The change was 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
208 334-3233 ph / (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-2101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**175. FEES (RULE 175).**

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements.

(3-30-06)

01. **Application Fee.** Application fee (includes original registration) – thirty-five dollars (\$305).  
~~(3-30-06)~~( )
02. **Reciprocal Fee.** Reciprocal fee – ~~twenty~~ thirty-five dollars (\$235).  
~~(3-30-06)~~( )
03. **Renewal Fee.** Annual registration renewal fee – ~~twenty~~ thirty-five dollars (\$235). ~~(3-30-06)~~( )
04. **Reinstatement Fee.** Reinstatement fee – ~~twenty~~ thirty-five dollars (\$235). ~~(3-30-06)~~( )
05. **Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license.  
(3-30-06)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.24.01 - RULES OF THE GENETIC COUNSELORS LICENSING BOARD**

#### **DOCKET NO. 24-2401-1501 (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 54-5607, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking is necessary to implement the newly enacted provisions of Title 54, Chapter 56, Idaho Code. The proposed rules provide contact information for the Board, definitions, and address changes. These rules set out the operations of the board; application process; fees, requirements for original licensure; requirements for existing genetic counselors; approved examinations; suitability for licensure; requirements for licensure by endorsement; requirements for provisional licensure; renewal of a license; continuing education, unprofessional conduct; unethical conduct; and discipline.

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

The proposed rules establish the following fees: application fee of \$500; original license fee of \$500; annual renewal fee of \$500; provisional license fee of \$500; endorsement fee of \$500; and duplicate license fee of \$10.

**FISCAL IMPACT:** The following is a specific 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 rules establish fees which will be deposited in the Bureau of Occupational Licenses dedicated fund. The fees will be used by the Genetic Counselors Licensing board to administer the act. Since all self-governing boards are expected to be self-supporting, these fees are based on the estimated costs and the anticipated number of licensees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 2015 legislature passed Senate Bill 1080 which created the Genetic Counselors Licensing Board. The proposed rules are necessary in order to implement the provisions of Title 54, Chapter 56, Idaho Code. The proposed rules were discussed during noticed, open meetings of the Board.

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

The Board is adopting the National Society of Genetic Counselors Code of Ethics adopted January 1992 and revised December 2004 and January 2006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.



Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph / (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2401-1501**

**IDAPA 24**  
**TITLE 24**  
**CHAPTER 01**

**24.24.01 - RULES OF THE GENETIC COUNSELORS LICENSING BOARD**

**000. LEGAL AUTHORITY.**

These rules are hereby prescribed and established pursuant to the authority vested in the Genetic Counselors Licensing Board by the provisions of Title 54, Chapter 56, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The rules will be cited as IDAPA 24.24.01, "Rules of the Genetic Counselors Licensing Board." ( )

**02. Scope.** These rules implement the purposes and intent of Chapter 56, Title 54, Idaho Code, to regulate the profession of genetic counseling in the interest of the public health, safety, and welfare. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Board may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ( )

**003. ADMINISTRATIVE APPEAL.**

Administrative appeals will be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

The document titled "National Society of Genetic Counselors Code of Ethics," adopted January 1992 and revised December 2004 and January 2006, is incorporated by reference into this rule and is available at the Board's office and on the Board's web site. ( )

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

**01. Street Address.** The office of the Genetic Counselors Licensing Board is located within the Bureau of Occupational Licenses, 700 W. State Street, Boise, Idaho 83702. ( )

**02. Office Hours.** The office is open between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time each day except Saturdays, Sundays and holidays. ( )

**03. Mailing Address.** The mailing address of the Board is PO Box 83720, Boise, Idaho 83720-0063. ( )

**04. Telephone Number.** The telephone number of the Board is (208) 334-3233. ( )

**05. Email Address.** The Board's email address is [gen@ibol.idaho.gov](mailto:gen@ibol.idaho.gov). ( )

**06. Facsimile.** The Board's fax number is (208) 334-3945. ( )

**07. Electronic Address.** The Board's official website can be found at <http://www.ibol.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein and the records associated with the Board are subject to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. OPEN MEETINGS.**

This Board operates pursuant to the Idaho Open Meetings Law, Title 74, Chapter 2, Sections 40 through 47 inclusive, Idaho Code. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. ABGC.** American Board of Genetic Counseling, Inc., its successor or equivalent. ( )

**02. ABMG.** American Board of Medical Genetics, its successor or equivalent. ( )

**03. ACGC.** Accreditation Council for Genetic Counseling, its successor or equivalent. ( )

**04. ACS.** Active candidate status conferred by the American Board of Genetic Counseling to an individual who has met the requirements established by the ABGC to take the ABGC certification examination in genetic counseling. ( )

**05. Board.** Genetic Counselors Licensing Board as created in Section 54-5606, Idaho Code. ( )

**06. Bureau.** Idaho Bureau of Occupational Licenses as created in Section 67-2602, Idaho Code. ( )

**07. Certification.** Voluntary process by which the ABGC, ABMG, or NSGC, nongovernmental agencies, grant recognition and use of a credential to individuals who have met predetermined and standardized criteria. ( )

**08. Certification Examination.** Certification examination for genetic counselors administered by the ABGC, ABMG, or NSGC, certifying agencies approved by the Board. ( )

**09. CEU.** Continuing education unit. A measurable amount of credit granted to licensees by the Board for participation in education programs with content targeted to genetic counselors and pre-approved by the National Society of Genetic Counselors (NSGC). ( )

**10. Code of Ethics.** The National Society of Genetic Counselors Code of Ethics as approved by the Board as the code of ethics for Idaho and incorporated by reference in Section 004 of these rules. ( )

**11. Genetic Counseling.** Performing acts of a genetic counselor as described in Section 54-5603, Idaho Code. ( )

**12. Genetic Counselor.** An individual who is licensed under Title 54, Chapter 56 to engage in the practice of genetic counseling. ( )

**13. Licensed Physician.** A person holding a license issued under Title 54, Chapter 18, Idaho Code. ( )

**14. NSGC.** The National Society of Genetic Counselors, its successor or equivalent. ( )

**15. Person.** An individual not an association of individuals or a legal entity. ( )

**16. PAC.** Professional Activity Credit. A measurable amount of credit granted to licensees by the Board for participation in a variety of professional activities determined by the ABGC to promote genetic counselor educational development. ( )

**011. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.**

**01. Change of Name.** Whenever a change of a licensee's name of record occurs, the licensee must immediately notify the Bureau in writing of the change. Official documentation confirming the change of name must be provided to the Bureau on request. ( )

**02. Change of Address.** Whenever a change of the licensee's address of record occurs, the licensee must immediately notify the Bureau in writing of the change. ( )

**03. Address for Notification Purposes.** The most recent mailing address on file with the Bureau will be used for purposes of all written communication with a licensee including, but not limited to, notification of renewal and notices related to disciplinary actions. It is the responsibility of each licensee to keep the Bureau informed of a current mailing address. ( )

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

**100. ORGANIZATION AND OPERATIONS OF THE BOARD.**

**01. Meetings.** The Board must meet at least annually and at other such times and places as designated by the Chairman or upon the written request to the Chairman of a majority of members of the Board. ( )

**a.** A majority of Board members constitute a quorum and is required for the transaction of business. A majority vote of the quorum present at a meeting will be considered the action of the Board as a whole. ( )

**b.** The Chairman is a voting member. ( )

**02. Organization.** At the first meeting of each fiscal year, the Board will elect from its members a Chairman, who will assume the duties of the office at the direction of the Board. ( )

**a.** The Chairman will, when present, preside at all meetings, appoint with the consent of the Board, all committees, and will otherwise perform all duties pertaining to the office of Chairman. ( )

**b.** The Bureau will act as an agent of the Board and will be the official keeper of all records of the Board. The Bureau will provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. ( )

**101. -- 199. (RESERVED)**

**200. APPLICATION.**

**01. Filing an Application.** Applicants for licensure must submit a complete application, verified under oath, to the Board at its official address. The application must be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation. ( )

**02. Supporting Documents.** The applicant must provide or facilitate the provision of any supporting third party documents that may be required under the qualifications for the license being sought. ( )

**03. Applications Must Be Complete.** Applications will not be considered complete until all required information, documents, and fees are received by the Board. ( )

**04. Lack of Activity.** If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon a thirty (30) day written notice, unless the applicant shows good cause to the Board. ( )

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

**250. FEES.**

Fees are established in accord with Section 54-5613, Idaho Code as follows: ( )

**01. Application Fee.** Application fee is five hundred dollars (\$500). ( )

**02. Original License Fee.** Initial full license fee is five hundred dollars (\$500). ( )

**03. Annual Renewal Fee.** Annual renewal fee is five hundred dollars (\$500). ( )

**04. Provisional License Fee.** Provisional license fee is five hundred dollars (\$500). ( )

**05. License by Endorsement Fee.** License by endorsement fee is five hundred dollars (\$500). ( )

**06. Examination Fee.** The fee for those examinations administered by a third party administrator is the fee determined by the administrator and must be paid by the applicant directly to the administrator. ( )

**07. Duplicate License Fee.** Duplicate license fee is ten dollars (\$10). ( )

**08. Reinstatement Fee.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. ( )

**09. Refund of Fees.** All fees are non-refundable except that, if a license fee is tendered but the Board does not issue a license, the respective license fee will be returned. ( )

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

**300. REQUIREMENTS FOR ORIGINAL LICENSURE.**

The Board may grant an applicant a license as a genetic counselor who completes an application as set forth in Section 200, pays the applicable license fee as set forth in section 250, and meets the following requirements: ( )

**01. General.** ( )

**a.** An applicant must certify that he has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony or a lesser crime conviction. If the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**b.** An applicant must certify that he or his license has not been subject to any disciplinary action by a regulatory entity in another state, territory, or country including, but not limited to, having an application for licensure denied. If the applicant or his license has been subject to discipline, the applicant must submit to the Board a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**02. Education.** An applicant must hold a master's degree or higher in genetics from an ABGC, ABMG, ACGC, or NSGC accredited program or master's degree or higher in a related field of study as approved by the Board. ( )

**03. Examination.** An applicant must pass an ABGC or ABMG administered genetic counselor certification exam. ( )

**04. Certification.** An applicant must provide proof of current certification from the ABGC or ABMG. ( )

**301. REQUIREMENTS FOR EXISTING GENETIC COUNSELOR LICENSURE.**

Until July 1, 2016, the Board may grant a genetic counselor license to an applicant for licensure who does not qualify for licensure under Section 300 of these rules, completes an application as set forth in Section 200, pays the applicable license fee as set forth in Section 250, and who meets the following requirements: ( )

**01. General.** Meets the requirements prescribed in Subsection 300.01 of these rules. ( )

**02. Education.** Meets the requirements prescribed in Subsection 300.02 of these rules. ( )

**03. Experience.** Has worked as a genetic counselor for a minimum of ten (10) years and at least five (5) hours per week on average during the five (5) years immediately prior to the date of application. ( )

**04. Training.** Provides documentation satisfactory to the Board that he has completed at least two hundred (200) hours of formal training in genetic counseling as determined by the Board. ( )

**05. Endorsement.** Submits three (3) letters of recommendation from persons with whom applicant has worked in an employment setting, including at least one (1) letter from a genetic counselor qualified for licensure under Chapter 56, Title 54, Idaho Code and one (1) letter from either a clinical geneticist certified by the ABMG or a medical geneticist certified by ABMG. ( )

**302. -- 304. (RESERVED)**

**305. APPROVED EXAMINATION.**

Approved examinations will be the Genetic Counselor Certification Exam administered by the ABGC or ABMG. ( )

**01. Passing Score.** A passing score will be determined by the ABGC or ABMG. ( )

**02. Date of Exam.** The passage of the exam may have occurred prior to the effective date of these rules. ( )

**306. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.**

An applicant who in any state, territory or country has had a license revoked or suspended or has been otherwise disciplined by a Board, a government agency, or any other disciplinary body, or has been found guilty, convicted, received a withheld judgment or suspended sentence for a felony or a lesser crime conviction must submit with his application a written statement and any supplemental information establishing his current suitability for licensure. ( )

**01. Consideration of Factors and Evidence.** The Board will consider the following factors or evidence: ( )

**a.** The severity or nature of the crime or discipline; ( )

**b.** The period of time that has passed since the crime or discipline under review; ( )

**c.** The number or pattern of crimes or discipline or other similar incidents; ( )

- d. The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ( )
- e. The relationship of the crime or discipline to the practice of genetic counseling; ( )
- f. The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ( )
- g. Any other information regarding rehabilitation or mitigating circumstances. ( )
- 02. **Interview.** The Board may, at its discretion, grant an interview of the applicant. ( )
- 03. **Applicant Bears the Burden.** The applicant will bear the burden of establishing his current suitability for licensure. ( )

**307. -- 309. (RESERVED)**

**310. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.**

The Board may grant a license to an applicant for licensure by endorsement who completes an application as set forth in Section 200 of these rules and meets the following requirements: ( )

- 01. **General.** Meets the requirements prescribed in Subsection 300.01 of these rules; and ( )
- 02. **Holds a Current License.** The applicant must be the holder of a current active license in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity of another state, territory, or jurisdiction of the United States. The state, territory, or jurisdiction must have licensing requirements substantially equivalent to or higher than those required for new applicants in Idaho. The certification of licensure must be received by the Board from the issuing agency. ( )

**311. REQUIREMENTS FOR PROVISIONAL LICENSE.**

The Board may issue a provisional license to allow a person who has been granted ACS to engage in the practice of genetic counseling. The holder of a provisional license may only practice under the general supervision of a person fully licensed under this chapter or a physician licensed in this state. ( )

- 01. **Application.** An applicant must submit a completed application on a form approved by the Board together with the required fee. ( )
- 02. **Supervision.** While the provisional licensee is providing genetic counseling services, the licensee's supervisor need not be physically present; however, the supervisor must be readily accessible to the provisional licensee by telephone or by electronic means for consultation and assistance. ( )
- 03. **Expiration and Renewal.** A provisional license expires automatically upon issuance of a full initial license. It is valid for one (1) year from the date it is issued and the licensee may renew it with an application for extension signed by the licensee's supervisor, at the discretion of the Board, for one (1) year periods up to a maximum of four (4) renewals. ( )

**312. -- 399. (RESERVED)**

**400. RENEWAL AND REINSTATEMENT OF EXPIRED LICENSE.**

A licensee must renew his license annually as set forth in Section 67-2614, Idaho Code, and may reinstate his license within five (5) years after expiration as provided in Section 67-2614, Idaho Code. ( )

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

**500. CONTINUING EDUCATION.**

All licensees must comply with the following continuing education requirements: ( )

**01. Requirement.** Beginning with the second renewal of their license, a licensee will be required to complete a minimum of two (2) CEUs within the preceding twelve (12) months or one (1) CEU and one (1) PAC within the preceding twelve (12) months. ( )

**02. Documentation.** Each licensee will maintain documentation verifying continuing education course attendance and curriculum, or completion of the educational activity for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. ( )

**a.** Documented evidence of meeting the continuing education course requirement must be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. Documented evidence of completing a continuing education activity must be in such form as to document both completion and date of the activity. ( )

**b.** A licensee must submit the verification documentation to the Board, if requested by the Board. If a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. ( )

**03. Waiver.** The Board may waive the requirements of this rule for reasons of individual hardship, including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. ( )

**04. Carryover of Continuing Education Hours.** CEUs and PACs not claimed in the current renewal year may be claimed in the next renewal year. A maximum of two (2) CEUs or one (1) PAC and one (1) CEU may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. ( )

**05. Exemption.** A licensee is exempt from the continuing education requirements under this section for the period between the initial issuance of the original license and the first expiration date of that license. ( )

**501. -- 699. (RESERVED)**

**700. UNPROFESSIONAL CONDUCT.**

**01. Examples.** Unprofessional conduct includes any of the following: ( )

**a.** Failure to follow the guidelines for genetic counseling contained within the National Society of Genetic Counselors Code of Ethics as referenced in Section 004 of these rules. ( )

**b.** Failure of a genetic counselor to provide general supervision to a provisional genetic license holder as required by Subsection 311.02 of these rules when both are parties to a supervision contract. ( )

**701. -- 799. (RESERVED)**

**800. UNETHICAL CONDUCT.**

Unethical conduct is conduct that does not conform to the guidelines for genetic counseling contained within the National Society of Genetic Counselors Code of Ethics, incorporated by reference into Section 004 of these rules and approved by the Board as the Idaho Code of Ethics. ( )

**801. -- 899. (RESERVED)**

**900. DISCIPLINE.**

**01. Disciplinary Action.** If the Board determines that grounds for discipline exist for violations of Title 54, Chapter 56, Idaho Code, violations of these rules, or both, it may impose disciplinary sanctions against the

licensee including, without limitation, any or all of the following: ( )

- a. Refuse to issue, renew, or reinstate a license; ( )
- b. Revoke or suspend the licensee's license; ( )
- c. Condition, restrict, or limit the licensee's practice, license, or both; ( )
- d. Impose an administrative fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws and rules; and ( )
- e. Order a licensee to pay the costs and fees incurred by the Board in the investigation, prosecution, or both, of the licensee for violation(s) of the Board's laws and rules. ( )

**901. -- 999. (RESERVED)**



## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD**

**DOCKET NO. 24-2501-1501**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-5403, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

Applicants for licensure as a driving instructor must undergo a medical examination and obtain a new medical certificate thirty days before applying for the instructor apprenticeship training program and before applying for an instructor license. Because the apprenticeship program normally takes more than one month to complete, applicants usually must undergo 2 medical exams in a short period of time to obtain an instructor license. This redundancy is expensive and is unnecessary for the protection of the safety, health, and welfare of the public. Extending the period to 2 years will eliminate this waste of time, money, and other resources.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the amendment will benefit the applicants and it 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 4th Day of September, 2015.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P.O. Box 83720  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2501-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**250. DRIVING INSTRUCTOR LICENSE (RULE 250).**

**01. Application.** Each applicant for a driving instructor license must apply as required by Rule 150. Each applicant is required to provide his name, date of birth, and contact information, including mailing address and telephone number, on the Board-approved application form. (4-7-11)

**02. Age.** An applicant for a driving instructor license must be at least twenty-one (21) years old. (4-7-11)

**03. Driving Record and Drivers License.** Each applicant must submit a copy of a valid driver's license in good standing and a copy of a satisfactory driving record. An unsatisfactory record includes, but is not limited to, two (2) moving violations in the past twelve (12) months, or suspension or revocation of a driver's license in the last thirty-six (36) months, or a conviction involving alcohol or controlled substances within the last thirty-six (36) months. (4-7-11)

**04. Criminal History Background Check.** Each applicant must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must submit a full set of the applicant's fingerprints, and any relevant fees, to the Bureau which will forward the fingerprints and fees to the organization that conducts the fingerprint based criminal history background check. The application will not be processed until the completed fingerprint-based criminal history background check has been received. (3-20-14)

**05. Medical Certificate.** A driving instructor licensee may not provide in-vehicle instruction to students if the instructor suffers from a medical condition that may impair the instructor's ability to safely instruct student drivers. Accordingly, each applicant for an instructor's license must obtain a medical examination conducted in accordance with the Federal Motor Carriers Safety Regulations (49 CFR 391.41-391.49). The examination must ~~occur~~ **be completed** within ~~the thirty (30) days~~ **two (2) years** preceding the application. The applicant must submit a medical affidavit or certificate, issued and signed by a licensed, qualified medical professional documenting that the examination occurred and that the applicant does not suffer from any physical or mental condition or disease that would impair the applicant's ability to safely instruct student drivers. If a medical condition exists, the applicant must re-certify as the medical professional requires and submit that information to the Board. (4-7-11) ( )

**06. Education.** Each applicant must submit written evidence, satisfactory to the Board, of having graduated from a high school or a regionally or nationally accredited college or university, or of having obtained a GED. (4-7-11)

**07. Instructor Apprenticeship Training Program.** Applicants for licensure must demonstrate to the Board's satisfaction that they have successfully completed all required classroom instruction and behind-the-wheel training hours from a Board-approved instructor apprenticeship training program or have met the requirements for a waiver of the apprenticeship training program as set forth in these rules. The applicant must have undertaken and completed the apprenticeship training program within the five (5) year period immediately preceding the application. (4-11-15)

**a.** Proof of successful completion must include written certificate from a Board-approved apprenticeship training program certifying that the applicant has satisfactorily completed the program. An applicant need not have completed all required classroom instruction and behind-the-wheel training hours through a single program so long as the last program attended by the applicant ensures itself, and its business licensee certifies to the Board that the applicant has satisfactorily completed all required hours through Board-approved apprenticeship training programs. (4-7-11)

**b.** A person may not enroll in an apprenticeship training program unless the person has applied for,

paid for, and obtained an apprenticeship permit from the Board. The applicant must apply on Board-approved forms, which must identify the applicant and the business licensee in whose approved apprenticeship training program the applicant will be enrolled. The individual applicant must establish that they are at least twenty-one (21) years old, hold a valid driver's license and a satisfactory driver license record, have passed a fingerprint based criminal history background check, and have obtained a medical certificate consistent with the requirements of Subsections 250.02 through 250.05. An apprenticeship permit automatically expires one (1) year after issuance. The Board also may suspend or revoke an apprenticeship permit, and refuse to issue another permit, if the permittee engages in any act or omission that would subject the permittee to discipline if the permittee had an instructor's license. No one may be a permittee for more than three (3) years. (3-20-14)

**08. Waiver of Instructor Apprenticeship Training Program.** An applicant shall be entitled to a waiver of the apprenticeship training program if they possess the requisite training and experience as set forth below. (4-11-15)

**a.** An applicant who holds a current active unrestricted equivalent driving instructor license from another state shall qualify for a waiver of the apprenticeship training program requirement. The applicant is responsible to provide proof to the Board that they hold a current unrestricted driving instructor license from another state, and that said license is equivalent to an Idaho driver instructor license in its qualifications and scope of practice; or (4-11-15)

**b.** An applicant who has held an active and unrestricted public driver education instructor license issued by the Idaho State Department of Education for at least two (2) years shall qualify for a waiver of the apprenticeship training program requirement. The applicant is responsible to provide proof to the Board that they hold a current unrestricted Idaho public driver instructor license. (4-11-15)

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

### **25.01.01 - RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

#### **DOCKET NO. 25-0101-1501**

#### **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 21, 2015.

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

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

Section 36-2107, Idaho Code, directs the Board to prescribe and establish rules of procedure to carry into effect the provisions of its governing statute. This includes the issuance of outfitter licenses with such restrictions and limitations thereon as the board may find reasonable for safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides and for the conservation of wildlife and range resources. In doing so the Board has the power to cooperate with the federal and state government in matters of mutual concern regarding the business of outfitting and guiding.

The Board licenses Outfitter businesses that provide boating and fishing services to the public on the South Fork of the Snake River (SS1), a section of the Henry's Fork of the Snake River (SH3), a section of the Snake River above Idaho Falls (SN-1), and a section of the Teton River (TE-3). This rulemaking clarifies individual use areas and conforms state licensed outfitter boating limits on these four river sections in Eastern Idaho with federal permit requirements that will be established in a decision record for Interagency Management of Special Recreation Permits/Special Use Permits and Designated Camping within the Snake River Planning Area and Teton River Canyon developed by the Upper Snake Field Office, Bureau of Land Management; the Palisades Ranger District, US Forest Service. It also grandfathered in one outfitter historically licensed for Waterfowl hunting on a portion of the South Fork of the Snake River.

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

No fees or charges are being increased or imposed in this rulemaking.

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

No fiscal impact will occur as a result of changes that are being made.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for the following reasons:

These rivers are fully or partly managed and various uses permitted by the Bureau of Land Management or the US Forest Service. This rule is the result of those agencies working together to develop a draft environmental assessment that received public comments. The federal agencies will coordinate with the state regarding the proposed rule and will issue a decision record at the same time the state issues a final rule in order to have consistency between all agencies. The Board, in consideration of Section 36-2107 (e), Idaho Code, has cooperated with these agencies during this process and plan to jointly move these rules governing the licensing of outfitters on these rivers forward in order to parallel federal requirements. The Board has concluded that the processes used by these federal agencies has met or has exceeded the public involvement processes required in the Idaho Administrative Procedure Act (APA) and by doing so greatly supplements the Board in its rule promulgation process following APA requirements. The federal rulemaking has significantly considered public need and interest as well as the appropriate uses and conservation of

these river resources and the Board's promulgation of these rules will allow it to further take these matters into consideration.

**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 rule, contact Jake Howard, Executive Director, Outfitters and Guides Licensing Board (208) 327-7380.

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 28, 2015.

DATED this 26th Day of August, 2015

Jake Howard  
Executive Director  
Outfitters and Guides Licensing Board  
1365 N. Orchard Street, Suite 172  
Boise, ID 83706  
(208) 327-7380 office, (208) 327-7382 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 25-0101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.**

**01. Licensable Waters -- River Sections (BL1) Blackfoot River through (PR1) Priest River --**  
**Table.** The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

| River/Section  | Maximum No. Power | Maximum No. Float |
|--|-------------------|-------------------|
| <b>(BL1) Blackfoot River</b> - Morgan Bridge to Trail Creek Bridge   | none              | 2                 |
| <b>(B01) Boise River, South Fork</b> - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman. No overnight camping or walk-and-wade fishing allowed. | none              | 2                 |

| River/Section   | Maximum No. Power   | Maximum No. Float |
|---|---|-------------------|
| <b>(BO2) Boise River</b> - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. Each outfitter may use at any time a maximum of four (4) boats for boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.  | none  | 2                 |
| <b>(CF1) Clark Fork River</b> - Montana stateline to Lake Pend Oreille (boating closing date September 30)  | 4 outfitters for either power or float or combination thereof |                   |
| <b>(CL1) Clearwater River</b> - Lowell to the Lower Bridge at Kooskia. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. Fishing may not be conducted downstream from the Upper Bridge at Kooskia by CL1 outfitters. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan. | none  | 5                 |
| <b>(CL2) Clearwater River</b> - The Upper Bridge at Kooskia to the Orofino Bridge. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.   | 6   | 10                |
| <b>(CL3) Clearwater River</b> - The Orofino Bridge to the mouth of the Clearwater River with the Snake River at Lewiston. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.   | 10  | 10                |
| <b>* (NFCL) North Fork Clearwater River</b> - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir   | none  | 4                 |
| <b>(CDNF) Headwaters of North Fork Coeur d'Alene</b> - Including tributaries (Independence and Tee Pee Creeks) upstream from Devils Elbow Campground. Three (3) walk and wade only licenses. Up to four (4) clients on the river at one time per license.   | none  | none              |

| River/Section  | Maximum No. Power | Maximum No. Float |
|--|-------------------|-------------------|
| <b>(CD1) Coeur d'Alene River</b> - Devil's Elbow to South Fork confluence (boating closing date is June 30). Fishing limit is two (2) float boats per license with a maximum of two (2) clients at a time per boat. Two (2) additional walk and wade licenses can be issued. Walk and wade limited to a maximum of two (2) clients at a time per license.  | none              | 1                 |
| <b>(CD2) Coeur d'Alene River</b> - South Fork confluence downstream to Cataldo Mission Boat Ramp. The float boat closing date is June 30. Fishing limit is one (1) float boat per license with a maximum of two (2) clients or two walk and wade clients per license at a time. Walk and wade activities do not have to be initiated from a float boat.  | none              | 1                 |
| <b>(CD3) Lateral (Coeur d'Alene chain) Lakes</b> - Connected by the Coeur d' Alene river. Cataldo Mission Boat Ramp to Highway 97 Bridge. A limit of one (1) power boat per license with a maximum of two (2) clients at a time or a limit of one (1) guide per license and two (2) float tubes at a time or two (2) clients walking and wading. The walk and wade activities must be associated with the power boating. | 3                 | none              |
| <b>* (JB1) Jarbidge/Bruneau Rivers</b>   | none              | 4                 |
| <b>(K01) Kootenai River</b> - Montana stateline to Canada boundary   | 5                 | 5                 |
| <b>(LCL1) Little North Fork Clearwater River</b> - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.  | none              | 2                 |
| <b>* (LO1) Lochsa River</b>  | none              | 5                 |
| <b>(MO1) Moyie River</b> - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)   | none              | 5                 |
| <b>* (OW1) Owyhee River</b> - Nevada stateline to Oregon stateline or South Fork to confluence with Owyhee River and continuing on to a take-out point.  | none              | 6                 |
| <b>(PN1) Payette River, North Fork</b> - Payette Lakes Outlet to Hartsell Bridge. Restrictions: NO FISHING ALLOWED. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.  | none              | 2                 |

| River/Section  | Maximum No. Power | Maximum No. Float |
|--|-------------------|-------------------|
| <b>(PN1A) Payette River, North Fork</b> - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter. | none              | 2                 |
| <b>(PN2) Payette River, North Fork</b> - Cabarton to Smiths Ferry Bridge   | none              | 5                 |
| <b>(PS1) Payette River, South Fork</b> - Grandjean to Deadwood River   | none              | 5                 |
| <b>* (PS2) Payette River, South Fork</b> - Deadwood River to Banks   | none              | 5                 |
| <b>(PA1) Payette River</b> - Banks to Black Canyon Dam   | none              | 5                 |
| <b>(PO1) Pend Oreille River</b>  | 5                 | 5                 |
| <b>(PR1) Priest River</b> - Dickensheet Campground to Priest River City  | none              | 5                 |

(4-11-06)

**02. Licensable Waters -- River Sections (MF1) Middle Fork Salmon River Through (SE2) Selway River -- Table.** The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

| River/Section   | Maximum No. Power | Maximum No. Float |
|---|-------------------|-------------------|
| <b>###(MF1) Salmon River, Middle Fork</b> - Boundary Creek to Indian Creek  | none              | 27                |
| <b>### (MF2) Salmon River, Middle Fork</b> - Indian Creek to Cache Bar on the Salmon River  | none              | 27                |
| <b>(SA1) Salmon River</b> - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar   | none              | 6                 |
| <b>(SA2) Salmon River</b> - Torrey's Bar to first Highway 93 bridge above Challis. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan. | none              | 5                 |



| River/Section   | Maximum No. Power | Maximum No. Float |
|---|-------------------|-------------------|
| <b>(SA3) Salmon River</b> - First Highway 93 bridge above Challis to Kilpatrick River access. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.  | none              | 6                 |
| <b>(SA4A) Salmon River</b> - Kilpatrick River access to North Fork - License period from May 1 to September 30. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.   | 5                 | 11                |
| <b>(SA4B) Salmon River</b> - Kilpatrick River access to North Fork - License period from October 1 to April 30. Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.   | 2                 | 8                 |
| <b>(SA5) Salmon River</b> - North Fork to Corn Creek  | 3                 | 9                 |
| <b>###(SA6) Salmon River</b> - Corn Creek to Spring Bar Boat Ramp with no outfitter fishing below Vinegar Creek from September 15 through March 31 except that on a case-by-case basis, outfitter fishing may occur when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.   | 14                | 31                |
| <b>* (SA7A) Salmon River</b> - Vinegar Creek to Hammer Creek - License period from March 15 to October 15. No power boating is allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.  | 10                | 26                |
| <b>* (SA7B) Salmon River</b> - Power boats from Vinegar Creek to Spring Bar Boat Ramp and float boats from Vinegar Creek to Island Bar Boat Ramp, open from September 15 to March 31 only. Each float boat outfitter may use at any one time a maximum of three (3) boats for fishing, or two (2) additional boats for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director; and each power boat outfitter may use at any one time a maximum of two (2) boats for fishing, or one (1) additional boat for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director. | 6                 | 12                |

| River/Section   | Maximum No. Power | Maximum No. Float |
|---|-------------------|-------------------|
| * <b>(SA7C) Salmon River</b> - Riggins City Park Boat Ramp to Hammer Creek. Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period from September 15 to March 31.  | none              | 3                 |
| * <b>##(SA8) Salmon River</b> - Hammer Creek to Heller Bar or Lewiston on the Snake River   | 15                | 35                |
| * <b>(SE1) Selway River</b> - Paradise Campground to Selway Falls   | none              | 4                 |
| <b>(SE2) Selway River</b> - Selway Falls to the mouth of the Selway River at Lowell. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan. | none              | 5                 |

(4-11-06)

**03. Licensable Waters -- River Sections (SH1) Henry's Fork Snake River Through (TE3) Teton River -- Table.** The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

| River/Section   | Maximum No. Power | Maximum No. Float |
|---|-------------------|-------------------|
| <b>(SH1) Snake River, Henry's Fork</b> - Henry's Lake Outlet to Hatchery Ford. (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan. | none              | 7                 |
| <b>(SH2) Snake River, Henry's Fork</b> - Mesa Falls to St. Anthony. Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing, no more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Warm River, Warm River to Ashton Dam, and Ashton Dam to St. Anthony, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.  | none              | 8                 |

| River/Section  | Maximum No. Power | Maximum No. Float |
|--|-------------------|-------------------|
| <p><del>(SH3) Snake River, Henry's Fork - St. Anthony to confluence with South Fork of Snake River. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan</del></p> <p><u>No more than three (3) boats for fishing may be used by an outfitter at any one (1) time in each of the following river sections:</u></p> <ul style="list-style-type: none"> <li><u>a) St. Anthony to Red Road Bridge Boat Access (i.e., Parker/Salem or Fort Henry)</u></li> <li><u>b) Red Road Bridge Boat Access to Warm Slough Boat Access</u></li> <li><u>c) Warm Slough Boat Access to Menan Boat Access</u></li> </ul> <p><u>No outfitter may have more than six (6) boats on the SH3 in any one (1) day.</u></p> <p><u>When permitted by the BLM and with the notification to and concurrence of the IOGLB Executive Director, each outfitter may be allowed adjustments to the maximum boat limits in order to accommodate non-fishing boating activities (e.g., canoeing, paddle boards, and kayaks) and hazardous excursions that are part of an outfitter's operating plan. These adjustments must be reviewed and approved annually.</u></p> <p><u>IOGLB licenses are for the entire SH3 segment; a section of SH3 cannot be separated from SH3 for the purposes of selling a portion of an outfitter's business.</u></p> | <p>none</p>       | <p>4</p>          |

| River/Section  | Maximum No. Power                                     | Maximum No. Float  |
|--|---|--|
| <p><del>(SS1) Snake River - South Fork - Palisades Dam to confluence with Henry's Fork. No more than four (4) boats per section/per day may be used by an outfitter at any one time on any of the following river reaches: (a) Palisades Dam to Swan Valley Bridge; (b) Swan Valley Bridge to Black Canyon (Exception: Not more than eight (8) boats will be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m.); (c) Black Canyon to Poplar (Kelly Canyon); and (d) Poplar to the confluence with Henry's Fork. Restrictions: No outfitter may have more than twelve (12) boats on the SS1 in any one (1) day. Further, the lower boundary of Section (a) (Palisades Dam to Swan Valley Bridge) shall overlay Section (b) to the Conant takeout (Swan Valley Bridge to Black Canyon), and Section (b) shall overlay Section (c) to the Cottonwood access. Supply boats which do not carry clients are exempt from these restrictions</del></p> <p><u>No more than four (4) boats per section/per day may be used by an outfitter at any one (1) time in each of the following river sections:</u></p> <p><u>a) Palisades Dam to the Conant Boat Access;</u><br/> <u>b) Conant Boat Access to Fullmer Boat Access. Exception: Not more than eight (8) boats would be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m. due to overnight use at designated outfitter camps;</u><br/> <u>c) Fullmer Boat Access to Byington Boat Access;</u><br/> <u>d) Byington Boat Access to Lorenzo Boat Access; and</u><br/> <u>e) Lorenzo Boat Access to Menan Boat Access;</u></p> <p><u>Additionally, no outfitter may have more than twelve (12) boats on the SS1 in any one day.</u></p> <p><u>A one-time per year exception after July 15 may be granted from Conant Boat Access to Byington Boat Access that would allow two (2) additional boats per section to accommodate large client groups. During this one-time exception, if the two (2) additional boats do not accommodate the large client group, additional boats must come from slots allocated to other outfitters. The maximum daily boat limit for SS1 may not be exceeded. This would require written concurrence from the BLM/USFS and the IOGLB Executive Director.</u></p> <p><u>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</u></p> <p><u>IOGLB licenses are for the entire SS1 segment; a section of SS1 cannot be separated from SS1 for the purposes of selling a portion of an outfitter's business.</u></p> | <p style="text-align: center;"><u>5</u><br/>None*</p> | <p style="text-align: center;"><u>6</u><br/><u>8**</u></p> |

| River/Section  | Maximum No. Power   | Maximum No. Float |
|--|---|-------------------|
| <p><u>* Each licensed float boat outfitter may use one (1) supply boat (float or power) that does not carry clients. During periods of preparing overnight camps (i.e., setting up tents and portable toilet facilities, boating in grills and other cooking supplies) for the season, usually May or June of each year; and removing the same items listed above from overnight camps at the end of the season, usually October or November; multiple supply boats may be used.</u></p> <p><u>** One (1) license additional for waterfowl hunting covering both BLM and USFS managed lands and waters for the South Fork (Palisades Dam to Wolf Flats Boat Access may be issued. This license opportunity is in addition to the eight (8) float licenses and is limited to providing waterfowl hunting during waterfowl hunting season as defined by Idaho Fish and Game Rules and where no more than two (2) float or power boat boats per day can be used by the outfitter at any one time for that purpose. Fishing may not be provided or conducted unless the outfitter is also licensed and permitted as one (1) of the eight (8) outfitters addressed in this rule who may not provide hunting activities. This business opportunity may be sold separately.</u></p> |   |                   |
| <p><b>(SN1) Snake River - <del>Henry's Fork confluence downstream to Gem State Power Plant</del></b><br/> <u>For each license/permit issued, no more than four (4) boats per section/per day may be used by an outfitter at any one time in each of the following river sections:</u></p> <p><u>a) Menan Boat Access to Mike Walker Boat Access (includes Federally managed lands);</u><br/> <u>b) Mike Walker Boat Access to Gem State Power Plant (includes non-Federal lands).</u></p> <p><u>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</u></p> <p><u>OGLB licenses are for the entire SN1 segment; a section of SN1 cannot be separated from SN1 for the purposes of selling a portion of an outfitter's business.</u></p>  | <p><u>3 outfitters either float or power or combination thereof</u></p> | <p><u>3</u></p>   |
|  |   |                   |
| <p><b>(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir</b></p>   | <p>3</p>  | <p>3</p>          |
|  |   |                   |
| <p><b>(SN3) Snake River - American Falls Dam to Massacre Rocks State Park</b></p>  | <p>3</p>  | <p>3</p>          |
|  |   |                   |
| <p><b>(SN4) Snake River - Massacre Rocks State Park to Milner Dam</b></p>  | <p>3</p>  | <p>3</p>          |
|  |   |                   |
| <p><b>* (SN5) Snake River - Milner Dam to Star Falls</b></p>   | <p>none</p>   | <p>3</p>          |

| River/Section  | Maximum No. Power   | Maximum No. Float |
|--|---|-------------------|
| * (SN6) Snake River - Star Falls to Twin Falls   | none  | 5                 |
| (SN7) Snake River - Twin Falls to Lower Salmon Falls Dam   | 3   | 3                 |
| (SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam  | 3   | 5                 |
| (SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir   | 5   | 5                 |
| (SN10) Snake River - C.J. Strike Dam to Walter's Ferry   | 5 outfitters for either power or float or combination thereof                                 |                   |
| (SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir  | 5   | none              |
| * (SN12) Snake River - Hells Canyon Dam to Pittsburg Landing   | 18  | 15                |
| * (SN13) Snake River - Hells Canyon Dam to Pittsburg Landing, two (2) one-day float trips only   | none  | 2                 |
| (SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston   | 19  | 15                |
| (SN15) Snake River - Washington/Oregon stateline to Lewiston   | Limitations pending. (This section is set aside for future rules of fishing only outfitters.) |                   |
| (SJ1) St. Joe River - St. Joe River Headwaters to Red Ives. No outfitted boating. One (1) walk and wade only fishing outfitter.  | none<br>2   | none              |
| (SJ2) St. Joe River - Red Ives to Avery. In addition to one (1) float boat license, three (3) walk and wade only outfitters. No fishing from float boats, boat clients may fish via walk and wade. | none  | 1                 |
| (SJ3) St. Joe River - Avery to St. Joe City Bridge   | none  | 2                 |

| River/Section  | Maximum No. Power   | Maximum No. Float |
|--|---|-------------------|
| (SJ4) St. Joe River - St. Joe City Bridge to Lake Coeur d'Alene  | 2   | none              |
| (SM1) St. Maries River   | 5   | 5                 |
| (TE1) Teton River - Upper put-in to Cache Bridge, motors not to exceed 10 hp   | 5 outfitters for either power or float or combination thereof |                   |
| (TE2) Teton River - Cache Bridge to Harrop Bridge, motors not to exceed 10 hp  | 6 outfitters for either power or float or combination thereof |                   |
| <p><b>(TE3) Teton River - <del>Harrop Bridge to confluence with Snake River,</del> motors not to exceed 10 hp</b></p> <p><u>No more than two (2) boats per section/per day may be used by an outfitter at any one time in each of the following river sections: a), b), d), e) and f). No more than four (4) boats per section/per day may be used by an outfitter at any one time on river section c) and where two (2) boats from same outfitter must be spaced at three-hour (3) intervals:</u></p> <p>a) <u>Harrop Bridge Boat Access to Felt Dam Boat Access;</u><br/> b) <u>Felt Dam Boat Access to Spring Hollow Boat Access;</u><br/> c) <u>Spring Hollow Boat Access to Teton Dam Site Boat Access;</u><br/> d) <u>Teton Dam Site Boat Access to Hog Hollow Bridge Boat Access</u><br/> e) <u>Hog Hollow Bridge Boat Access to Teton Highway;</u><br/> f) <u>Teton Highway to confluence with the Henrys Fork of the Snake River.</u></p> <p><u>Note: No boat access exists at the confluence with the Henrys Fork of the Snake River. Outfitters would utilize Hibbard Bridge or Warm Slough Access on SH3. No fishing on SH3</u></p> <p><u>No outfitter may have more than eight (8) boats on the TE3 in any one day.</u></p> <p><u>Float boats may use motors not to exceed 10 hp in section a) (Harrop Bridge to Felt Dam Access) only. Float boats may use motors (5HP or less) for downstream steering only in sections d), e) and f). Motors are not allowed in other sections. Downstream steering does not include holding or upstream travel of watercraft with a motor.</u></p> <p><u>IOGLB licenses are for the entire TE3 segment; a section of TE3 cannot be separated from TE3 for the purposes of selling a portion of an outfitter's business.</u></p> | none  | 5                 |

\* Classified rivers

## Floatboat and powerboat outfitters on these sections shall be considered within their area of operations when hiking from the river or fishing in tributaries away from the river, but shall not include overnight activities. Conflicts with land-based outfitters shall be handled on a case-by-case basis. (3-30-07)( )

**04. Other -- Table.** The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho shall be open to fishing by outfitters with the following limitations:

| Lake or Reservoir        | Maximum No. of Operators | Maximum No. Boats per Operator per Lake or Reservoir |
|--------------------------|--------------------------|--|
| Lake Coeur d'Alene       | 8                        | 1  |
| Dworshak Reservoir       | 7                        | 2  |
| Hayden Lake              | 1                        | 2  |
| Henry's Lake             | 8                        | 2  |
| Island Park Reservoir    | 7                        | 2  |
| Magic Reservoir          | 3                        | 2  |
| Palisades Reservoir      | 10                       | 2  |
| Lake Pend Oreille        | 11                       | 1  |
| Priest Lake              | 5                        | 1  |
| American Falls Reservoir | 3                        | 2  |
| C.J. Strike Reservoir    | 4                        | 2  |
| Brownlee Reservoir       | 5                        | 2  |
| Oxbow Reservoir          | 3                        | 2  |
| Hells Canyon Reservoir   | 3                        | 2  |

(4-1-92)

**05. Other Lakes and Reservoirs.** All other Idaho lakes and reservoirs shall be limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-1-92)



**IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION**  
**26.01.06 - RULES GOVERNING COOPERATOR RECOGNITION AND SALE OF ADVERTISING**  
**DOCKET NO. 26-0106-1501 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING - PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, 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 21, 2015.

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

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

During the 2015 Regular Legislative Session, the Legislature passed S1089aaH that authorized the Park and Recreation Board to enter into agreements to secure long-term funding sources and authorized the recognition of cooperators as well as the sale of advertising. The Senate Committee on Resources and Environment requested that IDPR develop associated administrative rules.

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

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

There is no expected negative fiscal impact. IDPR is requesting the rules as part of our ongoing efforts to provide additional revenue sources through cooperator recognition and the sale of advertising.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 105](#).

**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 or materials are incorporated by reference in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rulemaking, contact Anna Canning at 208-514-2252.

All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015. Please send electronic submissions to [anna.canning@idpr.idaho.gov](mailto:anna.canning@idpr.idaho.gov).

DATED this September 3rd, 2015.

Anna Canning, Management Services Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue, Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Telephone: 208-514-2252; FAX 208-334-5232

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 26-0106-1501**

**IDAPA 26  
TITLE 01  
CHAPTER 06**

**26.01.06 - RULES GOVERNING COOPERATOR RECOGNITION AND SALE OF ADVERTISING**

**000. LEGAL AUTHORITY.**

These rules, promulgated by the Idaho Parks and Recreation Board pursuant to Section 67-5201, et seq., Idaho Code, and Section 67-4223, Idaho Code, are intended to further define and implement Section 67-4223(15), Idaho Code, which deals with sponsorship and the sale of advertising. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter will be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.06, "Rules Governing Cooperator Recognition and Sale of Advertising." ( )

**02. Scope.** The purpose of this chapter is to establish and document appropriate recognition for cooperators that provide financial assistance to Idaho Department of Parks and Recreation; and set appropriate criteria for the sale of advertising. ( )

**002. WRITTEN INTERPRETATIONS.**

This agency has no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

Any person who may be adversely affected by a final decision, ruling, or direction of the director may appeal the decision, ruling, or direction as outlined under IDAPA 26.01.01.250, Rules of Administrative Procedure of the Idaho Park and Recreation Board. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. ( )

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

**01. Office.** The central office of the department and the board is in Boise, Idaho. The telephone number for the board and the department is: (208) 334-4199. ( )

**02. Office Hours.** The central office is open from 8 a.m. until 5 p.m., Mountain Time, Monday through Friday. The central office is closed Saturdays, Sundays, and holidays. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. ( )

**007. (RESERVED)**

**008. DEFINITIONS.**

**01. Advertisement.** Any message distributed by any means that promotes or markets a business,

service, facility, or product. Something that is shown or presented to the public to help sell a product or service. ( )

**02. Board.** The Idaho Park and Recreation Board. ( )

**03. Cooperator.** An individual, foundation, corporation, government agency, not-for-profit organization, friends groups, concessionaire, or other entity that acts as a benefactor by donating, contributing, granting, subscribing, leasing, or providing other funds, materials, or labor for the purpose of maintenance, improvement, restoration, enhancement, reclamation, addition or enlargement of programs, holdings, properties, resources, or facilities of the department. ( )

**04. Department.** The Idaho Department of Parks and Recreation. ( )

**05. Director.** The Idaho Department of Parks and Recreation director or designee. ( )

**06. Facilities.** Any constructed feature or object within a state park including but not limited to, shelters, visitor centers, storage structures, work centers, entrance kiosks, campground loops, restroom and shower facilities, amphitheaters, lodges, overnight lodging, group use area, concessionaire facilities, boat launches and ramps, playground equipment, fire rings, paddocks, pathways, roads, pay stations, or trail and directional signs. ( )

**07. Recognition Plan.** An agreement describing the arrangement between the department and the cooperator. ( )

**009. -- 049. (RESERVED)**

**050. PROVISIONS REGARDING COOPERATOR RECOGNITION.**

**01. Applicability.** These rules apply to recognition given in consideration of financial, in-kind, or material assistance from cooperators. Financial assistance may be in the form of donations, grants, inter-governmental agreements or partnerships, sponsorships, endowments, concessionaire agreements, or other working agreements with the department. These rules focus on appropriate recognition of cooperators, regardless of the form of the working agreement. Recognition of cooperators must be consistent with the department’s mission, goals, and policies. ( )

**02. Appropriate Forms of Recognition.** The following forms of recognition among others may be appropriate: “thank you” message; commemorative object; acknowledgement on materials or equipment; acknowledgement on department-published media; temporary display of cooperator logos, branding, products, or signs at events; verbal recognition; temporary construction signs; recognition boards; exhibit labels; semi-permanent signs; permanent signs; and naming rights. ( )

**03. Recognition Plan.** The recognition plan must include, but is not limited to: ( )

**a.** A detailed statement of how the department is improving services through the arrangement and how the arrangement supports the mission of the department. ( )

**b.** A detailed statement of the department’s and the cooperator’s responsibilities and roles. ( )

**c.** A detailed plan for recognition of cooperators contributions to include display, type, location, size, design, content, and duration. ( )

**d.** Term and termination provisions. ( )

**04. Cumulative Impacts.** The department will minimize the impacts of visual clutter to natural, cultural, historic, and built environments. ( )

**05. Maintenance and Repair.** The department is under no obligation to maintain or replace

recognition signs, plaques, or structures if they are vandalized, lost, stolen or otherwise destroyed, or need to be relocated as a result of necessary park operations. ( )

**06. Special Privileges.** Providing financial assistance to the department on a project does not entitle the cooperator to any special privileges other than recognition as set forth in this chapter. ( )

**07. Right to Refuse.** The department will, among other matters, consider the qualifications and experience of any individual or entity seeking to become a cooperator, and the ability of any individual or entity to abide by the recognition plan authorized by these rules. The primary consideration in any arrangement is the benefit to the department and the compatibility of the cooperator's products, services, and mission with the department's mission, goals, and policies. The department may refuse to enter into a recognition plan with any potential cooperator. The department will not enter into a recognition plan with political organizations, adult entertainment establishments, or companies whose primary business is selling tobacco or pornography. ( )

**08. Prohibited Arrangements.** The department will not approve a recognition plan that contains the following prohibited arrangements: ( )

- a. Qualitative or comparative language; ( )
- b. Endorsements by the department; ( )
- c. Price information or indications of savings or value; or ( )
- d. Non-commercial speech that may be construed as political, religious, or as asserting a position on a public issue. ( )

**09. Recognition Plan Approval.** The board has approval authority for any recognition plan that includes naming rights. The director has approval authority for all other recognition plans. ( )

**051. NAMING RIGHTS.**

**01. Geographic Features.** The department will not name geographic features, whether natural or man-made, for cooperators. ( )

**02. State Park or Unit.** ( )

a. Because state parks are public places owned by the people of Idaho, simply having made a significant monetary contribution to the department is not compelling justification to associate the name of a cooperator with a state park or unit. For this reason, recognizing cooperators by naming state parks or units should be carefully considered so that the perceptions of the public are positive and the recognition does not imply private or exclusive use or ownership. ( )

b. State parks and units, in most cases, should bear the name to which they have been historically known due to location, topography, natural resources, or cultural values. ( )

c. For new and existing state parks, the board may recommend naming the state park in honor of an individual, living or deceased, or an entity that has contributed specifically to the park and that represents achievement of highest distinction in a professional or public service role which does not conflict with the department mission and goals. The state legislature will have final approval of the state park name. ( )

d. For new and existing state park units, the board may name the park unit in honor of an individual, living or deceased, or an entity that has contributed specifically to the park unit and that represents achievement of highest distinction in a professional or public service role which does not conflict with the department mission and goals. ( )

**03. State Park Facilities.** The board may name facilities, structures, or rooms within a structure to recognize a cooperator. The department cannot assure cooperators that the name will be permanently affixed to the

facility. Any sign displaying the name may be removed and replaced within an established time frame, when the facility is being renovated, or if there are problems of vandalism or other maintenance concerns. ( )

**052. PROVISIONS REGARDING THE SALE OF ADVERTISING.**

**01. Applicability.** The sale of advertising must be consistent with the department's mission, goals, and policies. These rules apply to: ( )

a. The direct sale of advertising by the department; and ( )

b. Arrangements with a vendor to sell advertising space on specific media. ( )

**02. Prohibited Content.** The department will not display or approve advertising that: ( )

a. Implies endorsement of products or services by the department; ( )

b. Advocates an illegal use or activity; ( )

c. Contains non-commercial speech that advocates a position regarding a political, religious, or public issue; ( )

d. Is clearly defamatory, obscene, or sexually suggestive; or ( )

e. Denigrates groups or individuals on the bases of gender, race, religion, ethnicity, national origin, disability, or political affiliation, or otherwise debases the dignity or stature on any individual or group of individuals. ( )

**03. Cumulative Impacts.** The department will minimize the impacts of visual clutter to natural, cultural, historic, and built environments. ( )

**04. Maintenance and Repair.** The department is under no obligation to maintain or replace advertising materials if they are vandalized, lost, stolen, or otherwise destroyed, or need to be relocated as a result of necessary park operations. ( )

**05. Special Privileges.** Purchasing advertising does not entitle the purchaser to any special privileges other than advertising as set forth in this chapter. ( )

**06. Right to Refuse.** The department will, among other matters, consider the qualifications and experience of any individual or entity seeking an advertising opportunity. The primary consideration in any arrangement is the benefit to the department and the compatibility of the advertiser's products, services, and mission with the department's mission, goals, and policies. The department may refuse to sell advertising to any potential purchaser. The department will not sell advertising to political organizations, adult entertainment establishments, or companies whose primary business is selling tobacco or pornography. ( )

**07. Approval for the Sale of Advertising.** The director has approval authority for the sale of advertising. ( )

**053. -- 999. (RESERVED)**

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1501 (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 54-1717, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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, there are two different non-pharmacy registrations depending on how many over the counter products are sold. The changes streamline to one registration allowing the sale of over the counter products. Currently, there are different commercial lists, but the same fee. The changes simplify language to charge the same fee for all similar commercial lists. Currently, rules do not allow the cancellation of Certified Technician registration if a registrant does not maintain the required National Certification registration. The changes enable the cancelling of technician certification registration upon notification for the lapsing of National Certification. In addition, new language requires a set amount of hours required for a certified technician to be supervised in a remote dispensing location. Present language requires less experiential hours for a foreign pharmacist than it does for a U.S. citizen. New language equalizes experiential hours for both. Finally, the changes add language setting storage requirements for controlled substances to further prevent theft or diversion.

This rulemaking docket: 1) modifies the retail storage registration or annual renewal fee to a flat fee of \$35 regardless of the number of drug items in stock; 2) modifies licensure requirements for foreign pharmacy graduates to increase experiential hours to match those hours required of in state students; 3) modifies registration requirements for certified pharmacy technicians to replace Institute for Certification of Pharmacy Technicians (ICPT) with National Healthcare Association certification and sets forth that failure to maintain necessary certification may result in cancellation of registration; 4) clarifies the amount of experiential hours required by a certified pharmacy technician to work in a remote dispensing site; and 5) modifies the storage requirements for controlled substances to further prevent theft or diversion.

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

The rule change modifies the retail storage registration or annual renewal fee to a flat fee of \$35 regardless of the number of drug items in stock. Section 54-1720, Idaho Code, authorizes the imposition of this fee.

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

**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 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 71](#) and in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 106](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, 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 28, 2015.

DATED this 4th Day of September 2015.

Alex Adams  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 27-0101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**021. FEE SCHEDULE.**

- |   |           |
|---|-----------|
| <b>01. Licenses -- Professionals.</b>   | (3-21-12) |
| <b>a.</b> Original pharmacist license: one hundred dollars (\$100).   | (3-21-12) |
| <b>b.</b> Licensure by reciprocity: two hundred fifty dollars (\$250).  | (3-21-12) |
| <b>c.</b> Pharmacist license annual renewal.  | (3-21-12) |
| <b>i.</b> Active: ninety dollars (\$90).  | (3-21-12) |
| <b>ii.</b> Inactive: fifty dollars (\$50).  | (3-21-12) |
| <b>d.</b> Late payment processing: fifty dollars (\$50).  | (3-21-12) |
| <b>e.</b> License reinstatement fee: seventy-five dollars (\$75).   | (3-21-12) |
| <b>02. Certificates of Registration -- Professionals.</b>   | (3-21-12) |
| <b>a.</b> Pharmacist registration or annual renewal: two hundred fifty dollars (\$250).   | (7-1-13)  |
| <b>b.</b> Pharmacist intern - registration or annual renewal: fifty dollars (\$50).   | (3-21-12) |
| <b>c.</b> Pharmacist extern registration and annual renewal: fifty dollars (\$50) due upon enrollment in an accredited school or college of pharmacy and renewed annually at no charge. | (3-21-12) |
| <b>d.</b> Technician - registration or annual renewal: thirty-five dollars (\$35).  | (3-21-12) |
| <b>e.</b> Veterinary drug technician - registration or annual renewal: thirty-five dollars (\$35).  | (3-21-12) |
| <b>f.</b> Registration reinstatement: one-half (1/2) the amount of the annual fee.  | (3-21-12) |
| <b>03. Certificates of Registration and Licensure - Facilities.</b>   | (3-21-12) |

- a. Retail pharmacy - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- b. Institutional facility - registration or annual renewal. (3-21-12)
  - i. Hospital pharmacy: one hundred dollars (\$100). (3-21-12)
  - ii. Nursing home: thirty-five dollars (\$35). (3-21-12)
- c. Manufacturer (including a repackager that is a manufacturer's authorized distributor of record) - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- d. Wholesaler. (3-21-12)
  - i. License or annual renewal: one hundred thirty dollars (\$130); or (3-21-12)
  - ii. Registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- e. Veterinary drug outlet - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- f. Nonresident central drug outlet. (7-1-13)
  - i. Initial license: five hundred dollars (\$500). (7-1-13)
  - ii. License annual renewal: two hundred fifty dollars (\$250). (7-1-13)
- g. Mail service pharmacy. (3-21-12)
  - i. Initial license: five hundred dollars (\$500). (3-21-12)
  - ii. License annual renewal: two hundred fifty dollars (\$250). (3-21-12)
- h. Limited service outlet - registration or annual renewal. (3-21-12)
  - i. Limited service outlet, if not listed: one hundred dollars (\$100). (3-21-12)
  - ii. Sterile product pharmacy: one hundred dollars (\$100). (4-4-13)
  - iii. Remote dispensing pharmacy: one hundred dollars (\$100). (3-21-12)
  - iv. Facility operating a narcotic treatment program: one hundred dollars (\$100). (3-21-12)
  - v. Durable medical equipment outlet: fifty dollars (\$50). (3-21-12)
  - vi. Prescriber drug outlet: thirty five dollars (\$35). (3-21-12)
  - vii. Outsourcing facilities: (4-6-15)
    - (1) Initial nonresident registration: five hundred dollars (\$500). (4-6-15)
    - (2) Initial resident registration: two hundred fifty dollars (\$250). (4-6-15)
    - (3) Registration annual renewal: two hundred fifty dollars (\$250). (4-6-15)
- i. Analytical or research lab -- registration or annual renewal: forty dollars (\$40). (3-21-12)
- j. Retail non-pharmacy outlets. ( )



- ~~i.~~     - ~~#Retail store~~ registration or annual renewal: ~~thirty-five dollars (\$35).~~                     ~~(3-21-12)~~(    )
- ~~ii.~~     ~~“A” (Stocks more than fifty (50) drug items): sixty dollars (\$60).~~                     ~~(3-21-12)~~
- ~~iii.~~    ~~“B” (Stocks fifty (50) or fewer drug items): twenty-five dollars (\$25).~~                     ~~(3-21-12)~~
- iii.     “V” (Vending machines): ten dollars (\$10) per machine.                                     (3-21-12)
- k.     Supplemental facility registrations or annual renewals.                                     (3-21-12)
- i.     Laminar flow or other hood, biological safety cabinet, or barrier isolator -- single registration required for one (1) or more hoods: no charge.                                     (3-21-12)
- ii.    ADS system -- single registration required for one (1) or more systems: no charge.                     (3-21-12)
- l.     Reinstatement: one-half (1/2) the amount of the annual fee.                                     (3-21-12)
- 04.     Controlled Substance Registration.**                                     (3-21-12)
- a.     Controlled substance - registration or annual renewal: sixty dollars (\$60).                     (3-21-12)
- b.     Wholesaler or distributor-controlled substance - registration or annual renewal: one hundred dollars (\$100).                     (3-21-12)
- c.     Controlled substance registration reinstatement: seventy-five dollars (\$75).                     (3-21-12)
- 05.     Administrative Services and Publications.**                                     (3-21-12)
- a.     Experiential hours certification: twenty-five dollars (\$25).                                     (3-21-12)
- b.     Duplicate pharmacist certificate of licensure: thirty-five dollars (\$35).                     (3-21-12)
- c.     Duplicate registration or license card: ten dollars (\$10).                                     (3-21-12)
- d.     Commercial lists.                                     (3-21-12)
- i.     ~~Pharmacy list~~ Subject to Subparagraph 021.05.d.ii. below, any registrant or licensee lists: fifty dollars (\$50).                                     ~~(3-21-12)~~(    )
- ~~ii.~~    ~~Pharmacist list: fifty dollars (\$50).~~                                     ~~(3-21-12)~~
- iii.    Controlled Substances Act (“CSA”) registrant list: one hundred fifty dollars (\$150).                     (3-21-12)
- e.     Official Idaho Register: fifteen dollars (\$15).                                     (3-21-12)
- f.     Idaho Pharmacy Laws and Rules book: thirty-five dollars (\$35).                     (3-21-12)
- g.     Hearing transcript: five dollars (\$5) per page.                                     (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**031.     PHARMACIST LICENSURE BY EXAMINATION: FOREIGN PHARMACY GRADUATES.**

- 01.     Licensure Submission Requirements.** To be considered for licensure, a graduate of a school or

college of pharmacy located outside of the United States must submit an application for licensure by examination, certification of completion of a minimum of ~~fifteen~~ seventeen hundred ~~forty~~ (~~150740~~) experiential hours, and; ~~(4-11-15)~~( )

- a. Certification by the FPGEC; or (4-11-15)
- b. Certification of graduation from a doctorate of pharmacy program from an accredited school or college of pharmacy within the United States. (4-11-15)

**02. Affidavit.** An Idaho State Board of Pharmacy Employer's Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. CERTIFIED PHARMACY TECHNICIAN REGISTRATION.**

To be approved for registration as a certified pharmacy technician, a person must satisfy the following requirements: (3-21-12)

- 01. Age.** Be at least eighteen (18) years of age unless a waiver is granted by the Board's executive director; (3-21-12)
- 02. Education.** Be a high school graduate or the recipient of a high school equivalency diploma unless a waiver is granted by the Board's executive director; (3-21-12)
- 03. Personal Characteristics.** Be of good moral character and temperate habits; and (3-21-12)
- 04. Certification.** Have obtained and maintained certified pharmacy technician (CPhT) status through the Pharmacy Technician Certification Board (PTCB), the ~~Institute for Certification of Pharmacy Technicians (ICPT)~~ National Healthcare Association, or their successors unless qualified for a continuous employment exemption. ~~(3-21-12)~~( )

**05. Cancellation of Registration.** Failure to maintain the certification requirements for certified pharmacy technician registration may result in cancellation of the registration. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. CONTROLLED SUBSTANCE STORAGE.**

Controlled substances must be stored as follows: ( )

**01. Schedule I.** Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet. ( )

**02. Schedules II, III, IV and, V.** Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and prescribers may disperse such substances, in whole or in part, throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances. ( )

~~2101.~~ -- 219. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES.**

Pharmacies and pharmacists commencing retail telepharmacy operations with a remote dispensing site after August 23, 2011, must comply with the following requirements: (3-21-12)

**01. Telepharmacy Practice Sites and Settings.** Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. (3-21-12)

**a.** Information justifying the need for the remote dispensing site must be submitted with the initial registration application. (3-21-12)

**b.** The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. (3-21-12)

**c.** The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. (3-21-12)

**d.** The Board will not approve a remote dispensing site if a retail pharmacy that dispenses prescriptions to outpatients is located within the same community as the proposed remote dispensing site. (3-21-12)

**02. Independent Entity Contract.** Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. (3-21-12)

**a.** A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. (3-21-12)

**b.** The contract must be retained by the supervising pharmacy. (3-21-12)

**03. PIC Responsibility.** Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. (3-21-12)

**04. Remote Dispensing Site Limitations.** The Board may limit the number of remote dispensing sites under the supervision and management of a single pharmacy. (3-21-12)

**05. Technician Staffing.** Unless staffed by a pharmacist, a remote dispensing site must be staffed by at least one (1) certified technician with at least two thousand (2,000) hours pharmacy technician experience in Idaho and under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is open. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically from the supervising pharmacy. (4-11-15)( )

**06. Common Electronic Recordkeeping System.** The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: (3-21-12)

**a.** Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and (3-21-12)

**b.** Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. (3-21-12)

**07. Records Maintenance.** Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. (3-21-12)

**08. Video and Audio Communication Systems.** A supervising pharmacy of an ADS system used in a remote dispensing site must maintain a video and audio communication system that provides for effective

communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of such video and audio surveillance for a minimum of ninety (90) days. (4-11-15)

**a.** Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system that must not be delegated to another person or entity. (3-21-12)

**b.** Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. (3-21-12)

**c.** Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed if any component of the communication system is malfunctioning until system corrections or repairs are completed. (3-21-12)

**09. Access and Operating Limitations.** Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. (3-21-12)

**10. Delivery and Storage of Drugs.** If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. (3-21-12)

**a.** Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received. The technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. (3-21-12)

**b.** If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet. (3-21-12)

**c.** Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. (3-21-12)

**d.** Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a locked cabinet within a secured area of a remote dispensing site and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. (3-21-12)

**11. Wasting or Discarding of Drugs Prohibited.** Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited. (3-21-12)

**12. Returns Prohibited.** The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent. (3-21-12)

**13. Security.** A remote dispensing site must be equipped with adequate security. (4-11-15)

**a.** At least while closed, a remote dispensing site must 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. The site must have a means of recording the time of entry and the identity of all persons who access the site, which must be retained for ninety (90) days. Two (2) factoring credentialing is required for entry, which must include two (2) of the following: (4-11-15)

- i. Something known (a knowledge factor); (4-11-15)
- ii. Something possessed (a hard token stored separately from the computer being accessed); and (4-11-15)
- iii. Something biometric (finger print, retinal scan, etc.); (4-11-15)
- b.** A remote dispensing site 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 remote dispensing sites must meet the following security requirements: (4-11-15)
  - i. Walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. (4-11-15)
  - ii. Solid core or metal doors are required. (4-11-15)
  - iii. Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed. (4-11-15)
- c.** Access to the area of the remote dispensing site where prescription drugs are prepared, distributed, dispensed or stored must be limited to technicians and pharmacists. Any other persons requiring access to the remote dispensing site for legitimate business reasons may only be present in the secured area with the permission and under the supervision of a pharmacist, which may be satisfied via audio/video communication. (4-11-15)
- d.** A remote dispensing site must be closed for business and secured during all times a pharmacist or technician is not present. (4-11-15)
- 14. Patient Counseling.** A remote dispensing site must include an appropriate area for patient counseling. (3-21-12)
  - a.** The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist. (3-21-12)
  - b.** Unless onsite, a pharmacist must use the video and audio communication system to counsel each patient or the patient's caregiver on new medications. (3-21-12)
- 15. Remote Dispensing Site Sign.** A remote dispensing site must display a sign, easily visible to the public, that informs patients that: (3-21-12)
  - a.** The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; (3-21-12)
  - b.** Identifies the city or township where the supervising pharmacy is located; and (3-21-12)
  - c.** Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered or if counseling is accepted at a remote dispensing site. (3-21-12)
- 16. Pharmacist Inspection of Remote Dispensing Site.** A pharmacist must complete and document a monthly in-person inspection of a remote dispensing site and inspection reports must be retained. (3-21-12)
- 17. Continuous Quality Improvement Program.** The PIC of the remote dispensing site must develop and implement a continuous quality improvement program. (4-11-15)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1502

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 necessary to clarify the dispensing of drugs and devices within an institutional facility. This rulemaking provides new language to clarify and list to whom an institutional facility may dispense drugs and devices.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 27-0101-1501 in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 71](#) and in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 106](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, 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 28, 2015.

DATED this 4th Day of September 2015.

Alex Adams  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone:(208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1502  
(Only Those Sections With Amendments Are Shown.)**

**620. INSTITUTIONAL FACILITY: PRACTICE OF PHARMACY AND ADMINISTRATION AND CONTROL OF DRUGS AND DEVICES.**

These institutional facility rules are applicable to the practice of pharmacy and the administration and control of drugs and devices ~~within~~ by institutional facilities or by persons employed by them. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**630. INSTITUTIONAL FACILITY: GENERAL STANDARDS FOR ADMINISTRATION AND CONTROL OF DRUGS AND DEVICES.**

~~01. Drugs and Devices Dispensed for Administration or Use Within an Institutional Facility.~~ Within an institutional facility, drugs and devices may be dispensed for administration to, or for self-administration or use by, a patient ~~while in the institutional facility~~ only as permitted by applicable law and these rules consistent with usual and customary standards of good medical practice, ~~as follows:~~ (3-21-12)( )

**01. Drugs and Devices Dispensed for Administration Within an Institutional Facility. Drugs and devices must only be dispensed to inpatients of an institutional facility:** ( )

a. Upon the drug orders of licensed facility prescribers; (3-21-12)

b. Pursuant to an emergency protocol for the administration of drugs without an order in life or death situations; ~~and or~~ (3-21-12)( )

c. ~~By~~ For self-administration or use if specifically authorized by the treating or ordering prescriber, the patient has been appropriately educated and trained to perform self-administration, and there is no risk of harm. (3-21-12)( )

**02. Drugs and Devices Dispensed for Administration or Use Outside an Institutional Facility.** A drug or device prepared for self-administration or use by a patient while outside the confines of the institutional facility must comply with the standard prescription drug labeling requirements; ~~only be dispensed for a limited and reasonable time as a continuation of or supplemental to treatment that was administered at the hospital and subject to the following:~~ (3-21-12)( )

**a. Permissible dispensing:** ( )

**i. To emergency room patients pursuant to these rules:** ( )

**ii. To other outpatients who receive treatment or consultation on the premises; and** ( )

**iii. To hospital employees, medical staff, and students at the hospital and their dependents, for their own personal use only and not for resale.** ( )

**b. Impermissible activities include dispensing refills for former patients and dispensing to walk up customers who have no connection to the hospital.** ( )

**03. Controlled Substances Reporting and Documentation.** Distribution, dispensing, delivery, or administration of controlled substances within an institutional facility or by facility personnel must be properly and adequately documented and reported in the time and manner required by the appropriate committee of the institutional facility and the director. (3-21-12)

**04. Patient's Personal Drug Supplies.** If an admitted patient brings a drug into the institutional facility, the drug must not be administered or used except pursuant to a drug order and only if it can be precisely identified and the quantity and quality of the drug visually evaluated by a pharmacist. (3-21-12)

a. If a patient's drug will not be administered or used, the pharmacy must package, seal, and return the

drug to an adult member of the patient's immediate family or store and return it to the patient upon discharge. (3-21-12)

**b.** Drugs not returned to the patient or the patient's family may be disposed of after a reasonable number of days following discharge or death. (3-21-12)

**05. Suspected Adverse Drug Reaction Reporting.** Suspected adverse drug reactions must be communicated in a timely manner to the pharmacy. (3-21-12)

**06. Required Pharmacy Returns.** Discontinued, expired, and damaged drugs and containers with worn, illegible, or missing labels must be returned to the pharmacy for proper handling. (3-21-12)



## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1503

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 docket streamlines, clarifies and adds missing or incomplete language. Current language is missing in the definitions associated with compounding of drugs. These changes clarify the language to add a hazardous drug definition, and definitions of USP 795 and USP 797. The changes clarify the components of a prescription drug order to include the prescriber phone number. These changes add language to allow certain product preparations to not be considered compounded if combined according to the manufacturer's labeling.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 27-0101-1501 in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 71](#) and in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 106](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, 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 28, 2015.

DATED this 4th Day of September 2015.

Alex Adams  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1503**  
**(Only Those Sections With Amendments Are Shown.)**

**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. Biological Product.** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings and licensed under Section 351(k) of the Public Health Service Act, 42 U.S.C. Section 262(i). (4-11-15)
- 06. Biosimilar.** A biological product highly similar to a specific reference biological product that is licensed by the FDA pursuant to 42 U.S.C. Section 262(k) and published in the Purple Book. (4-11-15)
- 07. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)
- 08. 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)
- 09. Central Pharmacist.** A pharmacist performing centralized pharmacy services. (7-1-13)
- 10. Central Pharmacy.** A pharmacy performing centralized pharmacy services. (7-1-13)
- 11. 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)
- 12. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (3-21-12)
- 13. 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)
- 14. 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)

15. **CME.** Continuing medical education. (3-21-12)
16. **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)
17. **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)
18. **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)
19. **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)
20. **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)
21. **CPE.** Continuing pharmacy education. (3-21-12)
22. **DEA.** United States Drug Enforcement Administration. (3-21-12)
23. **Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)
24. **DME.** Durable medical equipment. (3-21-12)
25. **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)
26. **Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)
27. **Drug Product Substitution.** Dispensing a drug product other than prescribed. (4-4-13)
28. **DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)
29. **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)
30. **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)
31. **FDA.** United States Food and Drug Administration. (3-21-12)
32. **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)
33. **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)

34. FPGEC. Foreign Pharmacy Graduate Examination Committee. (4-4-13)
- ~~35.~~ **Hazardous Drug.** Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one (1) 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. ( )
- ~~356.~~ **HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)
- ~~367.~~ **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)
- ~~378.~~ **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)
- ~~389.~~ **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)
- ~~3940.~~ **Institutional Pharmacy.** A pharmacy located in an institutional facility. (3-21-12)
- ~~401.~~ **Interchangeable Biosimilar.** A licensed biosimilar product determined by the FDA to be therapeutically equivalent to the reference biological product and published in the Purple Book. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. DEFINITIONS AND ABBREVIATIONS (S -- Z).**

01. **Sample.** A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug. (3-21-12)

- 02. Secured Pharmacy.** The area of a drug outlet where prescription drugs are prepared, compounded, distributed, dispensed, or stored. (3-21-12)
- 03. Skilled Nursing Facility.** An institutional facility or a distinct part of an institutional facility that is primarily engaged in providing daily skilled nursing care and related services. (3-21-12)
- 04. Student Pharmacist.** A term inclusive of pharmacist intern and pharmacist extern if differentiation is not needed. (3-21-12)
- 05. Technician.** Unless specifically differentiated, a term inclusive of pharmacy technician, certified pharmacy technician, and technician-in-training to indicate an individual authorized by registration with the Board to perform routine pharmacy support services under the supervision of a pharmacist. (3-21-12)
- 06. Telepharmacy.** The use of telecommunications and information technologies in the practice of pharmacy to provide pharmaceutical care services to patients at a distance. (3-21-12)
- 07. Therapeutic Equivalent Drugs.** Products assigned an “A” code by the FDA in the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and animal drug products published in the FDA Approved Animal Drug Products (Green Book). (4-4-13)
- 08. Unit Dose.** Drugs packaged in individual, sealed doses with tamper-evident packaging (for example, single unit-of-use, blister packaging, unused injectable vials, and ampules). (3-21-12)
- 09. USP.** United States Pharmacopeia. (3-21-12)
- 10. USP-NF.** United State Pharmacopeia-National Formulary. (3-21-12)
- 11. USP 795.** The current edition of the United States Pharmacopeia-National Formulary, Chapter 795. ( )
- 12. USP 797.** The current edition of the United States Pharmacopeia-National Formulary, Chapter 797. ( )
- 143. VAWD -- Verified Accredited Wholesale Distributor.** An accreditation program for wholesale distributors offered through NABP. (3-21-12)
- 124. VDO -- Veterinary Drug Outlet.** A registered establishment that employs a qualified VDT to distribute prescription veterinary drugs pursuant to lawful orders of a veterinarian. (3-21-12)
- 135. VDT -- Veterinary Drug Technician.** A non-pharmacist qualified by registration with the Board to distribute prescription veterinary drugs in a VDO. (3-21-12)
- 146. Veterinary Drug Order.** A lawful order by a veterinarian issued pursuant to the establishment of a veterinarian-patient-client relationship as recognized by the American Veterinary Medical Association. (3-21-12)
- 157. VIS.** Vaccine Information Statement. (3-21-12)

**(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, address, and phone number, 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. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**239. COMPOUNDING DRUG PRODUCTS.**

Any compounding that is not permitted herein is considered manufacturing. (4-11-15)

01. **Application.** This rule applies 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, except these rules do not apply to: (4-11-15)

- a. Compound positron emission tomography drugs; (4-11-15)
- b. Radiopharmaceutics; (4-11-15)
- c. The reconstitution of a non-sterile drug or a sterile drug for immediate administration; ~~and~~ ~~(4-11-15)~~( )
- d. The addition of a flavoring agent to a drug product; ~~and~~ ~~(4-11-15)~~( )
- e. Product preparation of a non-sterile, non-hazardous drug according to the manufacturer's FDA approved labeling. ( )

02. **General Compounding Standards.** (4-11-15)

a. **Active Pharmaceutical Ingredients.** All active pharmaceutical ingredients must be obtained from an FDA registered manufacturer. FDA registration as a foreign manufacturer satisfies this requirement. (4-11-15)

b. **Certificate of Analysis.** Unless the active pharmaceutical ingredient complies with the standards of an applicable USP-NF monograph, a CO must be obtained for all active pharmaceutical ingredients procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied, expired, returned, or disposed of. The following minimum information is required on the COA: (4-11-15)

- i. Product name; (4-11-15)
- ii. Lot number; (4-11-15)
- iii. Expiration date; and (4-11-15)

- iv. Assay. (4-11-15)
  - c. Equipment. Equipment and utensils must be of suitable design and composition and cleaned, sanitized, or sterilized as appropriate prior to use. (4-11-15)
  - d. Disposal of 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 ampoules, punctured stoppers of vials and bags, and containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be removed from stock and isolated for return, reclamation, or destruction. (4-11-15)
- 03. Prohibited Compounding.** Compounding any drug product for human use that the FDA has identified as presenting demonstrable difficulties in compounding or has withdrawn or removed from the market for safety or efficacy reasons is prohibited. (4-11-15)
- 04. Limited Compounding.** (4-11-15)
- a. Triad Relationship. 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. (4-11-15)
  - b. Commercially Available Products. A drug product that is commercially available may only be compounded if not compounded regularly or in inordinate amounts and if:
    - i. It is medically warranted to provide an alternate ingredient, dosage form, or strength of significance; or (4-11-15)
    - ii. The commercial product is not reasonably available in the market in time to meet the patient's needs. (4-11-15)
  - c. Anticipatory Compounding. Limited quantities of a drug product may be compounded or sterile prepackaged prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders for the compounded or sterile prepackaged drug product. (4-11-15)
- 05. Drug Compounding Controls.** (4-11-15)
- 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 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 compounding practice being performed: (4-11-15)
    - i. Appropriate packaging, handling, transport, and storage requirements; (4-11-15)
    - ii. Accuracy and precision of calculations, measurements, and weighing; (4-11-15)
    - iii. Determining ingredient identity, quality, and purity; (4-11-15)
    - iv. Labeling accuracy and completeness; (4-11-15)
    - v. Beyond use dating; (4-11-15)
    - vi. Auditing for deficiencies, including routine environmental sampling, quality and accuracy testing, and maintaining inspection and testing records; (4-11-15)

vii. Maintaining environmental quality control; and (4-11-15)

viii. Safe limits and ranges for strength of ingredients, pH, bacterial endotoxins, and particulate matter. (4-11-15)

**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. (4-11-15)

**c.** Non-Patient Specific Records. Except for drug products that are being compounded or sterile prepackaged for direct administration, a production record of drug products compounded or sterile prepackaged in anticipation of receiving prescription drug orders or distributed in the absence of a patient specific prescription drug order ("office use") solely as permitted in these rules, must be prepared and kept for each drug product prepared, including: (4-11-15)

i. Production date; (4-11-15)

ii. Beyond use date; (4-11-15)

iii. List and quantity of each ingredient; (4-11-15)

iv. Internal control or serial number; and (4-11-15)

v. Initials or unique identifier of all persons involved in the process or the compounder responsible for the accuracy of these processes. (4-11-15)



## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1504

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 docket adds missing or incomplete language allowing for statewide protocols. In the event of a federal or state declared emergency, new language would allow a pharmacist to perform drug therapy management as well as other patient care services according to statewide protocol in conjunction with the Board of Pharmacy and the Idaho Department of Health and Welfare. In addition, changes would allow for the suspension of requirements for those engaged in the scope of practice for which they are licensed in another state. New language would also allow for temporary pharmacies as well as mobile pharmacies and requirements therefor. Changes also provide that a pharmacist be allowed to refill prescriptions essential to the patients' health or continuation of therapy.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 27-0101-1501 in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 71](#) and in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 106](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, 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 28, 2015.

DATED this 4th Day of September 2015.

Alex Adams  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1504**  
**(Only Those Sections With Amendments Are Shown.)**

**016. BOARD OF PHARMACY LICENSURE AND REGISTRATION.**

The Board is responsible for the control and regulation of the practice of pharmacy in or into the state of Idaho, which includes the licensure or registration of professional, supportive, and ancillary personnel who engage in or support the practice. The Board is also responsible for the control, regulation, and registration of persons or drug outlets that manufacture, distribute, or dispense controlled substances within or into the state. Licenses or registrations required by state or federal law, or both, must be obtained prior to engaging in these practices or their supportive functions, except that the Board may suspend such requirements for the duration of a national, state or local emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, for individuals engaged in the scope of practice for which they are licensed in another state. (3-21-12)( )

**01. Pharmacy Practice Act Licenses and Registrations.** The Board will issue or renew a license or a certificate of registration upon application and determination that the applicant has satisfied the requirements of the Idaho Pharmacy Act and any additional criteria specified by these rules for the license or registration classification. Licenses and certificates of registration issued pursuant to Title 54, Chapter 17, Idaho Code, expire annually on June 30 unless an alternate expiration term or date is specifically stated in these rules. (3-21-12)

**02. Idaho Controlled Substances Act Registrations.** The Board will issue or renew controlled substance registrations upon application and determination that the applicant has satisfied the requirements of the Idaho Controlled Substances Act and any additional criteria specified by state or federal law applicable to applicants that manufacture, distribute, or dispense, or conduct research with, controlled substances. Registrations issued pursuant to Title 37, Chapter 27, Idaho Code, must be renewed annually by June 30 for pharmacists and by December 31 for all other registrants. (4-4-13)

**a.** Unless a wholesaler, an applicant for an Idaho controlled substance registration must hold a valid, unrestricted Idaho license to prescribe, dispense, or administer controlled substances and, unless a pharmacist or certified euthanasia technician, a valid federal DEA registration. If a required license or registration is cancelled or otherwise invalidated by the issuing agency, the Idaho controlled substance registration will be correspondingly cancelled. (3-21-12)

**b.** A registrant engaging in more than one (1) group of independent activities, as defined by federal law, must obtain a separate Idaho controlled substance registration for each group of activities if not exempted from separate DEA registration by federal law. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. DRUG OUTLET LICENSURE AND REGISTRATION.**

A license or a certificate of registration, as applicable, is required for drug outlets doing business in or into Idaho. A license or certificate of registration will be issued by the Board to drug outlets pursuant to, and in the general classifications defined by, Section 54-1729, Idaho Code. (3-21-12)

**01. New Drug Outlet Inspections.** Prior to approving the issuance of a new license or registration, each drug outlet may be inspected to confirm that the facility is appropriately equipped and has implemented proper procedures and minimum standards necessary for compliance with applicable law. Prescription drugs may not be delivered to a new drug outlet location and the drug outlet may not open for business prior to satisfactory completion of the opening inspection, if required. (3-21-12)

**02. Licenses and Registrations ~~Nontransferable~~ Transferability.** ( )

**a.** Licenses and Registrations Nontransferable. Drug outlet licenses and registrations are location specific and are nontransferable as to person or place, except in the event of a national, state, or local emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency. If the ownership or location of an outlet changes, any registration or license issued to it by the Board is void. (3-21-12)( )

**b.** Temporary Pharmacy Facilities and Mobile Pharmacies. The Board may approve or disapprove temporary pharmacy facilities and mobile pharmacies and shall make arrangements for appropriate monitoring and inspection of such facilities on a case-by-case basis. To provide pharmacy services during a national, state, or local emergency declared by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, pharmacies may arrange to temporarily locate or relocate to a temporary pharmacy facility or mobile pharmacy if the temporary pharmacy facility or mobile pharmacy: ( )

**i.** Is under the control and management of the pharmacist-in-charge or designated supervising pharmacist; ( )

**ii.** Is located within the declared disaster area or affected areas; ( )

**iii.** Notifies the Board of its proposed location; ( )

**iv.** Is properly secured to prevent theft and diversion of drugs; ( )

**v.** Maintains records in accordance with laws and rules of the state; and ( )

**vi.** Ceases the provision of services with the termination of the declared emergency, or as otherwise authorized by the Board. ( )

**03. Nonresident Drug Outlet.** The Board may license or register a drug outlet licensed or registered under the laws of another state if the other state's standards are comparable to those in Idaho and acceptable to the Board, evidenced by an inspection report. (7-1-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**116. PRESCRIPTION DRUG ORDER: REFILLS.**

**01. Refill Authorization.** A prescription drug order may be refilled when permitted by state and federal laws and only as specifically authorized by the prescriber. (3-21-12)

**a.** A pharmacist, utilizing his best professional judgment, may dispense a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (3-21-12)

**b.** Refills exceeding those authorized by the prescriber on the original prescription drug order may only be authorized through issuance of a new and separate prescription drug order. (3-21-12)

**02. Emergency Prescription Refills.** A pharmacist may refill a prescription for a patient when: ( )

**a.** ¶The prescriber is not available for authorization if, in the professional judgment of the pharmacist, a situation exists that threatens the health or safety of the patient should the prescription not be refilled. Only sufficient medication may be provided, consistent with the dosage instructions, to maintain the prescribed treatment until, at the earliest possible opportunity, the issuing or an alternative prescriber is contacted for further renewal instructions. (3-21-12)( )

**b.** Upon the declaration of a national, state, or local emergency by the President of the United States,

the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, and subject to the provisions of Subsection 310.02 of these rules, a pharmacist may dispense a refill of a prescription drug, not to exceed a thirty (30)-day supply if, in the pharmacist's professional judgment, the prescription drug is essential to the patient's health or continuation of therapy. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. PHARMACIST: COLLABORATIVE PHARMACY PRACTICE AND STATEWIDE PROTOCOL AGREEMENTS.**

**01. Collaborative Agreement.** Pharmacists and prescribers may enter into collaborative pharmacy practice through a written collaborative pharmacy practice agreement that defines the nature and scope of authorized DTM or other patient care services to be provided by a pharmacist. (3-21-12)( )

~~01~~**a.** Agreement Elements. The collaborative pharmacy practice agreement must include: (3-21-12)

~~01~~**i.** Identification of the parties to the agreement; (3-21-12)

~~01~~**ii.** The establishment of each pharmacist's scope of practice authorized by the agreement, including a description of the types of permitted activities and decisions; (3-21-12)

~~01~~**iii-** The drug name, class, or category and protocol, formulary, or clinical guidelines that describe or limit a pharmacist's authority to perform DTM; (3-21-12)

~~01~~**iv.** A described method for a prescriber to monitor compliance with the agreement and clinical outcomes of patients and to intercede where necessary; (3-21-12)

~~01~~**v.** A provision documenting a prescriber's right to override a collaborative practice decision made by a pharmacist whenever deemed necessary or appropriate; (3-21-12)

~~01~~**vi.** A provision allowing any party to cancel the agreement by written notification; (3-21-12)

~~01~~**vii.** An effective date; and (3-21-12)

~~01~~**viii.** Signatures of the parties to the agreement and dates of signing. (3-21-12)

~~01~~**ix.** Amendments to a collaborative pharmacy practice agreement must be documented, signed, and dated. (3-21-12)

~~01~~**b.** Board Review. The original collaborative pharmacy practice agreement and any subsequent revisions must be made available to the Board upon request. (3-21-12)

~~01~~**c.** Agreement Review. The collaborative pharmacy practice agreement must be reviewed and renewed annually and revised when necessary or appropriate. (3-21-12)

~~01~~**d.** Documentation of Pharmacist Activities. The patient care provided pursuant to the agreement must be documented in the patient's permanent record in a manner that allows it to be readily available to other healthcare professionals providing care to the patient. (3-21-12)

**02. Statewide Protocol Agreement.** A pharmacist may perform DTM or other patient care services according to a statewide protocol agreement issued by the director of the Idaho Department of Health and Welfare, in conjunction with the Board, for the purpose of improving public health. The protocol agreement must include: ( )

**a.** An effective date; ( )

- b.**     The geographical portion of the state where the protocol agreement is to be effective; and     (\_\_\_\_)
- c.**     The drug name, class, or category and protocol, formulary or clinical guidelines that describe or limit a pharmacist's authority to perform DTM or other patient care services.     (\_\_\_\_)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1505

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 clarifies and adds missing language in definitions. The changes provide needed updating and additional language to definitions. Pharmaceutical Care Services is updated by adding the ability to order and interpret laboratory tests. Reconstitution definition is also added to provide clarification as to what is considered compounding as opposed to reconstitution of a drug.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 27-0101-1501 in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 71](#) and in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, page 106](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Adams, 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 28, 2015.

DATED this 4th Day of September 2015.

Alex Adams  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
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Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1505**  
**(Only Those Sections With Amendments Are Shown.)**

**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. Outsourcing Drug Outlet.** A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (4-6-15)

**10. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)

**11. 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.~~ Ordering and interpreting laboratory tests; and ( )
  - ~~n.~~ Other services as allowed by law. (3-21-12)
- 12. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 13. 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)
- 14. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 15. 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)
- 16. PIC.** Pharmacist-in-charge. (3-21-12)
- 17. PMP.** Prescription Monitoring Program. (3-21-12)
- 18. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 19. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 20. 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)
- 21. Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (4-11-15)
- 22. 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)
- 23. Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. ( )
- 234. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)
- 245. 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)
- 256. 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)
- 267. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)
- 278. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)
- 289. R.N.** Registered nurse. (3-21-12)

## IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE

### 28.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)

DOCKET NO. 28-0201-1501

#### 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 67-4733, Idaho Code, and Code of Federal Regulations (CFR) 24 CFR 570.480.

**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 21, 2015.

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

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

The proposed changes will help the ICDBG program align with its Consolidated Plan, eliminate confusing language, comply with the Code of Federal Regulations (CFR), and help facilitate increasing interest from Idaho cities and counties. The changes will better define program eligible activities, expand the Senior and Community Center set-aside to include public parks, and update verbiage and terminology.

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

The rule will not require the imposition of a fee.

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

Idaho Department of Commerce does not anticipate a fiscal impact from this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the ability to communicate proposed rule changes and come to a consensus with 237 Idaho cities and counties is not feasible. However, some of the rule changes are based on city and county feedback from a September 2014 survey regarding the ICDBG program. The survey and public hearings were held in order to develop the ICDBG program's Five-Year Consolidated Plan. This plan is the guiding document of the CDBG goals and method of funding distribution.

**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:

ICDBG is a federally funded program and therefore must adhere to, and comply with, the CFR. Incorporating the CFR by reference allows for ICDBG to integrate ongoing updates without having to update Idaho code each time. This is a cost savings for taxpayers as there is no need to reprint rules with each update.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Megan Ronk, Chief Operating Officer, (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 28, 2015.

DATED this 2nd Day of September, 2015.

Megan Ronk  
Chief Operating Officer  
Idaho Department of Commerce  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0093  
Tel: (208)-334-2470 / Fax: (208)-334-2631

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0201-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**000. LEGAL AUTHORITY.**

In 1981 Congress amended the Community Development Act of 1974 to allow states to assume the Department of Housing and Urban Development's ~~Small-Cities State~~ Community Development Block Grant Program. The Department of Commerce, through these rules, is implementing the state's administration of the ~~Small-Cities State~~ Community Development Block Grant program as authorized by the Housing and Community Development Act of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I. Funds which are appropriated annually by Congress are allocated by statutory formula to each state. This chapter is adopted in accordance with Section 67-4702(2), Idaho Code. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

IDAPA 28.02.01 incorporates by reference the following: (3-29-10)

**01. 24 CFR 570.489, ~~pages 41 and 43~~**, dated April 1, 2001~~4~~. Access to this document is available through the Department of Commerce website at <http://commerce.idaho.gov/>. ~~(3-29-10)~~( )

**02. 24 CFR 570.611, ~~page 46~~**, dated April 1, 2001~~4~~. Access to this document is available through the Department of Commerce website at <http://commerce.idaho.gov/>. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. DEFINITIONS.**

For the purposes of these rules, the following words are defined. (7-6-94)

**01. Allocation.** The state of Idaho's share of the Small Cities Community Development Block Grant Program as determined by the funding formula contained in the Housing and Community Development Act of 1974, as amended. (7-6-94)

**02. Appropriation.** The Federal funding, as set by Congress, for the Department of Housing and Urban Development (HUD). (7-6-94)

**03. CDBG.** The Community Development Block Grants, especially the ~~Small-Cities State~~ Program administered by HUD. ~~(7-6-94)~~( )

**04. Department.** The Idaho Department of Commerce. (3-29-10)

**05. Grant.** The transfer of ICDBG funds, in accordance with state and federal law, from the Department to a unit of local government for the specific purpose of accomplishing the project described in the Application. (7-6-94)

**06. ICDBG.** The Idaho Community Development Block Grants. The Idaho Department of Commerce administered Small Cities ICDBG Program. (7-6-94)

**010. GENERAL OBJECTIVES.**

**01. National Objectives.** The primary objective of this program is to develop viable communities by expanding economic opportunities and providing decent housing, "principally for persons of low and moderate incomes." Consistent with this primary objective, projects funded under Idaho's Community Development Block Grant Program must be designed so that each activity will benefit either low and moderate income persons, will aid in the prevention or elimination of slums and blight, or will meet other community development needs having a particular urgency because of existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. (7-6-94)

**02. State Objectives.** The state's objective of the Idaho Community Development Block Grant (ICDBG) program is to assist Idaho communities in developing their economy, public facilities and housing to provide greater opportunities, principally for low and moderate income citizens, through: increasing economic opportunities by assisting business expansions and job creation; improving community infrastructure to accommodate economic growth and eliminate health and safety problems; improving housing stock and expanding housing choices; and rebuilding or revitalizing blighted areas. (7-6-94)

~~**03. ICDBG Funds.** ICDBG funds shall not be used to fund projects or activities which can be funded primarily by other state, private or federal resources. (7-6-94)~~

**011. GRANT PROGRAM.**

**01. Grant Types.** The following six (6) types of grants are available under the Idaho Community Development Block Grant program: Public Facility or Housing (PFH); Economic Development (ED); Community Center (CC) or Senior Citizen Center (SR); and Imminent Threat (IT). (7-1-98)

**02. General Descriptions.** In any project, eligibility must meet two (2) tests. First, the project must be described by one (1) or more eligible activities (Section 022) and second, the project must qualify in a national objective (Section 015). (7-6-94)

**03. Public Facility or Housing Grants.** (7-6-94)

**a.** Public facility projects are those that construct or improve facilities including, but not limited to, sewer or water systems, streets, curbs, gutters, and sidewalks, fire stations, public medical and health facilities, libraries, group homes, publicly owned commercial or industrial property. Some public facilities such as city halls, courthouses, police stations, jails, and schools are by definition ineligible (Section 052) or have extreme difficulty meeting a national objective. ~~Other public facilities such as solid waste disposal, parks, maintenance shops are sometimes eligible only in very narrow circumstances. (7-1-98)( )~~

**b.** Housing projects are those that improve or ~~construct~~ **rehabilitate** housing units for low and moderate income families. Projects include, but are not limited to, rehabilitation of public housing, rental rehabilitation, owner-occupied housing rehabilitation, acquisition of real property for rental rehabilitation, acquisition of land and site development for new rental housing, replacement housing, rehabilitation of school buildings into housing, acquisition of sites, site development and acquisition of manufactured housing for manufactured home parks. (7-6-94)( )

**04. Economic Development Grants.** There are two (2) types of Economic Development projects. (7-6-94)

**a.** The first is the provision of infrastructure, usually sewer, water, or street, to a specific business

expansion or new location. Manufacturing or processing companies are the more competitive projects. The grant funds assist with the public costs of extending services in exchange for a commitment from the business to create jobs for low and moderate income persons. (7-6-94)

b. The second grant is to assist with downtown revitalization. The downtown merchants and landowners must organize themselves and develop a plan of specific improvement actions. The downtown area must meet the slum and blight national objective. (7-6-94)

**05. Center and Park Grants.** (7-1-98)

~~a.~~ Community Center Grants, ~~Community Center projects,~~ Senior Center Grants, and Public Park Grants are ~~a~~ specific types of public facility projects. Funds are set aside for these facilities only. Community Centers, Senior Centers, and Public Parks must be owned or operated for the benefit of all project area or neighborhood residents. (7-1-98)( )

~~b.~~ Senior Citizen Center Grants. Senior Citizen Center projects are a specific type of public facilities project. Funds are set aside for these facilities and community centers only. The center must be owned or operated for the benefit of senior citizens. (7-1-98)

**06. Imminent Threat Grants.** Imminent Threat projects are those which correct or eliminate a recent threat to human health or safety (see Section 021 and Section 108). (7-6-94)

**07. Grant Award System.** Since demand for grants far exceeds available funds, a competitive system is used to select grants, except for the imminent threat and technical assistance grants. Grant applications shall be submitted, rated and selected for funding according to the criteria and procedures established by these rules. (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. BENEFIT TO LOW AND MODERATE INCOME PERSONS.**

**01. Definition.** Members of a family having an income within family income standards established by HUD for housing and community development programs. Unrelated individuals are considered one (1) person families. Low income is defined as families with income of fifty percent (50%) or less of the county median income. Moderate income is defined as families with income of eighty percent (80%) or less of the county median income. HUD established that county median income is the greater of either the county median income or the median income of the "non-entitlement" area of the state. Activities considered to benefit LMI persons are divided into four (4) categories: area benefit activity, limited clientele activity, housing activity, and job creation or retention activity. (7-6-94)

**02. Area Benefit Activity.** A grant project which meets the needs of LMI persons residing in an area where at least fifty-one percent (51%) of the residents are LMI persons. The benefits of this project are available to all persons in the area regardless of income. Such an area need not have the same boundaries as census tracts or other officially recognized boundaries but must be the entire area served by the project. A project that serves an area that is not primarily residential in character (i.e. street construction in an industrial park) shall not qualify under this category. (7-6-94)

**03. Limited Clientele Activity.** A grant project which benefits a specific group of people, at least fifty-one percent (51%) of whom are LMI persons. Limited clientele activities also include special projects to remove material and architectural barriers which restrict the mobility and accessibility of elderly or persons adults with disabilities to publicly-owned and privately-owned non-residential buildings. To qualify in limited clientele activity, the activity must meet one (1) of the following tests: (7-6-94)( )

a. Benefits a clientele group who are generally presumed to be principally LMI persons. Currently, the following groups are presumed by HUD to meet this criterion: elderly persons, homeless persons, persons adults with disabilities, migrant farm workers, abused children, battered spouses, illiterate persons, adults, or adults living

with the disease AIDS;

(7-6-94)( )

b. Information on family or household size and income proves that at least fifty-one percent (51%) of the clientele are persons whose family income does not exceed the LMI limit; or

(7-6-94)( )

c. Income eligibility requirements limit the activity exclusively to LMI persons; or (7-6-94)

d. By the nature and location it may be concluded that the clientele will primarily be LMI persons; or (7-6-94)

e. A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or persons with disabilities to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one (1) dwelling unit. (7-6-94)

**04. Housing Activity.** A grant project which adds to or improves permanent, residential structures which, upon completion, will be occupied by LMI households. This project may include, but not necessarily be limited to, the acquisition or rehabilitation of property; and conversion of non-residential structures; ~~and new housing construction.~~

(7-6-94)( )

a. The housing may be either one (1) family or multifamily structures. If the structure contains two (2) dwelling units, at least one (1) must be so occupied, and if the structure contains more than two (2) dwelling units, at least fifty-one percent (51%) of the units must be so occupied. Where two (2) or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. (7-6-94)

b. The following shall also qualify under this criterion. When less than fifty-one percent (51%) of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances: the assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; not less than twenty percent (20%) of the units will be occupied by low and moderate income households at affordable rents; and the proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households. (7-6-94)

**05. Job Creation or Retention Activity.** A grant project which creates or retains permanent jobs, at least fifty-one percent (51%) of which are either taken by LMI persons or considered to be available to LMI persons. (7-6-94)

a. Acceptable documentation on applicant/employee family income includes any of the following: (3-20-97)

i. Notice that employee/applicant is a referral from state, county, or local employment agency or other entity that agrees to refer individuals who they determine to be low or moderate income based on HUD's criteria. These entities must maintain documentation which is to be available for grantee, Department, or federal inspection; or (3-20-97)

ii. Written certification signed by the employee/applicant of family income and size to establish income status showing either: The actual income of the family; or, a statement that the family income is below that required by CDBG standards. These forms must include a statement that they are subject to verification by the local or federal government; or (3-20-97)

iii. Evidence that employee/applicant qualifies for assistance under another program with income qualification criteria at least as restrictive as those used by HUD (e.g., referrals from the Workforce Investment Act (WIA) program), except for referrals under the WIA program for dislocated workers. (4-11-06)

**b.** For an activity designed to create permanent jobs where at least fifty-one percent (51%) of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least fifty-one percent (51%) of the jobs will be “held by”, or will be made “available to”, low and moderate income persons. The unit of local government and the business must determine at the time of pre-application whether they will use “held by” or the “available to” criteria as their method of documenting LMI jobs. ~~The option chosen cannot be changed at a later date.~~ (3-20-97)( )

**c.** For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least fifty-one percent (51%) of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two (2) years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover. (7-6-94)

**d.** Jobs will be considered to be “available to” low and moderate income persons for these purposes only if: special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and the unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs. First consideration shall consist of the business using a hiring practices that in all likelihood will result in over fifty-one percent (51%) of persons hired being LMI persons, the business must seriously consider/interview an adequate number of LMI applicants, the availability of transportation must be considered to allow LMI persons to commute to the job site. The hiring practice used to make jobs available to LMI persons shall be identified in the pre-application and approved by the Department. (3-20-97)

**e.** As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except: in certain cases, such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by ICDBG funds; and where ICDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in Section 105(a)(15) of the Act making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one (1) year period. (7-6-94)

**f.** In any case where ICDBG funds are used for public improvement (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows: the assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within two (2) years from the completion of the public improvement. If the ICDBG assistance is under ten thousand dollars (\$10,000) per job created or retained, then only businesses applying for ICDBG assistance need to be assessed for low and moderate income job creation or retention. If the ICDBG equals or exceeds ten thousand dollars (\$10,000) per job then any business benefiting by the public improvement, for a period of up to one (1) year after the physical completion of the public improvement, must be assessed for low and moderate income job creation or retention. (3-29-10)

**017. -- 019. (RESERVED)**

**020. AID IN PREVENTION/ELIMINATION OF SLUMS AND BLIGHT.**

**01. Definition.** ~~An area of slum and blight is a definable geographic area which contains a substantial number of deteriorating or dilapidated buildings or two (2) or more deteriorated public facilities throughout the area.~~ The area impairs the sound growth of a community, constitutes an economic liability or a social liability to the community, or contains conditions which are a menace to public health, safety or welfare. Any Eligible Activity may be used to remove conditions that are contributing to the slum and blighting conditions. Activities may address slum and blight conditions on either an area basis or spot basis. (7-6-94)( )

**02. Elimination of Slum or Blight on an Area Basis.** To qualify under the national objective of slum/

blight on an area basis, a project must meet ~~all of the following criteria. First, the area shall, by resolution, be officially designated by the grantee and must meet the definition of a slum, blighted, deteriorated or deteriorating area. The resolution shall establish the boundaries of the slum and blighted area and generally describe the conditions of slum and blight. Second, there must be identified and documented a substantial number of deteriorated or deteriorating buildings, or public improvements throughout the area. This condition will be considered fulfilled if two (2) or more public improvements throughout the area are in a general state of deterioration. Third, the project must address one (1) or more of the conditions which contributed to the deterioration of the area~~ the criteria as defined in 24 CFR 570.483(c)(1). (7-6-94)( )

**03. Elimination of Slum or Blight on a Spot Basis.** To comply with the national objective of elimination or prevention of slums or blight outside a slum or blighted area, a project must meet the ~~following criteria: the project must be designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area; and the project is limited to: acquisition, clearance, relocation, historic preservation, or rehabilitation of buildings (but only to the extent necessary to eliminate specific conditions detrimental to public health and safety). The grantee shall by resolution declare the property(ies) to be in a severely deteriorated condition, and generally describe the conditions of the building. The grantee shall document the deteriorating and blight conditions including but not limited to code inspections, structural inspections, appraisals, the impact of the property on surrounding property and the health and safety problems. The grantee shall describe and document their legal options and actions relative to the project~~ as defined in 24 CFR 570.483(c)(2). (7-6-94)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. ELIGIBLE ACTIVITIES.**

An activity ~~listed in Sections 023 through 051 which~~ as identified in 24 CFR 570.482 eligible activities that also meets one (1) of the three (3) national objectives is considered eligible and may be financed in whole or in part with Idaho Community Development Block Grant (ICDBG) funds. Each grantee must ensure and maintain evidence that each of its ICDBG-funded activities meets one (1) of the national objectives. A grant project shall consist of a combination of eligible activities. Each activity must also be in compliance with the following conditions: (3-20-97)( )

**01. Environmental Review.** An environmental review and clearance procedure (contained in the Code of Federal Regulations (24 CFR Part 58)) must be completed for each project consisting of activities as defined in this Section. (7-6-94)

**02. Cost Principles.** Costs incurred must conform with the requirements of OMB Circulars A-87 "Cost Principles Applicable to Grants and Contracts with State and Local Governments" or A-122, "Cost Principles for Nonprofit Organizations." (7-6-94)

**03. Mixing Eligible and Ineligible Uses.** A public facility eligible for ICDBG assistance may be funded even if it is part of a multiple-use building containing ineligible uses if: (7-6-94)

**a.** The eligible portion of the building is a designated and discreet area of the building; (7-6-94)

**b.** The applicant can determine the costs attributable to the eligible use or eligible portion of the facility as distinct from the overall costs of the facility. (7-6-94)

**04. Special Assessments.** (7-6-94)

**a.** Definition. The recovery of the capital costs of a public improvement, such as streets or sewer lines, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement. The fee amount represents the pro-rata share of the capital costs of the public improvement levied against the benefiting properties. The term does not relate to user fees or taxes or the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes. (7-6-94)



b. Restrictions. For projects funded beginning in 1984, no special assessments will be levied against properties owned and occupied by low and moderate income persons to recover that portion of a capital expenditure funded in whole or in part by ICDBG funds. This includes fees or assessments made as a condition to obtain access to a facility. Grant recipients may levy assessments to recover the portion of a capital expenditure funded from other sources if the assessments of the low and moderate income owner-occupants are paid with ICDBG funds. Funds collected through special assessments are not program income if the assessment of LMI owner-occupants are paid with ICDBG funds. ICDBG funds may be used to pay for assessments levied against property owned and occupied by low and moderate income persons even if the public facility improvements are financed solely from other sources, and if the improvements were carried out in compliance with ICDBG rules. (7-6-94)

05. **Beneficiary Data.** Each grantee shall collect and maintain data on the persons to directly benefit from the grant project. The data shall include information on race, gender and ethnic characteristics of persons who are applicants for, participants in, or beneficiaries of the grant project. (7-6-94)

**~~023. ACQUISITION OF REAL PROPERTY.~~**

~~ICDBG funds may be used to acquire real property in whole, or in part, by purchase, long-term lease (if for fifteen (15) years or more), donation, or otherwise. The following real property or interests therein is eligible for acquisition: property which is blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth; property which is appropriate for rehabilitation or conservation activities; property which is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources, and scenic areas; the provision of recreational opportunities; or the guidance of urban development; property which is to be used for the provision of public works, facilities, and improvements eligible for assistance under these rules; and property which is to be used for housing.~~ (7-6-94)

**~~024. PUBLIC FACILITIES AND IMPROVEMENTS.~~**

~~The acquisition, construction, rehabilitation, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promotes energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements. Included are facilities to provide shelter for persons having special needs provided such facilities are not prohibited by the new housing construction prohibition.~~ (7-6-94)

**~~025. CODE ENFORCEMENT.~~**

~~Code enforcement involves the payment of salaries and overhead cost directly related to the enforcement of local codes. ICDBG funds may be used only in deteriorated or deteriorating areas where enforcement, together with public or private improvements or services, may be expected to arrest the decline of the area.~~ (7-6-94)

**~~026. CLEARANCE AND DEMOLITION.~~**

~~Clearance, demolition, removal of buildings and facilities, and movement of structures to other sites.~~ (7-6-94)

**~~027. REMOVAL OF ARCHITECTURAL BARRIERS.~~**

~~Removal of material and architectural barriers which restrict the mobility and accessibility of elderly and persons with disabilities to publicly or privately owned buildings, facilities and improvements.~~ (7-6-94)

**~~028. RENTAL INCOME PAYMENTS.~~**

~~Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be utilized for the relocation of individuals and families displaced by activities under this title.~~ (7-6-94)

**~~029.—032. (RESERVED)~~**

**~~033. DISPOSITION OF PROPERTY.~~**

~~Costs associated with the disposition (through sale, lease, donation, or otherwise) of any real property acquired with ICDBG funds, or with the retention of real property for public purposes. Reasonable costs of temporarily managing such property (or property acquired under urban renewal) until final disposition of the property is made. Disposition costs include fees paid for: appraisals, surveys, marketing, legal services, financial services, transfer taxes and other costs involved in the transfer of ownership of property. Any proceeds from the disposition of such property shall be considered program income.~~ (7-6-94)

~~034. PUBLIC SERVICES.~~

~~Provisions of new or increased levels of public services, including, but not limited to, those concerned with employment, crime prevention, child care, health, drug abuse, fair housing, counseling, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the state) during any part of the twelve (12) month period immediately preceding the date of submission of the application. (7-6-94)~~

~~035. USE OF ICDBG FUNDS FOR LOCAL MATCH.~~

~~Payment of the non-federal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under the ICDBG program. Payment is limited to only the eligible activities which are in compliance with ICDBG requirements. (7-6-94)~~

~~036. COMPLETION OF URBAN RENEWAL PROJECTS.~~

~~Payment of the cost of completing a project funded under Title I of the Housing Act of 1949. (7-6-94)~~

~~037. RELOCATION PAYMENT.~~

~~Relocation payments and assistance for displaced individuals, families, business organizations and farm operations when determined by the grantee to be appropriate. (7-6-94)~~

~~038. PLANNING ACTIVITIES.~~

~~01. Community Development Plan. Develop a comprehensive community development plan. (7-6-94)~~

~~02. Policy, Planning and Management Capacity. Develop a policy, planning and management capacity so that the recipient of assistance under this title may more rationally and effectively: determine its needs; set long-term goals and short-term objectives; devise programs, regulations and activities to meet these goals and objectives; evaluate the progress of such programs in accomplishing these goals and objectives; and include the carrying out of activities as described in Section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981. (7-6-94)~~

**CODIFIED SECTION 039 IS BEING RENUMBERED TO SECTION 022.06**

~~039. 06. Administrative Activities. Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development, housing activities, and the costs related to the establishment and administration of federally approved enterprise zones; to carry out management, coordination and monitoring of activities necessary for effective planning and implementation, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities including planning under ~~Section 038~~ 24 CFR 570.482. These costs shall not exceed ten percent (10%) of ICDBG grant funds and any program income. (~~3-20-97~~) ( )~~

~~040. SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES.~~

~~01. Economic Development Activities. Grant funds may be used for economic development activities which directly assist a specific business firm. In authorizing activities, the Department will take into account the amount of permanent employment to be generated which is available to low and moderate income persons, the necessity of the assistance or activity to stimulate private investment and the degree of impact on the economic conditions of the applicant. (7-6-94)~~

~~02. Eligible Activities. The following are eligible activities that may be carried out: (7-6-94)~~

~~a. Acquisition, construction, reconstruction, or installation of publicly owned commercial or industrial buildings and structures, and other publicly owned real property equipment and improvements, including public facilities, utilities, and other on-site improvements, including railroad spurs, electrical, gas and telephone services. Such activities may be carried out by the grantee, sub-recipient, or private nonprofit firms. Rehabilitation of~~

~~privately owned commercial or industrial buildings is eligible under Subsection 040.02.b. or Subsection 051.01.~~  
(3-30-07)

~~b. A project may include the provision of direct financial assistance to private-for-profit businesses including, but not limited to, assistance through grants, loans, loan guarantees, interest supplements, or technical assistance and other forms of support, for any eligible activities to carry out an economic development project, excluding those described as ineligible in Subsection 052.01. In order to ensure that any such assistance does not unduly enrich the for profit business, an analysis shall be conducted to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project as described in 24 CFR Part 570.482(e) and (f).~~  
(3-30-07)

~~041.—044. (RESERVED)~~

~~045. SUB GRANTS TO NONPROFIT ORGANIZATIONS.~~

~~01. Eligible Activities. A grantee may subgrant ICDBG funds to any of the types of sub recipients specified below, to carry out a neighborhood revitalization or community economic development project. Such a project may include any eligible activity under these rules and ineligible activities listed in Subsection 052.02, but not those described as ineligible in Subsection 052.01.~~  
(3-30-07)

~~02. Grantee Responsibilities. Grantees are wholly responsible for ensuring that ICDBG funds are utilized by sub recipients in a manner in compliance with the requirements of these rules and the other applicable federal, state or local laws. Grantees remain responsible for carrying out the environmental review and clearance responsibilities.~~  
(3-30-07)

~~03. Sub-Recipient Eligibility. Sub-recipients eligible to receive grants under Section 045: (3-30-07)~~

~~a. A neighborhood based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit (nonprofit) basis within a neighborhood. An organization is considered to be neighborhood based if the majority of its membership, clientele or governing body are residents of the neighborhood where activities assisted with ICDBG funds are to be carried out. A "neighborhood" is a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood, or the entire jurisdiction of a unit of general local government which is under twenty five thousand (25,000) population.~~  
(7-6-94)

~~b. Section 301(d) Small Business Investment Companies. A Section 301(d) Small Business Investment Company is an entity organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.~~  
(7-6-94)

~~c. Local Development Corporations. A local development corporation is: an entity organized pursuant to Title VII of the Headstart, Economic Opportunity and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.); an entity eligible for assistance under Section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696); other entities incorporated under state law whose membership is representative of the area of operation of the entity (including non resident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in Subsection 045.03.a.; or a state development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).~~  
(7-6-94)

~~d. Colleges and Universities. An institution of higher education having a demonstrated capacity to carry out eligible activities for the benefit of the grantee.~~  
(7-6-94)

~~046. ENERGY PLANNING. Activities necessary to the development of comprehensive community wide energy use strategy.~~  
(7-6-94)

~~047. TECHNICAL ASSISTANCE.~~

~~ICDBG funds may be used by the grantee (or provided by a grantee to a sub-grantee) to increase their capacity to carry out eligible neighborhood revitalization or economic development activities. Such costs are not included in the ten-percent (10%) limitation on administrative and planning costs. (7-6-94)~~

**~~048. HABITABILITY OF HOUSING UNITS.~~**

~~Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily LMI neighborhoods. (7-6-94)~~

**~~049. MICRO-ENTERPRISES.~~**

~~Provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by: providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises; providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises. (7-6-94)~~

**~~050. HOUSING ACQUISITION FOR LMI HOMEOWNERS.~~**

~~ICDBG funds may be used to facilitate and expand homeownership for LMI persons by: subsidizing interest rates and principle amounts for LMI home buyers; directly finance the home acquisition for LMI owner; acquire mortgage guarantees for LMI homebuyers (grantees and grant funds cannot directly guarantee mortgage financing.); provide up to fifty percent (50%) of a down payment for LMI homebuyers; pay reasonable closing costs normally associated with the purchase of a home by a LMI homebuyer. (3-20-97)~~

**~~051. HOUSING AND COMMERCIAL REHABILITATION AND PRESERVATION ACTIVITIES.~~**

~~**01. Commercial Rehabilitation.** ICDBG funds may be used to finance the substantial rehabilitation of privately owned existing buildings or structures used for business, commercial or industrial purposes. It includes, but is not limited to, structural and foundation modifications, removal of building code violations, utility improvements (electrical, gas, water, sewer, air, telephone, vacuum), energy efficiency improvements, facade modifications, safety systems integral to the building, loading and unloading facilities which are part of a building, and expansion of the square footage of the building. The term is generally considered to mean improvements which become part of the building. Rehabilitation of a commercial or industrial building owned by a private for profit business may qualify under the "rehabilitation" category only if it is limited to facade improvements of the exterior of the building and/or the correction of code violations. All other improvements must meet the requirements of the "Special Economic Development" category (Subsection 040.02.b.). The amount of ICDBG funding to finance commercial rehabilitation shall be reasonable compared to the value of the building less the value of the land. (See Subsection 040.02.b.) (7-6-94)~~

~~**02. Housing Rehabilitation.** ICDBG funds may be used to finance the rehabilitation and improvements of privately owned buildings for residential purposes, low income public housing and other publicly owned residential buildings. Funds may also be used to assist private individuals and entities, including profit making and nonprofit organizations, to acquire property for residential rehabilitation and rehabilitation for the use or resale for residential purposes. (7-6-94)~~

~~**03. Financial Assistance.** Assistance may be in the form of grants, loans, loan guarantees, interest supplements or other means to pay the costs related to the following activities: (7-6-94)~~

~~**a.** Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and renovation through alterations, additions to or enhancement of existing structures, which may be undertaken singly or in combination; (7-6-94)~~

~~**b.** Loans for refinancing existing indebtedness secured by a residential property rehabilitated with ICDBG funds if such financing is determined to be necessary or appropriate to achieve the community's development~~

~~objectives;~~ (7-6-94)

~~e. Improvements to increase the energy efficiency in residential structures through the installation of storm windows and doors, siding, wall and attic insulation; or conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;~~ (7-6-94)

~~d. Improvements to increase efficiency of residential water usage through water saving faucets and shower heads, repair of water leaks, etc.;~~ (7-6-94)

~~e. Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines;~~ (7-6-94)

~~f. For residential rehabilitation carried out with ICDBG funds, costs of: Initial homeowner warranty premiums; hazard insurance premiums, except where assistance is provided in the form of a grant; and flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973;~~ (7-6-94)

~~g. Cost of acquiring tools to be lent to owners and tenants who will use such tools to carry out rehabilitation;~~ (7-6-94)

~~h. The rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937; or~~ (7-6-94)

~~i. Renovation of closed school buildings for residential uses.~~ (7-6-94)

~~04. **Rehabilitation Services.** Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this Section, under Section 312 of the Housing Act of 1964, as amended, under Section 819 of the Act, or under Section 17 of the United States Housing Act of 1937. These services plus Administrative costs shall not exceed fifteen percent (15%) of the grant.~~ (7-6-94)

~~05. **Use of Grant Funds.** A grantee may use grant funds to pay substantial reconstruction of a home, owned and occupied by a LMI family. A grantee may use grant funds to pay substantial reconstruction of a home, owned and occupied by a LMI family, if during rehabilitation construction the need for reconstruction is discovered or where reconstruction is part of a larger neighborhood revitalization effort and the grantee determines that rehabilitation efforts are not sufficient to restore the home and the cost of reconstruction is less than the fair market value of the property after reconstruction is completed.~~ (3-20-97)

**023.-- 051. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**053. GRANT APPLICATION PROCESS.**

**01. Grant Application.** The Grant Application generally consists of a Notice of Intent to apply, the Application, and an Addendum. These are submitted to the Department at different times in the application process. (7-6-94)

**a.** Notice of Intent. A one (1) page letter sent to the Department as soon as a community decides to submit a grant application. This is an optional, but strongly recommended, step. It allows the Department to assist the community with eligibility and structuring of the proposed project. (7-6-94)

**b.** Application. The major required document which describes and documents the applicant's proposed project. It contains the information required to document that the proposed project will meet a national objective and consists of eligible activity(ies). The Application is the basis of the Department's and the EAC's review

and ranking of the project.

(7-6-94)

c. Addendum. Additional information required by the Department to further document the project or to fulfill additional federal requirements once the Application has been selected by the Economic Advisory Council.  
(7-6-94)

**02. Project.** A project shall address a single need and may consist of one (1) or more eligible activities which are to be undertaken with the ICDBG funds and any other funds committed to the project. A project also includes all the benefits which are to result from the related activities and from compliance with all federal and state laws and regulations which are conditions of the grant. The principal activity which directly addresses the problem area shall represent a majority of funds requested; other activities must be incidental to, and in support of, the principal activity. For example, a program which addresses a housing need might include housing rehabilitation as the principal activity. Support activities such as street improvements or demolition must be incidental and clearly in support of the principal activity.  
(7-6-94)

**03. Funding.** In addition to ICDBG funds, the other funds committed to a project are divided into other government funds, local matching funds, and private funds. Other government funds are from state, federal, or foundation sources provided to the grantee for the project. Local matching funds are defined as cash donations, capital reserves, program income (Section 171), cash resulting from debt financing, local improvement districts, general obligation or revenue bonds, tax levies, land sales or miscellaneous revenue. Local matching funds are generally those funds and contributions raised by the residents of the grantee. Also to be considered as local matching funds are the fair market value of the time of local government crews (force account) working on the project, donations of land, materials, and equipment for the project, waiver of local fees, and volunteer labor. Private funds are from individuals, businesses, or corporations which are spent on private property, but are necessary to the completion of the project and the generation of the benefits. Direct loans to individuals on housing projects will not be considered local match.  
(4-11-06)

**04. Documentation.** Firm evidence of in-kind contributions of equipment or materials will be considered as cash. The market value of land may be considered as local match if the value of the real estate is documented by appraisal or assessment. Architectural or engineering estimates of labor, materials and equipment should be prepared to determine value of these items. ~~Other documentation such as Bills of Sale, catalogue price lists, retail prices, etc. should be used. The value of a donation or a commitment of land should be documented by appraisals or fair market value.~~ Volunteer labor should be estimated by man hour, types of skills needed and wage rates. Documentation of insurance coverage for volunteers should be included in the application. This documentation should be a letter from the insurance agent of the community or civic group.  
(7-6-94)( )

**054. -- 060. (RESERVED)**

**061. NOTICE OF INTENT SOLICITED.**

The Notice of Intent to apply shall be submitted in a letter from the Chief Elected Official. Notices for ED projects shall be continuously accepted and reviewed; ~~Notices for SR and PFH shall be submitted following the Application workshops held each year.~~ Submittal is optional, but strongly recommended. First priority for technical assistance and staff travel will be given to those applicants which submit a Notice of Intent to apply. IT projects do not submit a Notice of Intent.  
(3-20-97)( )

**062. SUBMITTAL OF NOTICES OF INTENT, APPLICATIONS, AND ADDENDA.**

Applications may be mailed, ~~or~~ hand-delivered, or submitted electronically. All Applications and Addenda must be postmarked or dated by a commercial carrier not later than midnight of the announced Application deadline date. Any Application or Addendum not meeting the following closing date criteria will be disqualified and returned to the applicant. An Application and Addendum will be considered to be received on time under either one (1) of the following circumstances:  
(7-6-94)( )

**01. Sent by Mail or Private Commercial Carrier.** It was sent by mail or private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by a commercial carrier date. Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.  
(7-6-94)

**02. Hand-Delivered.** Hand-delivered Applications and Addenda will be accepted during the normal working hours. In establishing the date of receipt of hand-delivered Applications and Addenda, reliance will be placed on documentary evidence of receipt maintained by the Department. (7-6-94)

**03. Electronically.** Electronically submitted Applications and Addenda must be submitted by midnight of the deadline date. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. FORMAT.**

~~An~~ The Application and Addendum form and format shall be submitted on eight and one half inch (8 1/2") by eleven inch (11") white paper. It may be printed on both sides of the paper. Maps and larger sheets shall be folded to eight and one half inch (8 1/2") by eleven inch (11") size. Left and right margins shall be one (1) inch. The text shall be typed single spaced with double spaces between paragraphs. Pages shall be numbered. The types of headings and numbering systems are optional to the applicant. Supporting documents should be noted and placed in an appendix. The original and an electronic Application and the addendum, if required, shall be submitted to the Department of Commerce as prescribed in the ICDBG Application Handbook. (3-30-07)( )

**073. (RESERVED)**

**074. SECTIONS.**

The Application shall consist of the following sections: (7-6-94)

**01. Cover.** The cover shall contain "An application for an Idaho Community Development Block Grant by the \_\_\_\_\_ (City/County) of \_\_\_\_\_ (Name) \_\_\_\_\_ Date: \_\_\_\_\_." (one (1) page) (7-6-94)

**02. Cover Letter.** A cover letter signed by the Mayor or the Chairman of the Board of County Commissioners on official stationery. This is the official letter of application for a grant. (one (1) page) (7-6-94)

**03. Table of Contents.** (one (1) page) (7-6-94)

**04. ICDBG Application Information Form.** Fully completed and signed by the applicant. (one (1) page) (7-6-94)

**05. Threshold Factors.** The first four (4) factors must all be answered in the affirmative before an Application is to be reviewed and ranked. For public facility, housing and downtown revitalization projects an Application shall include Subsections 074.05.a. through 074.05.d. An Addendum, where required, shall include Subsections 074.05.e. through 074.05.g. All other application types must include Subsections 074.05.a. through 074.05.g. (3-30-07)

**a.** The applicant must be an eligible applicant (Section 012). Describe how the applicant meets the eligibility criteria. If this is a joint or in-behalf-of application, describe agreements and arrangements for managing the grant and the project. (7-6-94)

**b.** The project shall be an eligible activity(ies). Describe why the project and the various activities are eligible according to the rules in Section 022. (7-6-94)

**c.** The applicant shall adopt a citizen participation plan and shall conduct a public participation process. Applicants shall submit a copy of the Citizen Participation Plan and results of citizen involvement in developing the project. A copy of the Citizen Participation Plan must be submitted with the Application. An ICDBG may be awarded only if the grantee certifies that it is following a detailed citizen participation plan which: provides for and encourages citizen participation, with particular emphasis on participation of persons of low and moderate income who are residents of slum and blight areas or provides for participation of residents in low and moderate income neighborhoods as defined by the applicant; provides citizens with reasonable and timely access to local

meetings, information, and records relating to the grantee's proposed use of funds; provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including, at least, the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for persons with disabilities; provides for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable; and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. (3-19-99)

d. At least one (1) public hearing is required to permit public examination and appraisal of the Application. Public hearings shall be scheduled in ways and at times to provide for full participation of citizens. The building or facility must be accessible to persons with disabilities. All information presented in the hearings shall also be available, upon request, in a form usable by persons with disabilities. Proper notification shall be given by a public advertisement in a local newspaper no less than seven (7) days prior to the meeting date. The seven (7) days shall be counted beginning the date the advertisement appears and ending the day before the date of the hearing. The notice shall include: a brief description of the proposed project; the amount of funds being requested; the time and place of the public hearing, including a statement that the hearing will be held in a handicapped accessible facility; notification that both written and verbal comments will be accepted; and a description of the availability of services for persons with disabilities, upon request. It is recommended the applicant also post notification of the public hearing at various public locations and use other media notices of the hearing. At a minimum, applicants shall provide in the minutes of the meeting, evidence the following occurred at the public hearing: The Application and Application Handbook were available for review; the amount of funds available for local community development and housing activities was discussed; the range of activities to be undertaken was presented including community impact and benefit to low and moderate income (LMI) persons; verification that citizen's comments and views on the proposed Application were considered prior to submittal and, if determined appropriate, a description of how the Application was modified; a copy of the public notice, minutes and a list of those attending the public hearing(s); a description of any plans for the project regarding citizen participation, i.e., the formation of a citizen's advisory committee; and a description of any assistance for persons with disabilities requested and provided. (3-20-97)

e. The applicant shall have the administrative capacity to administer the grant. This means having ~~completed~~ started the procurement process for a Department-approved grant administrator in accordance with Section 212. The grant administrator ~~shall~~ should be included in project development and Application writing efforts. (3-30-07)( )

f. The applicant shall have adopted a Fair Housing Ordinance or resolution. This ordinance or resolution must have been adopted and publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Fair Housing Resolution or Ordinance has been adopted, applicants do not have to re-adopt the Resolution or Ordinance. The applicant will be required to show documentation the Resolution or Ordinance was published within the previous twelve (12) month period. (3-30-07)

g. The applicant shall either certify it will follow the Idaho Department of Commerce's Anti-displacement Plan or have adopted an Anti-Displacement and Relocation Plan. If the applicant adopts its own plan, the ordinance or resolution must have been publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Anti-Displacement and Relocation Plan has been adopted, applicants do not have to re-adopt the Plan. The applicant will only be required to show documentation the Plan was published within the previous twelve (12) month period. (3-30-07)

**06. General Project Description.** This is the critical section of the Application. It should include enough information for the reviewer to clearly understand the community, its needs, the project, and how the grant will help to solve the community problem. The information in each ranking section should substantively expand upon the project description. The narrative should succinctly describe the following items: a description of the community as to size, location and economy; a thorough assessment of all the community's needs and how the proposed project is a priority in comparison with the other needs addressed. The applicant should also include a description which



discusses how the existing condition came about, the number of people affected, and the seriousness of the problem(s); the particular project that is being proposed shall be described in detail. Describe the project, the various components, anticipated costs, schedule of activities, maps showing the location of the project ~~to the community (detailed enough to locate it by car)~~ and a map of the boundaries of the project area. This description shall be detailed enough that it can be used to write a contract scope of work; describe the benefits of the project, how it solves the identified need, and how it will enhance the community and its economy. Provide a demographic profile of the persons to benefit. ~~This shall include gender, minority status, persons with disabilities, and female head of household.~~ Describe how the project meets the state objectives of the ICDBG program (see Sections 000, 010, and 011); and if program income is expected to be generated, a re-use plan must be developed according to Section 175.

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

**07. ICDBG Budget Form Fully Completed by the Applicant.** (one (1) page) (7-6-94)

**08. Assurances.** The applicant shall sign the Assurances Form certifying that it will comply with the following federal laws and regulations: National Environmental Policy Act of 1969; Civil Rights Act of 1964 Pub.L 88-352; Civil Rights Act of 1968 Pub.L 90-284; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended and the implementing regulations at 49 CFR Part 24; Rehabilitation Act of 1973, Section 504 "Handicapped Accessibility"; Housing and Community Development Act of 1974 as amended Pub. L 93-383; Davis-Bacon Act (40-USC 276a--5); Historic Preservation Act; Anti-Lobbying Certification; Excessive Force Certification; and Section 106 of the Housing and Urban Recovery Act of 1983, certifying they will: minimize displacement and follow a residential anti-displacement and relocation assistance plan, affirmatively further fair housing, provide citizen participation, not use assessments or fees on low and moderate income owner occupants to recover capital costs of ICDBG-funded public improvements; Prohibition of Use of Assistance For Employment Relocation, Section 588 of the Quality Housing and Work Responsibility Act of 1998 Pub. L 105-276. (one (1) page). (3-30-01)

**09. Review and Ranking Narrative.** The applicant shall address each point category in the order given in the review and ranking section of the applicable grant category; ~~referenced below. If a particular point category is not applicable or not selected, it should be indicated.~~ (7-6-94) ( )

- ~~a. Economic Development Grants: (4-11-06)~~
- ~~i. Infrastructure (Section 096). (7-6-94)~~
- ~~ii. Downtown Revitalization (Section 097). (7-6-94)~~
- ~~b. PFH (Sections 083 through 087) and SR (Section 101) Grants: (7-6-94)~~
  - ~~i. Program Impact and Eligible Activity Point Form. (4-11-06)~~
  - ~~ii. National Objectives. (4-11-06)~~
  - ~~iii. Project Categories. (4-11-06)~~
  - ~~iv. Advisory Council Points Narrative. (4-11-06)~~

**10. Additional Information from Applicant (Appendix).** Maps, letters of support, technical studies and appropriate background documentation should be placed in this section and bound into the Application (no page limit). (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**081. PUBLIC FACILITIES AND HOUSING GRANTS.**

Public Facilities and Housing Grants refers to provision of local government utilities or facilities or the rehabilitation of housing for low to moderate income persons. ~~Applicants for these grants shall compete in one (1) of the two (2)~~

~~categories: public facilities or housing.~~ PFH grants may be funded to a maximum of five hundred thousand dollars (\$500,000). The PFH selection process consists of two (2) major components, the Application and the Addendum. See Section 092 entitled "Award Process" for details of the award process. See Subsection 135.02 of these rules for "Tag-on For Accessibility For Persons With Disabilities." ~~(3-19-99)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**084. PROGRAM IMPACT.**

Three hundred ~~twenty~~ ~~(3200)~~ points. Some or all of the points may be granted in each subcategory. The local financing factors, which represents the largest portion of the total number of points each applicant may receive, is intended to ensure that the best overall proposals are selected for funding. The score on this factor is determined by evaluating how effectively local funds are used in comparison with other applicants. The Department may require an applicant to provide supplemental financial information to clarify the local ability to finance all or a portion of a proposed ICDBG project. The applicant should provide evidence or documentation of the nature, amount and/or value of match committed to the project. Housing projects should (if match is not committed) provide the names of the agency, staff person and program(s) which may provide match, a description of the program and a time table for the match approval process. ~~(4-11-06)( )~~

**01. Percentage of ICDBG Dollars in Total Project (~~fifty thirty~~ ~~(530)~~ points).** All Applications will be ranked by percentage of ~~Community Development (ICDBG)~~ funds requested divided by total project costs. Total project costs are the total funds committed from all sources - federal, state, local and private funds. The applicant must clearly identify the other funding sources with dollar amounts from each. The rankings shall be divided into four (4) equal categories. The lowest ICDBG percent (%) receives the most points and the highest ICDBG percent (%) receives the least points. Points will be assigned according to the following schedule: ~~(3-19-99)( )~~

- a. First Quartile -- ~~fifty thirty~~ ~~(530)~~ points. ~~(3-19-99)( )~~
- b. Second Quartile -- ~~thirty twenty~~ ~~(320)~~ points. ~~(3-19-99)( )~~
- c. Third Quartile -- ~~fifteen ten~~ ~~(150)~~ points. ~~(3-19-99)( )~~
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**02. Percentage of Local Matching Funds (sixty (60) points).** All Applications will be ranked by the percentage of local matching funds divided by the total of local match and ICDBG funds. The highest percentage of local dollars will receive the highest points. See Subsection 053.03 for definition of local match. The rankings shall be divided into four (4) equal categories. The highest local match percentage (%) receives the most points and the lowest local match percentage (%) receives the least points. Points will be assigned according to the following schedule: (4-11-06)

- a. First Quartile -- sixty (60) points. (7-6-94)
- b. Second Quartile -- forty (40) points. (7-6-94)
- c. Third Quartile -- twenty (20) points. (7-6-94)
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**03. ICDBG Dollars per Person (fifty (50) points).** The ratio of total persons directly benefited by the project, compared to ICDBG funds requested (ICDBG dollars per person) shall be ranked and divided into quartiles. The lowest ICDBG dollars receives the most points and the highest ICDBG dollars receives the least points. The points shall be assigned to the ratio of ICDBG dollars per person as follows: (7-6-94)

- a. First Quartile -- fifty (50) points. (7-6-94)

- b. Second Quartile -- thirty (30) points. (7-6-94)
- c. Third Quartile -- fifteen (15) points. (7-6-94)
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**04. Local Matching Funds per Person (sixty (60) points).** The ratio of total persons directly benefited by the project, compared to local matching funds shall be ranked and divided into quartiles. The Department may request supplemental financial data from any applicant to determine local ability to finance a proposed project or clarify a community’s financial situation. The Department may take into consideration a community’s ability to contribute local matching funds in determining all rating and ranking points. The highest local funds per person receives the most points and the lowest local funds per person receives the least points. The points shall be assigned to the ratio of local matching funds per person as follows: (4-11-06)

- a. First Quartile -- sixty (60) points. (3-19-99)
- b. Second Quartile -- forty (40) points. (3-19-99)
- c. Third Quartile -- twenty (20) points. (3-19-99)
- d. Fourth Quartile - zero (0) points. (7-6-94)

**05. Eligible Activity Priority Ranking (one hundred (100) points).** Each eligible activity (Sections 022 through 051) is assigned a priority point factor. The applicant should list the activities and the ICDBG funds budgeted to each. These points shall be assigned to an Application based upon the percentage of the total ICDBG funds committed to each activity and multiplied by the priority points assigned to each. The total of the priority points so calculated is the total of the priority points for the Application. Health and safety-related projects are defined as sewer, water, fire protection facilities, medical facilities, nursing homes, streets, and other similar projects. Social service facilities are defined to include community centers, senior centers, libraries, assisted housing, shelter care, senior housing, auditoriums, cultural facilities, recreation facilities, and parks.

| <b>TABLE 1 -- “Eligible Activity Priority Ranking”</b>                                 |  |
|--|--|
| Acquisition of Real Property   | <del>One hundred Seventy five (10075)</del> points |
| <del>Acquisition of Real Property for Housing Projects</del>                           | <del>Fifty (50) points</del>                       |
| Public Facilities and <del>Improvements—Health and Safety Related Infrastructure</del> | One hundred (100) points                           |
| <del>Public Facilities and Improvements—Housing Related</del>                          | <del>Seventy five (75) points</del>                |
| <del>Public Facilities and Improvements—Social Service Related</del>                   | <del>Fifty (50) points</del>                       |
| Engineering - Architectural  | One hundred (100) points                           |
| Code Enforcement   | Fifty (50) points                                  |
| Clearance and Demolition   | <del>Ten Fifty (450)</del> points                  |
| Removal of Architectural Barriers  | <del>Fifty One hundred (5100)</del> points         |
| Rental Income Payments   | Zero (0) points                                    |
| Disposition of Property  | Ten (10) points                                    |
| Public Services  | Zero (0) points                                    |
| Completion of Urban Renewal Projects   | Zero (0) points                                    |
| Relocation Payments  | Twenty-five (25) points                            |

| TABLE 1 -- "Eligible Activity Priority Ranking"                  |                          |
|--|--------------------------|
| Planning Activities  | Zero (0) points          |
| Administration Activities  | One hundred (100) points |
| Grants to Nonprofit Community Organizations                      | Zero (0) Points          |
| Grants to Nonprofit Community Organizations for Housing Projects | Seventy-five (75) points |
| Energy Planning  | Zero (0) points          |
| Housing Rehabilitation   | Seventy-five (75) points |

~~(4-11-06)~~( )

**085. NATIONAL OBJECTIVES.**

Two hundred sixty (260) points. The Application must qualify in one (1) of two (2) national objective categories: benefit to low and moderate income persons or the prevention or elimination of slum and blight. If the Application does not qualify in at least one (1) category it will be declared ineligible for review and ranking. The Application will not be considered further. The applicant must choose only one (1) of the two (2) categories in which to compete.

(7-6-94)

**01. Benefit to Low and Moderate Income (LMI) Persons (two hundred sixty (260) points).** To qualify in the LMI category the applicant shall demonstrate at least fifty-one percent (51%) benefit to LMI persons.

(3-20-97)

**a.** The applicant shall show that the project shall principally benefit a majority of LMI residents of the project area. Benefit is shown only if it meets one (1) of the following criteria: the activity shall be carried out in a ~~neighborhood~~ **service or benefit area** consisting of fifty-one percent (51%) LMI persons and provide services to such persons; the activity shall involve facilities designed for use predominantly by persons of LMI; or the activity shall improve permanent, residential structures which will be occupied by LMI households upon completion. See Section 016 for more information.

~~(7-6-94)~~( )

**b.** ~~All benefits~~ **LMI beneficiaries** shall be verified by an appropriate source(s). Numbers shall be documented either by census data or a reliable survey. This material shall be verifiable by the Department of Commerce Multiplier effects or ratios shall not be considered in assigning benefit points because these numbers do not show direct benefit. The cost of planning, management, and administration shall not be included in calculating benefit of LMI persons.

~~(7-6-94)~~( )

**c.** Applicants shall provide additional ~~documentation that low and moderate income persons are receiving direct benefits of the program as determined by the following:~~ **beneficiary information and data as instructed in the Application Handbook.**

~~(7-6-94)~~( )

~~i. A narrative description with maps showing the location of the project area (census tract or enumeration districts must also be included when identifying these areas);~~

~~(7-6-94)~~

~~ii. The total number of households and persons in the project area;~~

~~(7-6-94)~~

~~iii. The total number of persons shown to be LMI in the project area;~~

~~(7-6-94)~~

~~iv. The percentage of LMI persons in the project area.~~

~~(7-6-94)~~

~~v. Identification of all the needs of LMI persons in the project area including the scope and magnitude of these needs;~~

~~(7-6-94)~~

~~vi. The map(s) must also outline the area where there is a concentration of these needs;~~

~~(7-6-94)~~

~~vii. The total number of "minority households" in the project area and their needs, ie. The term~~

~~“minority household” is defined as one where one (1) or more adults are Black, Hispanic, Asian and Pacific Islanders, American Indian, or other non white. If minority household information is not available from a survey, then Census data on the number of minority persons sixteen (16) years and over is acceptable; (7-6-94)~~

~~viii. The total number of households where persons with disabilities reside in the project area. “Household” is defined as one in which there are one (1) or more persons who are physically or mentally disabled. If information is not available from a survey, then Census data on the number of disabled persons sixteen (16) years and over is acceptable and a description of LMI citizen participation during the data gathering process. (3-19-99)~~

d. LMI Need points for Public Facility projects will be determined according to the following standards. Critical Need receives the full eighty (80) points. Critical is defined as existing (officially identified) violations of federal or state health or safety regulations. Moderate Need is an officially identified problem related to health and safety regulations, but the situation is not in violation of any regulation. Moderate Need receives sixty (60) points. Potential Need is related to solving a current situation that would become a violation if left uncorrected. Potential Needs receives forty (40) points. Community Need is a general improvement not related to health and safety, but is a major improvement in community services and infrastructure. Community Need receives twenty (20) points. Applicants for fire safety projects can receive up to eighty (80) points in the need category if they can document how the proposed project is directly related to efforts to comply with the state’s currently adopted fire code or National Fire Protection Association Standards - fifty (50) points; maintenance and personnel training is conducted and documented - fifteen (15) points; the community participates in the Fire Incident Reporting System to the State Fire Marshal’s office - fifteen (15) points. (3-30-01)

e. Identification of Impact (~~eighty sixty~~ (860) points). The applicant shall submit the following: specific identification of the project activities that will be undertaken to meet identified LMI needs. A distinction must also be made regarding direct and indirect benefits; a discussion of project impact in providing long-term permanent solutions to alleviate the need(s) identified above; identify procedures that are or will be developed to measure impact throughout the project; and describe and provide documentation of the process used to identify the LMI needs. Documented health and safety needs are awarded higher points. Applicants for fire safety projects can receive up to ~~eighty sixty~~ (860) points in the impact category if they document; (~~3-30-01~~)(    )

i. How the proposed project ~~addresses elements in their Fire Suppression Rating Schedule affecting their~~ affects response time, recruitment of volunteers, and fire insurance rating - ~~eighty sixty~~ (860) points; (~~3-30-01~~)(    )

~~ii. Bonus points shall be given to applicants whose fire inspectors have completed the certification program and have current certification status through the State Fire Marshal’s office five (5) points; and (3-30-01)~~

~~iii. If the applicant documents a fire safety education program is implemented in the community five (5) points. (3-30-01)~~

**02. Housing Need and Impact. (7-6-94)**

a. Identification of Need (eighty (80) points) points). An applicant shall develop a housing needs assessment to determine the need for a housing grant. Information to be collected about the community shall include population and growth, family size, the number of elderly, persons with disabilities, minority persons, and family income. Housing information collected shall be total number of units, number of rental units, age of housing, vacancy rates, overcrowding, number of substandard units in the community, and the number of each type of housing, i.e. owner, rental, institutional and seasonal. The applicant shall address how the proposed housing project will meet the needs outlined in the housing conditions study. The maximum points will be assigned to those housing projects meeting the most need as outlined in the housing needs assessment. (3-19-99)

b. Identification of Impact (~~eighty sixty~~ (860) points). (~~3-19-99~~)(    )

i. In the housing impact area, points would be awarded on the level of income the proposed project would target, based on the following formulas: (3-19-99)

(1) Percent of eighty percent (80%) of ~~medium~~ median income x forty (40) = (~~3-19-99~~)(    )

(2) Percent of fifty percent (50%) of ~~medium~~ **median** income x sixty (60) = ~~(3-19-99)~~( )

(3) Percent of thirty percent (30%) of ~~medium~~ **median** income x ~~eighty~~ **sixty** (~~86~~0) = ~~(3-19-99)~~( )

ii. Applicants will be required to submit a written management plan showing how the housing units would be allocated to the different income levels and show how the proposed housing matches the needs outlined in the need category. Housing market data will also be required for this category. (3-19-99)

~~e03~~. **Low and Moderate Income Percentage Points (one hundred (100) points).** Points will be assigned according to the percentage of LMI in the project area. They are:

| TABLE 2 -- "Percentage of LMI in Project Area" |                   |
|--|-------------------|
| Percentage                                     | Points            |
| 0 - 50.00%                                     | zero (0)          |
| 51.00 - 60.00%                                 | twenty (20)       |
| 60.01 - 70.00%                                 | forty (40)        |
| 70.01 - 80.00%                                 | sixty (60)        |
| 80.01 - 90.00%                                 | eighty (80)       |
| 90.01 - 100.00%                                | one hundred (100) |

(7-6-94)

~~034~~. **Prevention or Elimination of Slum and Blight (two hundred ~~sixty~~ **forty** (2**4**0) points).** To qualify in the Slum and Blight category, the applicant shall receive at least one hundred (100) total points by demonstrating that the proposed project will have a direct impact on the elimination or prevention of slum and blight conditions. In evaluating impact, the information described below shall be considered (see Slum and Blight definition, Section 020). ~~(7-6-94)~~( )

a. Provide the following community data: location of the project area including a narrative description and map(s) showing the boundaries of the area; and an official declaration by the governing body that the area is an "Area of Slum and Blight." (7-6-94)

b. Identify need (one hundred thirty (130) points). Describe the nature and seriousness of existing conditions/needs in the project area. References to published engineering studies or surveys or letters from appropriate local agencies shall be included. Use maps to locate the conditions and their relationship to each other. The applicant shall describe the nature and seriousness of the need as it exists in the following areas: the number, location, and type of deteriorating structures present in the project area; the unsafe/unsanitary conditions that exist in the structures and area; the infrastructure and site improvements that are deteriorating (i.e., streets, sidewalks, parking lots, utilities, driveways, fences and landscaping); the danger to life and/or property that exists from fire, hazards or other causes; or the condition of the property that impairs economic growth in the community by being an economic or social liability. (7-6-94)

c. Identify Impact (one hundred ~~thirty~~ **ten** (1**3**0) points). Specify how project activities will eliminate or prevent conditions of slum and blight. Identify the impact of the proposed project in providing permanent solutions to alleviate the identifiable conditions. Identify the procedure that is or will be developed to measure impact throughout the project. ~~(7-6-94)~~( )

**086. -- 089. (RESERVED)**

**090. PROJECT CATEGORIES.**

Two hundred and twenty (220) points. PFH Applications shall address each of the categories below. The project

description and its benefits should be discussed in previous sections. This section is a measure of the preparedness of the project and the community to undertake the project. To earn points, the applicant must demonstrate that the appropriate actions, procedures, agencies, permits, financing and inspections to initiate and complete the project were discovered and show how much has been completed. The object is to have well thought out projects which will then be quickly executed if funded. The items identified in the following categories must be related to each other.

(3-30-01)

**01. Planning, Previous Actions and Schedule (~~one two hundred and eighty twenty~~ **(18220)** points).** According to the categories listed below, the applicant shall describe and document the process used to plan the project and describe the components of the project. The completeness of the process and project detail earn more points. ~~(4-11-06)~~ **( )**

**a.** Design Professional (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed a design professional selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**b.** Grant Administration (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**c.** Plan/Studies (~~twenty thirty~~ **(230)** points). A maximum of ~~twenty thirty~~ **(230)** points will be awarded in this category if the applicant documents a plan or a study has been completed which includes a survey of the existing condition of the system or facility, develops and screens alternatives to enable the system to meet future needs, selects a recommended alternative, and evaluates the potential impact of the project on the environment. For pre-fab buildings, provide a letter from local building officials that the building meets state of Idaho building, electrical, and plumbing codes. Include additional information by project type: ~~(4-11-06)~~ **( )**

**i.** Water and sewer system projects. A conditional approval issued by DEQ on the facilities study or the project's specification and drawings. (4-11-06)

**ii.** Health care facility projects. A letter of intent submitted to the Idaho Bureau of Facilities Standards describing the proposed scope of work. Provide a copy of the letter and any response from the Bureau of Facilities Standards. (4-11-06)

**iii.** Road and transportation system projects. Conditional approval of construction plans by the Idaho Transportation Department or local highway district. (4-11-06)

**iv.** Housing projects. Project meets the community's comprehensive plan and zoning ordinance. Also, completed a financial performance and management plan. (4-11-06)

**v.** Fire or EMT station projects. A public works or design professional facilities review. The review shall include survey of existing condition of the building (if applicable), an analysis of costs including rehabilitation costs versus new construction, site location consideration including environmental issues, existing building problems, and the need for the size of the facility. (4-11-06)

**d.** Environmental Scoping (ten (10) points). A maximum of ten (10) points will be awarded if the applicant or sub-recipient has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of application. (4-11-06)

**e.** Agency Viability (thirty-~~five~~ **(305)** points). A maximum of thirty-~~five~~ **(305)** points will be awarded in this category if the applicant documents the following per project type: ~~(4-11-06)~~ **( )**

**i.** Sewer or water projects. Completion of ICDBG financial viability worksheet with the utility rate reviewed by at least one (1) of the following: The USDA Rural Development, Boise State University Environmental

Finance Center, the Rural Community Assistance Corporation, or the Idaho Rural Water Association. (4-11-06)

ii. Health care, transportation, housing, fire/EMT, or other projects. The applicant's or sub-recipient's viability will be based on having the following components: A lawful governing body, completion of ICDBG financial viability profile, a stable funding source and positive cash flow, and capital improvement and facility management plans. (4-11-06)

iii. Youth center projects. Projects must assist youth ages six (6) to eighteen (18) in developing skills to overcome challenges and become responsible leaders. The applicant or sub-recipient must provide information on management and operation of the center, outreach activities, a cost analysis of rehabilitation versus new construction and document that local operating funds are committed. (3-30-07)

**f.** Property Acquisition (~~twenty~~ **thirty** (230) points). A maximum of ~~twenty~~ **thirty** (230) points shall be awarded if the applicant or sub-recipient has achieved project site control. (4-11-06)(    )

i. The applicant or sub-recipient has ownership of the property including easements or right of way permits. Identify if there are existing buildings on the property and whether or not businesses, individuals, or farms will be displaced and provide documentation of site control; or (4-11-06)

ii. If property (land, buildings, rights of way, easements) is not secured but is identified on a plat map five (5) points will be awarded. Identify if individuals or businesses, including farms will be displaced. (4-11-06)

**g.** Funding Commitments (~~forty-five~~ (405) points). A maximum of ~~forty-five~~ (405) points will be awarded if one hundred percent (100%) of match funds are committed to the project. A commitment letter must be included with the application addendum. A support letter is not a commitment. If match is a bond, provide documentation the bond has passed and identify who will buy it. (4-11-06)(    )

**h.** Schedule (five (5) points). A maximum of five (5) points will be awarded in this category if the dates to start and complete construction have taken into account weather conditions, other funding availability, environmental mitigation issues, real estate site control, and bidding time frame. (4-11-06)

**i.** Administrative Capacity (~~fifteen~~ **twenty-five** (25) points). A maximum of ~~fifteen~~ **twenty-five** (25) points will be awarded in this category. (4-11-06)(    )

i. ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections (five (5) points). (4-11-06)

ii. Completion of Section 504 Self Evaluation and Transition plan. Submit the transition plan and the name of the ADA coordinator to certify which elements have been completed (five (5) points). (4-11-06)

iii. Document ~~that efforts to Affirmatively Further~~ Fair Housing ~~Accessibility Standards have been adopted either separately or inclusively with the most current building code utilized by the applicant~~ (five **fifteen** (15) points). (4-11-06)(    )

**02. Cost Analysis (forty (40) points).** Cost estimates for the project should be an accurate and realistic analysis of the administrative, legal, accounting, engineering or architectural services, property acquisition, construction and closeout costs. The various sources of funding should be assigned to the appropriate parts of the project. In order to receive points, construction costs will need to be: (4-11-06)

**a.** Identified by a licensed design professional's cost estimate within four (4) weeks of the application due date; (4-11-06)

**b.** Completed Project Cost Estimate. Estimate should reflect: (4-11-06)

i. Acquisition costs including appraisals, land, relocation, and closing costs; (4-11-06)

ii. Construction costs including divisions 1 - 16 as described in the most recent MASTERFORMAT,



- Davis Bacon wage rate, overhead, profit, contingency, bonding, permits; (4-11-06)
- iii. Design professional fees including design fees, construction administration, and reimbursable fees; (4-11-06)
  - iv. Grant administration fees including writing and administration; (4-11-06)
  - v. Soft costs including soil studies, market study, environmental; and (4-11-06)
  - vi. Financing expenses. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**096. REVIEW AND RANKING NARRATIVE FOR BUSINESS EXPANSION PROJECTS.**

The following are the review and ranking narrative requirements for those projects which assist business expansion through the provision of infrastructure and creation of jobs. The following minimum criteria must be included in the application by the application deadline in order for staff to review and rank the project and recommend it to the Economic Advisory Council for consideration. (3-30-01)

**01. Minimum Criteria.** (7-6-94)

**a.** The project must meet the national objective of benefiting LMI persons through job creation. Fifty-one percent (51%) of all the new jobs created or retained must be held by or made available to a member of a low and moderate income family. (LMI as defined in Section 016). Family income must be certified by the employee at time of hire and must be able to be verified or may be documented through a Department of Commerce screening referral agency. (3-19-99)

**b.** The applicant must certify compliance with applicable federal circulars A-87, A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. (4-11-06)

**c.** A public hearing shall be held on the Application in accordance with Subsection 074.05.d. (7-6-94)

**d.** The project may qualify as a Special Economic Development Project under Subsections 040.02.a. and 040.02.b. if the project meets the Public Benefit Standards described in 24 CFR Part 570.482 (e) and (f). (3-30-07)

**e.** Attach an eight and one-half inch (8-1/2") by eleven inch (11") map showing the location of the proposed project in the community. Attach a site plan of the proposed project showing existing and proposed improvements both business and infrastructure; existing and proposed land uses in the surrounding area and natural features and conditions on the site and nearby. (3-20-97)

**f.** Attach a brief analysis of the business to be assisted, including the market for the product/services to be produced, the business' position in the market, and the financial and managerial capabilities of the business(es) to be assisted. This should also include financial statements and balance sheets for the business(es) to be assisted indicating sales, income, and net position for the prior three (3) years, and the names and experience of senior managers of the business. (4-11-06)

**g.** Attach a letter of commitment from the business(es) stating their agreement to be part of the grant project, their ability to accomplish their expansion, their understanding of and compliance with all applicable federal regulations, their understanding of and compliance with the payback liability if the jobs creation does not meet federal standards; and their willingness to make available all records and information necessary to document all jobs created by completing and signing the Grant Assistance Agreement and Certification of Compliance with Grant Conditions. (4-11-06)

**h.** Attach a description of the type and number of all the jobs to be created, a calculation of fulltime

equivalents (FTE), and a beginning payroll of the business(es) at the location of the proposed project, a detailed description of the hiring process and any training to be provided. The information should include both current job information and the job creation projected for two (2) years beyond the completion of the grant funded construction. If training is necessary, a training plan and schedule outlining the responsibilities must be included in the application. A description of the quality of new and retained jobs shall be included. A description of the median annual income and fringe benefits package for new or retained jobs shall be provided. (4-11-06)

**02. Ranking Criteria (one thousand (1,000) points possible). (7-6-94)**

a. Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than thirty thousand dollars (\$30,000) ICDBG per job will not be considered. If jobs are not being created or retained, a project cannot be funded. (3-29-10)

b. Quality of New or Retained Jobs (one hundred (100) points). Points in this category are assigned based upon a comparison of the full time equivalent (FTE) wages or salaries created (excluding benefits, and the average county starting salary as determined by the most recent quarterly Idaho Department of Commerce survey. To convert part time or seasonal positions, take the total number of hours of employment created for a given pay rate and divide by one thousand five hundred sixty (1,560). If the average county wage exceeds the state average wage; comparison with the state average will be used. The grantee will be awarded points based upon the percentage of FTE's exceeding the state or county average salary. The formula is: Percentage of jobs above state or county average salary x one hundred (100) = Wage Quality Points. (4-11-06)(    )

c. Fringe Benefits (one hundred (100) points). The businesses creating or retaining jobs as a result of ICDBG assistance shall document their fringe benefit plans. Points will be given as follows: fifty (50) points for an employer funded health plan and fifty (50) points for an employer funded pension plan. The business must provide both to receive full points. (4-11-06)

d. Business Risk and Management (zero (0) to one hundred ~~twenty-five~~ forty (~~125~~40) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria reasonably required by the Department. Projects receiving less than ~~seventy-five~~ ninety (~~75~~90) points in this category will be eliminated from further consideration. (4-11-06)(    )

e. Planning, Schedule and Cost (one hundred and seventy (170) points possible). Describe planning efforts to enhance economic development. A detailed and reliable cost estimate and a project construction schedule is required of all Applications. Cost analysis and schedule will receive equal emphasis. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

i. Planning (~~fifty~~ one hundred ten (~~5~~110) points). Describe planning efforts to identify and detail all steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. (4-11-06)(    )

ii. Schedule (~~fifty~~ fifteen (~~15~~0) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. (4-11-06)(    )

iii. Cost (~~fifty~~ twenty-five (~~25~~0) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)(    )

iv. Environmental Scoping (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook. (4-11-06)

~~f. Minority Benefit (fifteen (15) points). Applicants for job creation projects that are for business expansion or retention shall receive minority points if the business documents minority hiring on their current payrolls. If the percentage of minority participation is equal to or greater than the county in which they are locating, they shall receive full points. (4-11-06)~~

~~g. Local Investment Leverage Match (maximum of one hundred (100) points). The total of all local match will be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so, describe what attempts have been made to secure funds from the RLF for the project. Program Income from previous grants to be used in this project may be considered as local match. (4-11-06)( )~~

~~h. Distressed Areas (twenty (20) points). Maximum points will be given if the project is located in a historically underutilized business (HUB) zone or other similar qualifiers. (4-11-06)( )~~

~~i. Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence. (4-11-06)~~

~~j. Private Leverage (one hundred (100) points). The points in this category will be calculated by dividing the total of all private investment provided by the business in the project by the ICDBG amount requested and multiply it by one hundred (100). The business' private investment is the capital facilities, real estate and site development costs. Applicants shall provide documentation on the status of private investment, i.e. financing approvals. Payroll and start-up costs are not included in this calculation. (4-11-06)~~

~~k. Activities (twenty-five (25) points). Points will only be awarded for the percentage of ICDBG dollars committed to the acquisition, construction, or reconstruction of public infrastructure (Section 024); and for publicly-owned commercial building acquisition and/or rehabilitation for the purpose of assisting a business or businesses. (4-11-06)~~

~~l. Grant Management (twenty-five (25) points). If the grant funded activities are managed by the grantee, twenty-five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager. Previous track record of grantee and/or experience of grantee and grant administrator. (4-11-06)( )~~

~~m. Economic Advisory Council Evaluation (two hundred (200) points). The EAC will evaluate each Application on the basis of overall value, including its ability to make a significant impact on the Idaho economy and the commitment of the community to the project. The EAC evaluation process shall be prescribed in the ICDBG Application Handbook. (4-11-06)~~

## 097. REVIEW AND RANKING OF DOWNTOWN REVITALIZATION.

**01. Introduction.** Downtown Revitalization occurs only as merchants and landowners and other community representatives implement a series of actions which take advantage of community strengths and the economic and market forces operating in their community. An Idaho Community Development Block Grant program is only one (1) of the resources which can assist a downtown revitalization process. Therefore, the grant Application must be reviewed against the background of the total revitalization efforts. The following areas are reviewed by staff to evaluate the project. (3-19-99)

**02. Organization (seventy-five (75) points).** This is a measure of the strength and depth of the local commitment to downtown revitalization. Obvious problems and lack of cooperation will detract from the points. The Application should describe how the community is actively organized to plan and implement a downtown revitalization process. At the center of the process there should be a take-charge steering committee representing the major community actors, such as merchants, city officials, local economic development organizations, utilities, and banks. Active subcommittees shall undertake components of the process in promotion, design, and economic

restructuring. Other areas include infrastructure, finance, historic preservation, architecture, and various regulations. The process will be unsuccessful without the participation of, communication with, and cooperation from, various local, state and federal governmental agencies, ~~such as the Department of Transportation, Health and Welfare, Post Office, BLM, Forest Service, City Hall, County Courthouse, School Board, Highway Districts, Sewer, Water, and Fire Districts and Irrigation Districts. Participation of major companies, particularly those which drive the local economy, along with the utilities and banks, is also critical to the process.~~ (4-11-06)( )

**03. Assessments (seventy-five (75) points).** This is a measure of the accuracy, completeness and comprehensiveness of each of the assessments which underlie the implementation plan. Knowing and understanding the market forces which support a community's downtown is the foundation of any revitalization effort. Consequently, an analysis of the local economy's market or trade area is critical to determine the effort's direction. Only with this information can plans be made to select the mix of goods and services that can be supported and to decide the nature of the improvements to infrastructure, regulations, buildings, and promotional campaigns. The downtown area may no longer be a retail center and maybe some other use is appropriate. This should be identified and the plans accordingly developed around this activity. Therefore, the Application must contain the background studies that were conducted to assess the local economic forces, market conditions, demographics, and sales volumes; the present conditions of streets and sidewalks, sewers, water and storm drain systems, and traffic patterns; the mix of land uses, conditions of buildings and vacancy rates, physical design, including accessibility for persons with disabilities, and environmental conditions. To receive full points, a community assessment must include market analysis which includes a survey of the primary trade areas, customer market and business and property owner information. (4-11-06)

**04. Implementation (two hundred (200) points).** The Implementation Plan, by its very nature, needs to be action-oriented, with resources, time frames, and assigned responsibilities for each activity. The Plan should begin with an estimate of the economic potential of the downtown and the effect that revitalization will have upon the businesses and services. Next should be the goal statement(s) of the revitalization effort. Goals should be stated in general terms with implementation activities in specific, measurable terms. Suggested goal statements include marketing, promotion, regulatory, cleanup, and infrastructure. The Implementation Activities should be set out in detail with the responsible party(ies) identified, a completion time frame established, and the needed resources identified. Since revitalization will take a partnership of the public and private sectors to accomplish the goals, the activities may be divided into public and private categories. Points will be assigned to the Implementation Plan as follows: (7-6-94)

**a. Action Plan Preparedness (fifty one hundred (\$100) points).** This is a measure of ~~the detail of the implementation plan~~ completeness of downtown revitalization plan. The detail of a downtown revitalization plan should include ~~specific actions with assigned responsibilities and time frames for completion~~ goals, action items, timelines, costs, visioning, and assessment. (7-6-94)( )

**b. Architectural/Engineering Plans Design Professional Activities (fifty (50) points).** This will measure the extent of architectural design or engineering procurement undertaken and to determine the scope of the grant project and estimate costs. (7-6-94)( )

**c. Implementation Time Frame (fifty (50) points).** ~~This will measure whether reasonable time frames have been determined for the grant project and that all the major actions and accomplishments have been identified, including those necessary for the implementation of the grant.~~ (7-6-94)

**d. Previous Amount Accomplished (fifty (50) points).** This is a measure of all other action items in the implementation plan, how many have been started, and the progress towards completion. (7-6-94)

**05. Slum and Blight (two hundred (200) points).** This is a threshold which shall be met for the Application to be eligible for review. An Application will be disqualified if, in the opinion of the Department, the project does not meet the definition of Slum and Blight, (Section 020) or does not receive more than one hundred twenty-five (125) points in this category. The geographic boundaries of the downtown area shall be reasonable and officially designated. The conditions within the area shall be described and shall include the condition of all the infrastructure, the conditions of buildings and structures, and the economic forces which are causing the conditions of slum and blight. The Application shall describe the need for the proposed ICDBG project and the impact the project will have on the conditions of slum and blight. This will include the overall impact on the downtown revitalization

efforts and the long-term impact on the community. Some project activities may, more appropriately, meet another national objective. If so, it should be described in detail and documented according to the standards for that national objective. (7-6-94)

**a.** Need and impact (one hundred (100) points). This is a measure of the proposed area's need to prevent or eliminate conditions of slum and blight. It is also a determination of the project's impact on the conditions of slum and blight. A project must address the critical need of the slum and blighted area, have an impact on the economics of the downtown area, and have a measurable impact. The criteria for measuring the impact of the project on the conditions of slum and blight must be described in measurable terms, such as increase in private investment, establishment of new businesses or business expansions, sales growth, improvement in the appearance and value of property, reduction in vacancy rates and increase in housing units. This includes the economic impact and community impact. (7-6-94)

**b.** Relationship to overall plan (one hundred (100) points). This is a measure of: how the proposed grant project is related to the other actions and needs of the Implementation Plan; whether it is foundational to the revitalization of the downtown economy or it is peripheral to the needs of the economy; and how logically sequenced the activities being proposed are in relation to the other activities. If another national objective is included in the justification for some of the activities, include the description here and it will be judged upon its need and impact as described in this section. (7-6-94)

**06. The ICDBG Project (three hundred fifty (350) points).** The Application shall generally describe the eligible activities being proposed for funding. Any combination of eligible activities may be considered in designing the project. The eligible activity(ies) should be located on a detailed map. The relationship of the block grant project to the other implementation activities must be clear. Any matching funds shall be committed with the sources and schedules identified. All the other collateral implementation activities should be discussed and the funds expended documented. The Application shall describe the following items: (4-11-06)

**a.** Project Local Match (one hundred (100) points). The amount and percentage of "local match" firmly committed to the grant project shall be described. Evidence of commitment shall be provided by letter or agreements. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so describe what attempts have been made to secure funds from the RLF for the project. Program income from previous grants to be used in this project may be considered as local match. This total local cash match will then be added to other local match i.e. revenue bonds, in-kind match, etc. The total of all local match will then be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. *The percentage times the points (one hundred (100)) will determine the amount of points assigned.* (4-11-06)(    )

**b.** Project Other Match (~~seventy five~~ **one hundred (75100)** points). The percentage of other funds committed to the proposed ICDBG project from private and other state and federal sources. The percentage shall be calculated by dividing the total of the other sources by the sum of total project costs which is all match plus the ICDBG request. The percentage times the points (~~seventy five~~ **one hundred (75100)**) will determine the amount of points assigned. (4-11-06)(    )

~~**e.** BID/LID Commitment (fifty (50) points). A maximum of fifty (50) points will be awarded to communities who have established a formal business improvement district or local improvement district prior to submission of the application addendum.~~ (4-11-06)

~~**c.** Related Implementation Expenditures (sixty (60) points). The percentage of private investment or related expenditures spent on the other implementation plan action items compared to the ICDBG funds being requested. Amounts spent within one (1) year prior to the grant Application submittal and those committed to be spent during the year following the submittal of the Application may be counted for this section. The percentage shall be calculated by dividing the total of the other funds by the sum of other funds plus the ICDBG request. The percentage multiplied by the points (sixty (60)) will determine the amount of points assigned.~~ (4-11-06)

~~**d.** Long-term Program Involved (~~sixty five~~ **ninety (6590)**). The use of grant funds to leverage a payback mechanism so that funds will sustain the downtown redevelopment efforts over the long term. For example, this can be done through various types of loans, fees, bonds and tax increment financing. improvement districts.~~

urban renewal, or resort city tax. The pool of funds is to be dedicated to the downtown area. (4-11-06)( )

**07. Economic Advisory Council Points (one hundred (100) points).** The EAC, after reviewing the staff's ranking and recommendation, shall award its points based upon both the information presented and the Application. The EAC may award all or some of the points depending upon its opinion that the grant will promote the revitalization of the downtown economy. Projects which only fix a problem but do not leave the downtown in a better economic condition would receive fewer points. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**099. COMMUNITY CENTER AND SENIOR CITIZEN CENTER GRANTS.**

**01. Community Center Grants.** Community Center Grants are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Community Centers, not for other facilities such as shelter homes, nursing homes, and housing. Only cities or counties may apply. CC grants will be funded to a maximum of one hundred fifty thousand dollar (\$1050,000). ~~For construction of a new Community Center and on case-by-case basis; the staff may recommend for the EAC's consideration additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center has kitchen facilities and the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of community or neighborhood residents.~~ See Section 107 entitled Award Process, for details on the award process.

(7-1-98)( )

**02. Senior Citizen Center Grants.** Senior Citizen Center Grants, which address the need for community centers for senior citizen groups, are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Senior Citizen Centers, not for other facilities such as shelter homes, nursing homes, senior housing and other geriatric facilities. Only cities or counties may apply. SR grants will be funded to a maximum of one hundred fifty thousand dollar (\$1050,000). ~~For construction of a new Senior Center and on a case-by-case basis; the staff may recommend EAC's consideration of additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center is a designated meal site serving three (3) or more meals per week, the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of the senior and with the supporting advice of the regional office on aging.~~ See Section 107 entitled Award Process, for details on the award process.

(7-1-98)( )

**03. Public Parks Grants.** Public Parks Grants are part of competitive application process which is separate from the PFH project grant in the annual grant selection process. They are only for public parks, not for recreation facilities. Only cities and counties may apply. PK grant will be funded to a maximum of one hundred fifty thousand dollars (\$150,000). ( )

**034. Eligible Uses.** The following are eligible uses of Community Center, ~~or~~ Senior Citizen Center, and Public Park Grants: construction of facilities; purchase of facilities; rehabilitation of facilities; purchase of essential fixtures (a fixture is defined as equipment that is permanently attached to the building); and removal of architectural barriers for the handicapped. (7-1-98)( )

**045. Local Match Committed to the Project.** Match can be in the form of dollars, land, building materials and fixtures, volunteer labor, and waived fees. In the case of new construction or purchase and rehabilitation, the appraised or assessed value of donated real estate can be part of the match. Value of an existing facility cannot be used as match when the grant is for rehabilitation and/or expansion of the facility. Firm commitments of donated money, material and/or real estate must accompany the Application. (7-1-98)

**056. Priorities in Funding.** (7-6-94)

a. For Community Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving community or neighborhood residents. The second priority for funding will be construction of a new facility to replace an existing center. This will be considered only when the applicant demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of persons who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a community center facility is in a community where no facility now exists; but only where other Community Center facilities are not available, and if adequate local operating funds are committed. (7-1-98)

b. For Senior Citizen Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving the current senior citizen membership. The second priority for funding will be: construction of a new facility to replace an existing center. This will be considered only when the applicant demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of Seniors who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a Senior Center facility in a community where no facility now exists; but only where: other Senior Center facilities are not available; and if adequate local operating funds are committed. (7-1-98)

c. For Public Parks, the first priority for funding will be for cities or counties who are area-wide low-to-moderate income. The second priority for funding will be improving existing park facilities to meet playground equipment standards, ADA compliance, and to provide adequate facilities and fixtures for serving community and neighborhood residents. The last priority for funding will be construction of a new park. New park construction will only be considered when the applicant can demonstrate there is sufficient need and demand for the park. Existing or new, priority will be given to parks whose service area (typically one-half (½) mile radius) is lower income when compared to other neighborhoods or areas of the community. ( )

#### 100. APPLICATION.

The Application shall identify the eligible components ~~of the physical plant~~ of the center or park and define which items are critical, necessary, or ~~nice-to-have~~ potential concerns for the health and safety of persons using the facility. The projects with the highest needs and the greatest preparedness to proceed would be recommended for funding. (7-1-98)( )

01. **Notice of Intent.** (See Section 061) (7-6-94)

02. **Deadline.** CC, ~~and~~ SR, and PK Applications will be due on the first Friday of March, June, or September each year, as specified in the Application Handbook. The Application shall be submitted according to Section 062. The EAC will review the Applications and make funding recommendations at the April, July, or October Council meeting. (7-1-98)( )

03. **Information to Be Included.** The Application shall contain the information required by Section 074. The general project description (Subsection 074.06) shall contain the additional information described below. The Application shall be on the forms provided by the Department and according to the format described in Sections 072 and 073. The Application shall also address the center's geographic service area, the number of beneficiaries in the service area, other demographic data including minority and handicapped status, and the needs and impact of the project upon the lives of the residents, neighborhood, or senior citizens. (7-1-98)

04. **Restrictions.** An applicant is not qualified to apply for a CC, ~~or~~ SR, or PK grant if it has a currently funded community center, ~~or~~ senior citizen facility grant, or public parks grant, the funds of which are not eighty percent (80%) drawn down as shown on the Department's records as of the last date for accepting Applications. (7-1-98)( )

05. **The General Project Description Shall Address the Following Information.** (7-6-94)

a. **Health Services.** If the center is a designated meal site, provide information of the number of meal days weekly and the number of meals served weekly, monthly, and annually. This information should include any

outreach services. Other health services provided at the center should be described. Also, the average number of education activities scheduled per month should be included. Any provision or plans to provide adult day care should be described. (7-1-98)

**b. Building Information.** The Application shall describe the building's physical condition including the square footage of the building, roof condition, exterior conditions, foundation conditions, parking and floor and other structural conditions. (7-6-94)

**c. Interior Building.** The conditions of the interior of the center should be described, including electrical and plumbing conditions, handicapped access to building and interior spaces, handicapped bathrooms, heating and air conditioning equipment conditions, energy efficiency and weatherization of building, kitchen and food storage conditions and fire safety conditions. (7-6-94)

**d. Match Committed.** The amount of local funds and in-kind match that the center can commit to the project should be described and documented. (7-6-94)

**e. Planning of the Project.** The planning efforts for the center or park should be described. This may include the efforts to determine the needs of the center or park, and the solicitation of community and local government support. Items such as Health and Safety inspections, architectural or engineering designs, Area Agency inspections and recommendations, schedules of project construction and cost estimates may be included. (7-1-98)( )

**f. Park Information.** The Application should describe the park's physical condition including size, apparatus or playground fixtures for older children, playground equipment, section for pre-school children, open space for informal play, surface area for court games, field for group games, splash pad, porticos, restrooms, picnic areas, sidewalks, parking, and ADA accessibility. ( )

**06. Presentation.** Following selection of the Application by the Department staff. According to Section 065. (7-6-94)

**101. REVIEW AND RANKING PROCESS.**

The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

**01. Physical Conditions (three hundred fifty (350) points).** Points will be assigned to the needs of the center or park based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from one (1) to ~~three~~ nine (9) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. The Application should also include a facility plan or building assessment.



| TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS" |   |   |                                  |  |
|---|---|---|----------------------------------|--|
|   |   | Problem or Need Rating  |                                  |  |
|   |   | Violation of Laws/<br>Bldg. Codes/<br>Health and Safety<br>Concerns | Health and<br>Safety<br>Problems | No Violations or<br>Health and<br>Safety<br>Concerns           |
| Identified in Project<br>Description<br>Narrative | Identification of Problem                   | Critical<br>39  | Urgent<br>25                     | <i>Nice-to-Have</i><br><u>Potential</u><br><u>Concern</u><br>1 |
|   | Physical Conditions:<br>Structural Problems |   |                                  |  |
|   | Roof  |   |                                  |  |
|   | Walls                                       |   |                                  |  |
|   | Foundation                                  |   |                                  |  |
|   | Floors                                      |   |                                  |  |
|   | Weatherization                              |   |                                  |  |
|   | Expansion for adult day<br>care             |   |                                  |  |
|   | New Center                                  |   |                                  |  |
|   | Other                                       |   |                                  |  |
|   | Interior Problems:                          |   |                                  |  |
|   | Asbestos/lead based<br>paint                |   |                                  |  |
|   | Bathrooms                                   |   |                                  |  |
|   | Access for persons with<br>Disabilities     |   |                                  |  |
|   | Electrical/plumbing/<br>lighting            |   |                                  |  |
|   | Heating/air conditioning                    |   |                                  |  |
|   | Fire safety                                 |   |                                  |  |
|   | Unusable space                              |   |                                  |  |
|   | New Center                                  |   |                                  |  |
|   | Unusable space                              |   |                                  |  |
|   | Other                                       |   |                                  |  |
|   | Kitchen and Food Storage:                   |   |                                  |  |
|   | Health inspection                           |   |                                  |  |

| TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS" |   |   |                                  |  |
|---|---|---|----------------------------------|--|
|   |   | Problem or Need Rating  |                                  |  |
|   |   | Violation of Laws/<br>Bldg. Codes/<br>Health and Safety<br>Concerns | Health and<br>Safety<br>Problems | No Violations or<br>Health and<br>Safety<br>Concerns           |
| Identified in Project<br>Description<br>Narrative | Identification of Problem                             | Critical<br><u>39</u>   | Urgent<br><u>25</u>              | <u>Nice to Have</u><br><u>Potential</u><br><u>Concern</u><br>1 |
|   | Capacity of dry storage                               |   |                                  |  |
|   | Capacity of cold storage                              |   |                                  |  |
|   | Equipment   |   |                                  |  |
|   | New Center  |   |                                  |  |
|   | Other   |   |                                  |  |
|   | Access for Persons with<br>Disabilities               |   |                                  |  |
|   | Parking   |   |                                  |  |
|   | Entry   |   |                                  |  |
|   | Bathrooms   |   |                                  |  |
|   | New Center  |   |                                  |  |
|   | <u>Parks</u>  |   |                                  |  |
|   | <u>Playground fixtures for<br/>older children</u>     |   |                                  |  |
|   | <u>Playground fixtures for<br/>preschool children</u> |   |                                  |  |
|   | <u>Open space for informal<br/>play</u>               |   |                                  |  |
|   | <u>Surface area for court<br/>games</u>               |   |                                  |  |
|   | <u>Fields for group games</u>                         |   |                                  |  |
|   | <u>Splash pads</u>                                    |   |                                  |  |
|   | <u>Porticos</u>                                       |   |                                  |  |
|   | <u>Restrooms</u>                                      |   |                                  |  |
|   | TOTALS:   |   |                                  |  |
|   |   | ASSIGNED RANKING  |                                  |  |

(3-30-07)( )

02. ~~Planning and Schedule~~ Project Implementation (two hundred (200) points). Points will be

assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)( )

a. Pre-Planning (fifty forty (540) points). This is a measure of the effort ~~made to quantify the problems through building code inspections, health inspections, and architectural and engineering review~~ to structure, develop, design, and complete preliminary construction approval steps. (7-6-94)( )

b. Project Planning Design Professional (fifty twenty (520) points). This is a measure of the effort made to ~~coordinate all of the various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning~~ issue an RFP and complete a design professional selection process. This process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted. This would include vendors or suppliers. (7-6-94)( )

c. Schedule Grant Administration (fifty twenty (520) points). This is a measure of the effort ~~made to schedule all the project activities, including the different grant requirements and contractors that may be involved~~ issue an RFP and complete the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted. (7-6-94)( )

d. Costs Schedule (fifty five (50) points). This is a measure of the effort to ~~determine reasonable cost estimates for the various elements of the project~~ schedule all the project activities including the different grant requirements and contractors that may be involved. This would also include vendors for suppliers. (7-6-94)( )

e. Costs (twenty (20) points). This is a measure of the effort to determine reasonable cost estimates for various elements of the project. ( )

f. Environmental Scoping (ten (10) points). This is a measure of the effort made to complete a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of Application. ( )

g. Property Acquisition (twenty (20) points). A measure of the effort of the applicant or sub-recipient to achieve project site control. ( )

h. Administrative Capacity (sixty five (65) points). A measure of ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections, completion of Section 504 Self Evaluation and Transition plan, and documented efforts to Affirmatively Further Fair Housing. ( )

**03. Benefits (one hundred fifty (150) points).** (7-6-94)

a. Activities Provided (one hundred (100) points). This is a measure of how well the center or park is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center or park is providing on an annual basis. Service days will be calculated by taking the number of days an activity or service is offered during the course of the month multiplied by twelve (12). Activities can include health, recreational, social, educational, and transportation services. Quartile points ~~will~~ may be assigned to this area.

| TABLE 6 - "Ranking By Quartiles" |                          |
|----------------------------------|--------------------------|
| Highest Quartile                 | One hundred (100) points |
| Second Quartile                  | Sixty (60) points        |
| Third Quartile                   | Thirty (30) points       |
| Fourth Quartile                  | zero (0) points          |

~~(3-30-01)~~( )

**b.** Low and Moderate Income and Minority Outreach Activities (fifty (50) points). This is a measure of existing or proposed efforts made to include low and moderate income and minority participation in the center's or park's activities. ~~(7-1-98)~~( )

**04. Match (one hundred (100) points).** Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. (4-11-06)

**a.** The sixty (60) points for cash match shall be assigned on a quartile basis by taking the percentage resulting from the division of cash match by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of cash match in the project. (3-30-01)

- i. First Quartile -- sixty (60) points. (3-30-01)
- ii. Second Quartile -- thirty (30) points. (3-30-01)
- iii. Third Quartile -- fifteen (15) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

**b.** The forty (40) points for in-kind match shall be assigned on a quartile basis by taking the percentage in-kind match divided by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of in-kind match in the project. (3-30-01)

- i. First Quartile -- forty (40) points. (3-30-01)
- ii. Second Quartile -- twenty (20) points. (3-30-01)
- iii. Third Quartile -- ten (10) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. AWARD PROCESS.**

The Department shall review the Applications submitted with the EAC during its April, July, or October meeting. The EAC, after reviewing the Applications, and staff recommendations, will assign the points and recommend Applications to the Governor for funding and standby status. ~~(3-30-07)~~( )

**108. IMMINENT THREAT GRANTS.**

Five percent (5%) of the annual Community Development CDBG allocation or three hundred thousand dollars (\$300,000), whichever is less, shall be reserved to fund activities which will alleviate an imminent threat to public health or safety which requires immediate resolution. Each grant amount will not exceed one hundred thousand dollars (\$100,000). Only imminent threat grant Applications which meet the criteria in Section 109 will be presented to Economic Advisory Council for funding consideration. ~~(7-6-94)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. SPECIAL ALLOCATIONS -- IMMINENT THREAT URGENT NEED.**

Special Urgent Need Allocations shall be administered by the department when: (3-20-97)

**01. Presidentially Declared Disaster.** The threat is determined to be a Presidentially Declared Disaster; and (3-20-97)

**02. Appropriation Allocated.** A special Idaho Community Development Block Grant appropriation has been allocated to the Department through the Idaho HUD Community Development Block Grant Program. (~~3-20-97~~)( )

**112. SPECIAL ALLOCATIONS - APPLICATION.**

**01. Information to Be Included.** Information to be included shall be consistent with Subsection 109.02. (3-20-97)

**02. Special Urgent Need Grants.** Special urgent need grants under this program can be submitted by eligible applicants when conditions in Section 111 exist. (3-20-97)

**113. SPECIAL ALLOCATIONS - IMMEDIATE THREAT DETERMINATION.**

**01. An Imminent Threat/Urgent Need.** An Imminent Threat/Urgent Need is defined ~~in Section 021~~ by HUD. (~~3-20-97~~)( )

**02. Documentation.** Communities requesting an imminent threat grant shall contain all information shown in Subsections 110.02.a., 110.02.b., and 110.02.d., 110.03 to 110.04. (3-20-97)

**114. -- 115. (RESERVED)**

**116. SPECIAL ALLOCATIONS - REVIEW PROCESS.**

If staff, through reviewing the project, find that the applicant meets the criteria in Section 110, the Application may be recommended to the EAC for review. (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**118. TECHNICAL ASSISTANCE.**

To assist communities and applicants in their planning efforts and discourage uncoordinated piecemeal approaches to solving community problems, one percent (1%) of the annual Community Development CDBG allocation shall be set aside for technical assistance. (~~4-11-06~~)( )

**119. -- 134. (RESERVED)**

**135. ACCESSIBILITY TAG-ON FOR PERSONS WITH DISABILITIES FUNDING.**

**01. Additional Activity.** An applicant may include in their PFH or ED application as additional activity to improve the accessibility of public buildings for persons with disabilities, if the applicant meets all of the following conditions: (3-19-99)

**a.** The applicant has adopted a Section 504 Transition Plan; (3-19-99)

**b.** The applicant's total grant request does not exceed the maximum grant amount allowed for PFH or ED grants; (3-19-99)

**c.** The applicant matches the ICDBG access funds requested with ~~an equal amount of~~ local matching funds; (~~3-19-99~~)( )

**d.** The grant funds requested for this activity does not exceed ten thousand dollars (\$10,000); (3-19-99)

e. And the applicant can show previous progress in implementing the Transition Plan. (3-19-99)

**02. Separate Description and Cost Estimate.** The applicant shall provide a separate description of the handicapped accessibility items to be improved and a separate cost estimate. The activities shall be included in the general project budget and schedule. (7-6-94)

**136. -- 151. (RESERVED)**

**152. GRANT AWARD.**

**01. Funding Allocations.** Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first, the amount specified in 24 CFR 570.489 (see Subsection 004.01) shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance; third, five percent (5%) or three hundred thousand dollars (\$300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, ~~six ten~~ percent (~~610~~%) or ~~six nine~~ hundred thousand dollars (~~\$6900,000~~) whichever is less, of the total allocation, shall be set aside for Community Center (CC), ~~or~~ Senior Citizen Center (SR), or Public Parks (PK) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02. ~~(3-29-10)~~( )

**02. Shifting of Funds.** The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified at any time by the Department Director with the advice of the EAC depending on the needs and requests identified in the applications submitted. If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH, ~~or~~ CC, ~~and~~ SR, or PK category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. ~~(3-30-07)~~( )

**03. Standby Applications.** At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH, ~~or~~ CC, ~~and~~ SR, or PK Applications for funding even though not enough funds are available to fund the project(s). These Applications become "standby projects." Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded ~~shall~~ automatically may be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program rules. The standby applicant shall update its Application during the Addendum process. ~~(7-1-98)~~( )

**04. Termination of Project Selection for Funding.** (7-6-94)

a. If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant's project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project's viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

b. After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time,

demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

**c.** Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

**05. Excessive Funds.** In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

**06. Amendment of Project.** A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

**07. Allowable Costs.** Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

**a.** Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

**b.** Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

**08. Audit Requirements.** All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. LEAD BASED PAINT.**

**01. Abatement of Lead Based Paint.** Any applicant or grantee proposing to rehabilitate housing or structures constructed or substantially reconstructed prior to 1978 shall take measures to abate - as far as practicable - lead-based paint hazards. Such measures shall be in accordance with the Lead-Based Paint Poisoning and Prevention Act as amended and Title I of the Community Development Act of 1974 as amended. (7-6-94)

**02. Housing.** Housing shall be defined as any structure designed for occupation by or occupied by children of six (6) years old or less. This includes such uses as day care centers, nurseries, playgrounds, pre-schools and residential uses etc. (7-6-94)

**03. Methodology.** Any lead-based paint abatement and disposal shall be by current state-of-the-art methods approved by the ~~Division of Environmental Quality~~ Environmental Protection Agency. (~~7-6-94~~)( )

**04. Environmental Review.** The lead-based paint hazard shall be determined as part of the environmental review. Abatement shall be considered as part of the project and is an eligible grant expense. (7-6-94)



## **IDAPA 28 - DEPARTMENT OF COMMERCE**

### **28.02.07 - RULES GOVERNING THE ADMINISTRATION OF THE IGEN GRANT PROGRAM**

**DOCKET NO. 28-0207-1501**

#### **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 21, 2015.

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

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

These rule changes provide for industry, in partnership with an eligible recipient to take the lead in applying for an IGEN grant. The 3 Universities will remain the only eligible recipients of an IGEN grant. The other changes are clarification of process in regards to the application and commercialization of revenue, as well as other grammatical corrections.

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

**FISCAL IMPACT:** The following is a specific 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 this rule making.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule change confers a benefit. Affected interest groups were consulted regarding the proposed 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:

There are no materials incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule contact Megan Ronk, Chief Operating 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 28, 2015.

DATED this 3rd Day of September, 2015

Megan Ronk  
Chief Communications & Governmental Affairs Officer  
Idaho Department of Commerce  
700 W State Street  
Boise, ID 83702  
Phone: 208-334-2470  
Fax: 208-334-2631

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0207-1501  
(Only Those Sections With Amendments Are Shown.)

**010. DEFINITIONS.**

As used in this chapter: (3-20-14)

**01. Department.** Idaho Department of Commerce. (3-20-14)

**02. Eligible Applicant.** Idaho research universities: Boise State University, Idaho State University, ~~and~~ University of Idaho, ~~and Industry Partners.~~ (3-20-14)( )

**03. Eligible Recipient.** Idaho research universities: Boise State University, Idaho State University, and the University of Idaho. ( )

~~034.~~ **IGEM Council.** Idaho Global Entrepreneurial Mission Council as defined in Section 67-4726, Idaho Code. (3-20-14)

~~045.~~ **IGEM Executive Committee.** The IGEN Executive Committee is made up of the IGEN Council chairman, the director of the Idaho Department of Commerce, and the Idaho State Board of Education member of the IGEN Council. (3-20-14)

~~056.~~ **IGEM Grant Program.** A grant program established ~~by the IGEN Council~~ for the purpose of ~~funding projects intended to further the purpose~~ enhancing technology transfer and commercialization of research and technologies developed at the universities to create high-quality jobs and new industries in Idaho as described in Section 100 of these rules. (3-20-14)( )

~~07.~~ **Industry Partner.** A business that designs, produces, or sells goods or services for profit and is partnered with an Eligible Recipient. ( )

~~068.~~ **University.** As used in these rules, University means Boise State University, Idaho State University, and the University of Idaho. (3-20-14)

**011. ABBREVIATIONS.**

As used in this chapter: (3-20-14)

**01. IGEN.** Idaho Global Entrepreneurial Mission. (3-20-14)

~~02.~~ ~~RFP Request for Proposal.~~ (3-20-14)

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

**100. PURPOSE.**

The IGEN 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. (3-20-14)( )

**101. -- 199. (RESERVED)**

**200. ~~REQUEST FOR PROPOSAL (RFP) GRANT APPLICATION.~~**

The IGEN Council will release a ~~RFP grant application~~ outlining the process and requirements for Eligible Applicants to apply for IGEN Grant Program awards. The ~~RFP grant application~~ shall include requirements for performance measures and reporting. Awarded programs that fail to meet the requirements set forth in the ~~RFP grant application~~ may be terminated. (3-20-14)( )

201. -- 299. (RESERVED)

**300. SELECTION PREFERENCE.**

In selecting IGEM ~~proposals~~ grant applications for award, the IGEM Council shall give greater weight to ~~proposals~~ grant applications that partner with Idaho based entities. (3-20-14)( )

**301. MATCHING REQUIREMENT.**

All ~~approved awards must contain a match requirement. The match may be~~ grant applications are required to include a monetary or in-kind ~~as established in the RFP~~ contribution from the Industry Partner(s). (3-20-14)( )

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~~ grant application and in the funding agreement 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. (3-20-14)( )

401. -- 499. (RESERVED)

**500. COMMERCIALIZATION REVENUE.**

~~Any~~ eCommercialization revenue generated through the IGEM University research ~~initiative~~ project and by IGEM funded research faculty will be distributed as outlined in Section 67-4731, Idaho Code. (3-20-14)( )

## IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

### 31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-1501

#### 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 21, 2015.

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 Safety and Accident Reporting Rules (IDAPA 31.11.01) adopt by reference several national safety codes applicable to electric and natural gas utilities and federal safety regulations applicable to natural gas and pipeline utilities. Currently, Rule 201 adopts the 2011 edition of 49 Code of Federal Regulations (CFR) Parts 191-193, 195 and 199 addressing the construction and operation of natural gas pipelines. Next, Rule 202 incorporates by reference the 2012 edition of the International Fuel Gas Code (IFGC) published by the International Code Council. Finally, Rule 203 incorporates by reference the 2012 edition of the International Mechanical Code (IMC) for natural gas or gas-burning appliances. The Commission proposes to update these three safety rules by adopting the 2015 edition of the IMC, the 2015 edition of the IFGC, and the October 1, 2014 edition of the federal pipeline safety CFRs. There are no major revisions to the 2011 edition of the federal Pipeline Safety Regulations.

There are several revisions included in the 2015 edition of the IFGC. First, the Code Council has added Section 307.6 regarding the operation of new condensation pumps located in uninhabitable spaces. Second, Sections 402.2 and Tables 402.4(3) and 402.4(4) have been revised to address volumetric flow rates of new gas appliances above 2,000 feet in elevation and Schedule 40 metallic pipe. Finally, Sections 404.5 through 404.7.3 have been revised to improve the integrity of new piping systems in concealed locations.

There are also several revisions included in the 2015 edition to the IMC. First, Section 505.3 requires common exhaust systems for new domestic kitchens in multistory buildings to comply with revised design requirements. Sections 507.1 through 507.1.2 revised design features for new commercial kitchens using natural gas. Section 601.5 has revised the return air opening standards. Finally, Section 412.6 addresses the transfer of LP-gas dispensing operations and safety clearances.

**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 this proposed rule adopts updated national safety codes and federal regulations necessary for the safety of utility employees and the public during the installation, operation, or maintenance of natural gas pipelines, fuel gas systems and natural gas-fired appliances.

**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:

Adoption of the current national safety codes and the CFRs will make these rules consistent with federal safety regulations concerning natural gas and pipeline utilities. In addition, incorporation of the two other national safety codes will promote the safety of utility employees, utility customers, and the public. Finally, incorporation by reference will mitigate the need to publish hundreds of pages of safety codes.

**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 28, 2015. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 1st Day of September, 2015.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762  
Email: [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

Street address for express delivery:

472 W. Washington  
Boise, ID 83720-5918

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-1101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).**

The Commission incorporates by reference Part 260.9, Title 18 (April 1, 201~~4~~<sup>5</sup>) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 201~~4~~<sup>5</sup>), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available on the web from the U.S. Government Bookstore, <http://bookstore.gpo.gov>, and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The incorporated CFR Parts are also available in electronic format at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html). All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference.

(~~3-29-12~~)(    )

**202. INTERNATIONAL FUEL GAS CODE (IFGC) (RULE 202).**

**01. Incorporation by Reference.** The Commission incorporates by reference the International Fuel Gas Code, 201~~2~~<sup>5</sup> Edition except for Part 2 of Chapter 1. The International Fuel Gas Code is published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070. The Code is available from the Code Council and may be ordered online at [www.iccsafe.org/Store/Pages/default.aspx](http://www.iccsafe.org/Store/Pages/default.aspx). Telephone orders may be placed by calling toll-free 800-786-4452.

(~~3-29-12~~)(    )

**02. Utility Compliance.** All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Fuel Gas Code and to connect for service and light only those installations that:

(3-20-04)

a. Have been inspected and approved by authorized agencies; or (4-1-98)

b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Fuel Gas Code as a condition of receiving service or continuing to receive service. (3-20-04)

**203. INTERNATIONAL MECHANICAL CODE (IMC) (RULE 203).**

**01. Incorporation by Reference.** The Commission incorporates by reference those portions of the 2012~~5~~ International Mechanical Code explicitly referring to gas or gas-burning appliances except Part 2 of Chapter 1. The International Mechanical Code is published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070 and may be ordered by calling toll-free 800-786-4452 or online at [www.iccsafe.org/Store/Pages/default.aspx](http://www.iccsafe.org/Store/Pages/default.aspx). ~~(3-29-12)~~( )

**02. Utility Compliance.** Gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Mechanical Code and to connect for service and light only those installations that: (3-20-04)

**a.** Have been inspected and approved by authorized agencies; or (4-1-98)

**b.** When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Mechanical Code as a condition of receiving service or continuing to receive service. (3-20-04)

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**  
**31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES**  
**DOCKET NO. 31-7103-1501**  
**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 21, 2015.

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). Currently, Rules 103 and 104 adopt the October 1, 2013 edition of Title 49 of the Code of Federal Regulations (CFR). The Commission proposes to adopt the 2014 edition of the CFR for both Rules 103 and 104. Since Rule 103 was last updated in 2013, the PHMSA has amended 49 C.F.R. Part 173.150 revising procedures and restrictions for the shipping of various amounts of ethyl alcohol in liquid or solid form. These changes became effective on April 17, 2014. 79 Fed.Reg. 15,033-01, 15,040-46 (March 18, 2014). The current edition of Title 49 of the CFR was published on October 1, 2014.

**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 2014 edition of the federal hazardous material safety regulations are explained in detail in the descriptive summary above. Adoption of the 2014 federal safety regulations will provide uniformity between state and federal rail safety provisions. Incorporation by reference will also mitigate the need to publish hundreds of pages of nationally available safety regulations.

**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 28, 2015. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 1st Day of September, 2015.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
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Street address for express delivery:

472 W. Washington  
Boise, ID 83720-5918

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-7103-1501**  
**(Only Those Sections With Amendments 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, 201~~3~~<sup>4</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. (~~3-20-14~~)(    )

**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, 201~~3~~<sup>4</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). (~~3-20-14~~)(    )



## **IDAPA 34 - OFFICE OF THE SECRETARY OF STATE**

### **IDAPA 34.02.01 - PRESIDENTIAL PRIMARY**

#### **DOCKET NO. 34-0201-1501 (CHAPTER REPEAL)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 97-903(9), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

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

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

As Idaho's statutory code no longer allows for write-in candidates during a presidential primary, this chapter is no longer necessary and is being repealed.

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

There are no fees included in this chapter.

**FISCAL IMPACT:** The following is a specific 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:

Repeal of this chapter will have no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this chapter is being repealed since it is obsolete.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor at (208) 332-2849.

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 28, 2015.

DATED this 16th Day of September, 2015.

Tim Hurst, Chief Deputy  
Office of the Secretary of State  
700 W. Jefferson, Rm. E205  
P.O. Box 83720  
Boise, ID 83720-0080  
(208)334-2300

**IDAPA 34.02.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1501

#### NOTICE OF RULEMAKING - PROPOSED RULES

**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(2), 63-3624(a), 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 027 - Computer Equipment, Software, & Data Services.**

The passage of House Bill 209 during the 2015 Idaho legislative session necessitated changes to this rule. Effective April 1, 2015, the bill amended the definition of tangible personal property in Idaho Code Section 63-3616 clarifying that digital videos, digital music, digital books, and digital games are tangible personal property only when the purchaser has a permanent right to use the digital product. The proposed changes primarily focus on removing conflicts with the new law. The old subsection 08 addressing digital games has been combined into subsection 06 with the other digital products. The new subsection 08 contains changes to bring it in line with legislative changes from previous years (primarily House Bill 598 from the 2014 session).

**Rule 056 - Photographers and Photofinishers.**

The proposed rule has been updated to address taxability of digital photographs particularly in light of House Bill 598 passed during the 2014 legislative session. That change in the law removed digital photographs from the definition of tangible personal property unless the photographs are delivered on disc. As a result, where a photographer primarily sells digital photographs delivered electronically, they no longer qualify for the production exemption on their purchases.

**Rule 107 - Vehicles and Vessels – Gifts, Military Personnel, Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians, and Other Exemption.**

The passage of House Bill 12 during the 2015 legislative session added utility-type vehicles (UTVs) and specialty off-highway vehicles to the exemption available to nonresidents purchasing certain vehicles and boats in Idaho. The proposed rule has been updated to reflect those changes.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015, Idaho Administrative Bulletin, [Vol. 15-5, pages 84-85](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September 2015.

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. 35-0102-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).**  
Section 63-3616, Idaho Code

**01. Definitions.** For purposes of this rule, the following terms will have the following meanings: (4-11-15)

**a. Canned Software.** Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. (4-11-15)

**b. Computer.** A computer is a programmable machine or device having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (4-11-15)

**c. Computer Hardware.** Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (4-11-15)

**d. Computer Program.** A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. (4-11-15)

**e. Computer Software.** Computer software, or simply software, is defined as any of the following: (4-11-15)

i. A computer program; (4-11-15)

ii. Any part of a computer program; (4-11-15)

iii. Any sequence of instructions that operates automatic data processing equipment; or (4-11-15)

iv. Information stored in an electronic medium. (4-11-15)

**f.** Custom Software. Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. (4-11-15)

**g.** Digital Product. See definition for "Information Stored in an Electronic Medium" in Subsection 027.01.h. (4-11-15)

**h.** Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with "digital product." (4-11-15)

**i.** Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user's storage media at the user's location but does not transfer storage media containing the software to the user. (4-11-15)

**j.** Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. (4-11-15)

**k.** Storage Media. Storage media include, but are not limited to, hard disks, optical media discs, diskettes, magnetic tape data storage, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. (4-11-15)

**02. Computer Hardware.** The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (4-11-15)

**03. Canned Software.** When canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. If canned software is sold using a physical package but the package does not contain the canned software on storage media, it is not tangible personal property and the sale is not taxable. For example, if a printed key code is sold in a box that allows the user to download canned software and activate the canned software using the key code, the sale is not taxable. (4-11-15)

**a.** If canned software is loaded on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in Subsection 027.03 of this rule. (4-11-15)

**b.** Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 ~~through and~~ 027.08~~7~~ of this rule. ~~(4-11-15)( )~~

**c.** When a sale of canned software is taxable, tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (4-11-15)

**04. Remotely Accessed Computer Software.** Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. (4-11-15)

**05. Maintenance Contracts.** Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services.

(3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (4-11-15)

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; (4-11-15)

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (4-11-15)

iii. If the maintenance contract only provides upgrades delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; (4-11-15)

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

c. If an optional software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software updates on storage media, no portion of the contract is taxable unless the customer actually receives software updates on storage media. (4-11-15)

**06. Digital Products.** Digital music, digital books, ~~and~~ digital videos, ~~and digital games~~ are tangible personal property regardless of the delivery or access method ~~but only if the purchaser has a permanent right to use the digital music, digital books, digital videos, or digital games. Where the purchaser has a permanent right to use these digital products, the~~ sales, leases, and rentals of these digital products are ~~is~~ taxable. ~~Whether the user has the right to stream or download these digital products, the sale, l~~leases, or rentals of these digital products ~~is are not~~ taxable. (4-11-15)(    )

a. Other than digital music, digital books, ~~or~~ digital videos, ~~or digital games~~, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. (4-11-15)(    )

b. ~~Special rules apply to digital games. See Subsection 027.08 of this rule. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is taxable if the purchaser has a permanent right to use the digital game. If a user pays a periodic subscription charge to play a digital game, the periodic subscription charge is not taxable. If a user pays a periodic subscription charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is not taxable.~~ (4-11-15)(    )

**07. Digital Subscriptions.** Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions ~~granting access to a database of digital music, digital books, or digital videos~~ are ~~not~~ taxable ~~regardless of the method of access or delivery.~~ (4-11-15)(    )

~~a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable.~~ (4-11-15)

~~b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may download content from the database onto the user's storage media.~~ (4-11-15)

~~08. **Digital Games.** Digital games are tangible personal property regardless of access or delivery method and, therefore, the sale of a digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still taxable. If a user pays a periodic charge to play a digital game that requires a constant connection over the internet to a remote server, the periodic charge is taxable. If a user pays a periodic charge for a gaming service that enables certain functionality such as multiplayer capability in one (1) or more digital games, the periodic charge is taxable. If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable. (4-11-15)~~

~~09. **Reports Compiled by a Computer.** The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer if the final product is printed or delivered in an electronic format on storage media. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented or delivers the report to the purchaser electronically. (3-6-00)( )~~

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (4-11-15)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

~~10. **Online or Remote Data Storage.** Charges to store data on storage media owned and controlled by another party is a nontaxable service. (4-11-15)~~

~~11. **Training Services.** Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)~~

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

**121. Custom Software.** The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

**a.** Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

**b.** If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

**c.** Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

**132. Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**056. PHOTOGRAPHERS AND PHOTOFINISHERS (RULE 056).**

Sections 63-3616 & 63-3622D, Idaho Code

**01. Sales of Photographs.** ( )

**a.** Printed photographs are tangible personal property. Sales of printed photographs are taxable.( )

**b.** Digital photographs are tangible personal property when sold and delivered to the purchaser on storage media. Sales of digital photographs are taxable when sold and delivered to the purchaser on storage media. ( )

**c.** Digital photographs are not tangible personal property when delivered electronically. Sales of digital photographs are not taxable when sold and delivered to the purchaser electronically. ( )

**042. Sales by Photographers and Photofinishers.** ~~Photographers and photofinishers are engaged in the business of producing and selling tangible personal property.~~ (6-23-94)( )

**a.** When ~~such persons develop and/or print pictures, and~~ photographers or photofinishers sell films, frames, cameras, ~~completed~~ printed photographs, digital photographs delivered on storage media, photostats, blueprints, etc., they are making a sale of a completed article of tangible personal property ~~in every case~~ and they must collect the tax on the total selling price unless an exemption applies. (6-23-94)( )

**b.** When ~~such persons~~ photographers or photofinishers render service, such as retouching, ~~and~~ tinting, or coloring of print photographs belonging to others, they are performing taxable processing services and must collect the tax from their customers unless an exemption applies. When similar services are performed on a digital photograph, the service is only taxable if the final product is delivered on storage media. (6-23-94)( )

**c.** Photographers may charge a sitting fee ~~to cover the cost of taking the picture,~~ which may be separately stated from any charges for ~~developing and printing~~ the photographs. ~~Such~~ When charged along with a sale

of printed photographs or digital photographs delivered on storage media, sitting fees are charges for producing or fabricating tangible personal property and are ~~therefore subject to sales~~ taxable. See Idaho Sales Tax Administrative Rule 029. (6-23-94)( )

**023. Sales to Photographers and Photofinishers.** (6-23-94)

a. Photographers ~~who are in the business of selling photographs~~ and photofinishers may qualify for the production exemption if they are primarily in the business of selling print photographs or digital photographs delivered on storage media. Photographers and photofinishers primarily in the business of selling digital photographs that are delivered electronically cannot qualify for the production exemption. ( )

b. The production process begins when the film image is ~~exposed~~ captured. Therefore, photographers must pay sales or use tax on purchases of props, backdrops and other items used prior to the start of production of the photograph. Equipment and supplies including cameras, lights, lenses, film, paper, fix, developer, and enlargers used to produce photographs are used during the production process and are exempt if the photographer otherwise qualifies for the production exemption in Section 63-3622D, Idaho Code. (6-23-94)( )

~~b.c.~~ Photofinishers may purchase equipment and supplies exempt from sales or use tax as long as the equipment and supplies are directly used to produce photographs which they will sell and they otherwise qualify for the production exemption provided by Section 63-3622D, Idaho Code. (6-23-94)

**04. Definitions. For purposes of this rule, the following terms have the following definition:** ( )

a. Storage media. Storage media include, but are not limited to, optical media discs such as CDs or DVDs, hard drives, diskettes, magnetic tape data storage, solid state drives, flash drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).**  
Sections 63-3621(k) and (l) and 63-3622R, Idaho Code

**01. In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

**02. Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)



ii. The title may be marked as a gift and signed by the donor. (3-4-10)

**03. Nonresidents.** (3-30-07)

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. 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 motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

**b.** For the purposes of this rule, 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. (3-29-12)

**c.** A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (4-11-15)

**a.** If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

**b.** A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

**05. Military Personnel.** (4-11-15)

**a.** Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

**b.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

**a.** If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the six hundred dollars (\$600) tax due Idaho. The assessor will collect three hundred dollars (\$300) tax. (4-11-15)

**c.** Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

**d.** Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

**e.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

**f.** Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

**g.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

**a.** The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

**b.** This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

**c.** Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to

the vehicle being transferred. (2-18-02)

**09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

**10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)

**a.** Sales ~~to nonresidents~~ of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: ~~(5-3-03)~~( )

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and ~~(5-3-03)~~( )

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. ~~(5-3-03)~~( )

**b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

**c.** This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

**d.** For purposes of Subsection 107.10 of this rule, ~~an~~ ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator, UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. ~~(3-4-10)~~( )

**e.** For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

**f.** For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

**g.** To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

**11. Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax

Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1502

#### 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(2), 63-3624(a), 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 041 - Food, Meals, or Drinks.**

**Rule 072 - Application and Payment of Use Tax.**

The passage of House Bill 237 during the 2015 Idaho legislative session exempted prepared food and beverage freely given to employees if the retailer is in the business of selling prepared food and beverage (e.g. a restaurant). A new subsection has been added to the proposed draft of Rule 041 to define prepared food and prepared beverage. The only change to the proposed draft of Rule 072 is an addition of a cross reference to Rule 041.

**Rule 050 - Veterinarians and Veterinary Supplies.**

**Rule 079 - Production Exemption.**

**Rule 083 - Farming & Ranching.**

**Rule 103 - Hand Tool, Component, and Unit Price.**

The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule drafts of each of the above remove the language that is in conflict with the new law.

**Rule 128 - Certificates for Resale and Other Exemption Claims.**

The proposed rule draft includes changes to several descriptions of exemption certificates that have been updated to reflect the current version of the form. In addition, several changes have been made to remove hand tool language due to the passage of House Bill 39 mentioned above.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 55-56](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September, 2015.

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. 35-0102-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**  
[Section 63-3612\(2\)\(b\), 63-3621\(p\), & 63-3622J, Idaho Code](#)

**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. (3-20-14)

**11. 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)

**12. 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)

**13. Free Giveaways to Employees.** It is common practice for a retailer to give away prepared food and beverage, including full meals, to its employees free of charge. Giveaways of this nature normally trigger a use tax liability for the retailer calculated on the value of the items given away. However, if the retailer is in the business of selling prepared food and beverage, giveaways of prepared food and beverage to its employees are not taxable. Retailers that would qualify include restaurants and grocery stores with a deli or similar section that sells prepared food. ( )

**a.** For purposes of this subsection, prepared food means food intended for human consumption that: ( )

**i.** Is heated when given away; or ( )

**ii.** Consists of two or more ingredients combined by the retailer and given away as a single item; or ( )

**iii.** Is customarily served with utensils. ( )

**b.** For purposes of this subsection, prepared beverage means any beverage intended for human consumption. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**



**050. VETERINARIANS AND VETERINARY SUPPLIES (RULE 050).**

Sections 63-3622 & 63-3622D, Idaho Code

**01. In General.** Fees charged by a veterinarian for professional services are not subject to sales or use taxes. Tangible personal property used or consumed by a veterinarian or sold by a veterinarian ~~are~~ **is** taxable in accordance with the provisions of this rule. (7-1-93)( )

**02. Drugs and Other Supplies.** Drugs and other supplies used by a veterinarian while treating animal patients are tangible personal property consumed by the veterinarian in the course of providing services. If the veterinarian has not paid sales tax on his purchase of the drugs or supplies, a use tax is ~~payable~~ **owed** by the veterinarian. (7-1-93)( )

**03. Services Provided to Exempt Customers.** The veterinarian's ~~use of drugs~~ **is** taxable even though he may be providing services to a cattle rancher, dairyman or other producer because the drugs are consumed by the veterinarian and not by the producer. Since the production exemption is available only to persons engaged in a production business, the veterinarian does not benefit from the exemption. (7-1-93)( )

**04. Retail Sales of Drugs and Supplies.** The sale of drugs and veterinary supplies by a veterinarian is a retail sale. Veterinarians making such sales must obtain a seller's permit and must charge and remit the sales tax on such sales. However, the sale of drugs and veterinary supplies, ~~except hand tools with a unit price of less than one hundred dollars (\$100), to a cattle rancher, dairyman or other~~ person operating ~~for gain or profit~~ a stock, dairy, poultry, fish, fur, or other ranch **for gain or profit** is exempt if documented by an exemption certificate as provided in Rule 128. (3-15-02)( )

**05. Equipment and Supplies.** Tangible personal property purchased or acquired by the veterinarian for the operation of his business including professional instruments and supplies, and office furnishings and equipment are taxable. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).**

Sections 63-3615 & 63-3621, Idaho Code

**01. Imposition of Use Tax.** Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code. (7-1-93)

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term "use" does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules. (3-15-02)

**03. Storage.** Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho. (7-1-93)

**04. Specifically Excluded from the Definition of Both Use and Storage Are:** (7-1-93)

a. Retention or use of property for subsequent transportation outside the state; or (7-1-93)

b. Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use

or resale solely outside the state.

(7-1-93)

**05. Receipt Showing Sales Tax Paid.** If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer's receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements.

(6-23-94)

**06. Out-of-State Purchases.** If the property is purchased outside the state or from a retailer not subject to the Commission's jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission.

(6-23-94)

**07. Taxes Paid to Another State.** The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid.

(7-1-93)

**a.** If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax.

(6-23-94)

**b.** If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property.

(6-23-94)

**c.** If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is limited to the amount of Idaho tax due on the same transaction or use of the property.

(6-23-94)

**08. Use Undeterminable at Time of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax.

(3-15-02)

**09. Removal from This State.** If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply.

(7-1-93)

**10. Tangible Personal Property Removed From Inventory.** A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code.

(4-4-13)

**a.** Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, if a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor.

(4-4-13)

**b.** Special rules apply to retailers giving away prepared food and beverage to their employees. See Rule 041 of these rules for more information. ( )

**bc.** Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

**ed.** Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees. (7-1-93)

**de.** Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars (\$10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars (\$100). (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**079. PRODUCTION EXEMPTION (RULE 079).**  
Sections 63-3622 & 63-3622D, Idaho Code

**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)
- ~~e. 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)~~
- ~~c.~~ Office equipment and supplies. (7-1-93)
- ~~d.~~ 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.g.** 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)

**h.h.** Transportation equipment and supplies. (7-1-93)

**h.i.** Aircraft of any type and supplies. (7-1-93)

**h.j.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

**h.k.** Other incidental items not directly used in production. (7-1-93)

**h.l.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

**h.m.** 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 (ATVs), 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)

**h.n.** Parts to repair recreation-related vehicles. (7-1-93)

**h.o.** 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. (3-20-14)

**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)**

**083. FARMING AND RANCHING (RULE 083).**

[Sections 63-3603, 63-3622 & 63-3622D, Idaho Code.](#)

This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in Rule 079 of these rules. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (3-15-02)

**01. In General.** Farming includes custom farming and the operation of a farm or ranch, and includes stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges, and orchards operated with the intention of making a gain or profit. Farming does not include operation of ranches or stables where the sole purpose is showing or racing horses, or the breeding of show or race horses. (7-1-93)

**02. Property Primarily and Directly Used.** As applied to the business of farming, the exemption applies to all tangible personal property which is primarily and directly used to conduct the farming business, and which is necessary or essential to the operation, except those categories of property listed in other sections of this rule. (7-1-93)

**03. Directly Used.** The term directly used means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting, and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. (7-1-93)

**04. Transportation Activities.** Equipment used to move farm produce to initial storage is exempt, even though it may be mounted on a vehicle which is required to be licensed and is taxable. Equipment qualifies for this exemption if: (7-1-93)

- a. It is readily removable from the vehicle on which it is mounted; (7-1-93)
- b. It is separately stated on the vendor's invoice; and (7-1-93)
- c. It is sold to a qualified farming operation and is supported by a valid exemption claim form. (7-1-93)

**05. Disinfectants Used in the Dairy Industry.** Effective January 1, 1990, disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats, or other milking equipment are exempt. (7-1-93)

**06. Safety Supplies.** Safety supplies required by a state or federal agency and directly used in a farming operation are exempt from sales or use tax. (7-1-93)

**07. Plants.** Plants, such as orchard trees and grape vines, are exempt. (7-1-93)

**08. The Farming Exemption Does Not Include:** (9-1-93)

**a.** Property purchased to meet the personal needs of a farmer, his family, or employees. Examples of items that are excluded from the exemption include, but are not limited to, hand soap, toothpaste, shampoo, blankets, sheets, pillowcases, towels, washcloths, irrigation boots, coveralls, gloves, other clothing, and grocery items. (7-1-93)

**b.** Food and supplies purchased for barnyard and household pets, such as cat and dog food, are subject to the tax. Even though a dog may occasionally be used for herding livestock or a cat may control mice in the barn, the supplies purchased for their care and maintenance do not qualify for the production exemption. Only when a dog's SOLE purpose is the herding or protection of a rancher's livestock may the food and supplies for the dog be purchased tax exempt under the production exemption. (7-1-93)

**c.** Livestock trailers which may be attached to motor vehicles used to transport horses, cattle, sheep, or other farm animals on public roads are transportation equipment and are subject to sales or use tax. (7-1-93)

**d.** Motor vehicles required to be licensed are subject to sales or use tax even when used exclusively in a farming operation. Motor vehicles purchased, but not licensed, by a farmer for use exclusively in an off-road production activity, such as a feed truck, are not subject to sales or use tax. (7-1-93)

~~**e.** A hand tool, regardless of how necessary its use may be to production or how directly it may be used, is specifically excluded from the production exemption if the unit price of the tool is one hundred dollars (\$100) or less. A hand tool is an instrument used or worked by hand. Examples of hand tools in the farming and ranching industry include emasculators, branding irons, tattoo kits such as crimpers and rollers, cartag applicators, calf pullers, syringes and needles, buckets, sponges, balling guns, shovels, wheelbarrows, ropes, cattle prods, whips, wrenches, drills, and power tools. Hand tools do not include such things as feed bags, tack, halters and lead ropes, cow magnets, and weaning rings. These items, depending on use, may qualify for the exemption. If a halter and lead rope are purchased by a horse trainer, no exemption applies. If a halter and lead rope are purchased by a rancher to be used on his stock horse, no tax applies. (7-1-93)~~

~~**f.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)~~

**09. Exemption Certificate.** Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See Rule 128 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. HAND TOOL, COMPONENT, AND UNIT PRICE (RULE 103).**

Sections 63-3622S, 63-3622T, 63-3622W, & 63-3622JJ, Idaho Code

**01. Exempt Hand Tools.** The Idaho sales tax law exempts hand tools with a unit price of over one hundred dollars (\$100) if the hand tools are used directly and primarily in any of the following operations: (7-1-93)

~~**a.** Manufacturing, processing, mining, farming or fabricating, Section 63-3622D, Idaho Code; (7-1-93)~~

~~**ba.** Broadcasting, Section 63-3622S, Idaho Code; (7-1-93)~~

~~**eb.** Certain newspaper publishing, Section 63-3622T, Idaho Code; (7-1-93)~~

~~**ec.** Agricultural irrigation, Section 63-3622W, Idaho Code; (7-1-93)~~

~~**ed.** Logging, Section 63-3622JJ, Idaho Code. (7-1-93)~~

**02. Unit.** A unit, as applied to hand tools, means a single, distinct part or object which can be used by itself to perform a specific function. For example, a screwdriver can be used by itself to tighten or loosen a screw. When units, such as screwdrivers, are sold in sets to a manufacturer who will use the tools primarily and directly in

the production process, i.e., to assemble product, a per unit price must be computed to determine if the purchase qualifies for the over one hundred dollars (\$100) per unit exemption. When a manufacturer purchases a set of twenty (20) wrenches for one hundred twenty-five dollars (\$125) to be used in product assembly, the purchase is taxable because the per unit price of the hand tools is less than one hundred dollars (\$100). (7-1-93)

**03. Component.** A unit may be composed of two (2) or more components. A component is a distinct part which must be physically attached to another part to perform a specific function. A component alone has no utility. For example, a drill bit must be physically attached to a drill in order for the bit or the drill to have utility. Together they become a unit which can perform a specific function. Single components or sets of components, sockets, drill bits, etc., are taxable unless they will be physically joined to another component, ratchet, drill, etc., to form a unit which exceeds one hundred dollars (\$100) in cost. For example, drill bits which are physically attached to a five hundred dollar (\$500) drill press to perform a specific function in a production process are exempt from the tax. (7-1-93)

**04. Unit Price.** The total amount extended on a purchase invoice for multiple units is not the unit price. The unit price must be computed to determine whether the hand tool exceeds one hundred dollars (\$100) and qualifies for a given exemption. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).**

**Section 63-3622, Idaho Code**

**01. In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

**02. Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

**03. Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

**04. Qualified Buyers for Purposes of Resale.** The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

**a.** A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

**b.** A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

**c.** An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

**05. Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does



not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

**i.** Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

**ii.** Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

**iii.** Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

**b.** Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

**c.** Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)

**d.** Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency employer or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. ~~(3-6-00)~~( )

**e.** The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

**f.** Sales Tax Exemption Certificate - Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. ~~(3-6-00)~~( )

**g.** ~~Motor Vehicle~~ Sales Tax Exemption Certificate -- Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American

Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (4-13)( )

**h.** ~~Truck Camper, Transport Trailer, Occasional Sale Exemption Claim --~~ Office Trailer and ~~Untitled Boat Certificate Transport Trailer~~, Form ST-108TR, is required by any person ~~titling, registering, or licensing certain vehicles on which sales tax was not paid~~ **claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer.** ~~Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim~~ **The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption.** (3-15-02)( )

**i.** Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

**j.** Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

**a.** Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

**b.** Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than**

**Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-4-10)

**a.** A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- ~~i.~~ ~~Hand tools with a unit price not in excess of one hundred dollars (\$100);~~ (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- ~~iv.~~ Selling and distribution equipment and supplies; (3-6-00)
- ~~v.~~ Property used in transportation activities; (3-6-00)
- ~~vi.~~ Equipment or other property used to make repairs; (3-6-00)
- ~~vii.~~ Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- ~~viii.~~ Licensed motor vehicles; (3-6-00)
- ~~ix.~~ Aircraft; and (3-6-00)
- ~~x.~~ Recreational vehicles. (3-6-00)

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of ~~a fifteen dollar (\$15) hammer~~ **toothpaste** and a case of motor oil. The retailer must collect the sales tax on the sale of the ~~hammer~~ **toothpaste**, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the ~~hammer~~ **toothpaste** because, as a matter of law, the sale of ~~hand tools with a unit price of one hundred dollars (\$100) or less~~ **personal hygiene products** is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)(    )

~~**c.** Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item.~~ (3-6-00)

~~**d.**~~ A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

~~**e.**~~ Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

~~**f.**~~ In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the

production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

**gf.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

**08. Purchaser's Responsibility.** A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

**b.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant

should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)

**09. Timely Acceptance of Certificates.** A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1504**  
**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(2), 63-3624(a), 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 081 - Underground Mining.**

The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule draft removes the language that is in conflict with the new law.

**Rule 099 - Occasional Sales.**

**Rule 110 - Returns Filed By County Assessors and Financial Institutions.**

These proposed rule drafts change references to an exemption certificate to reflect the current version of the form.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September, 2015.

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. 35-0102-1504**  
**(Only Those Sections With Amendments Are Shown.)**

**081. UNDERGROUND MINING (RULE 081).**

[Section 63-3622D, Idaho Code](#)

This rule is meant to show how the production exemption applies to the underground mining industry. This rule is based on the usual methods of doing business. Differences in the way a specific taxpayer conducts his business can result in determinations different from those in this rule. In cases not covered by this rule, the general principles in Rule 079 of these rules apply. Determinations of taxability are based on the primary use of equipment. (3-15-02)

- 01. Nontaxable Purchases.** The following are generally considered nontaxable: (7-1-93)
- a.** Development of known ore deposits, including diamond drilling and other activities to develop levels, laterals, crosscuts, drifts, stopes, raises and shafts. (7-1-93)
  - b.** Support materials, including, timber, concrete, rock bolts, shotcrete, matting, and equipment used to install them. (7-1-93)
  - c.** Drilling of blast holes to facilitate the extraction of ore including pneumatic rock drills and compressors used to supply compressed air to operate pneumatic rock drills. (7-1-93)
  - d.** Blasting to facilitate the extraction of ore using explosives, caps, fuses, etc. (7-1-93)
  - e.** Slushing/mucking to convey broken ore and waste to passes and chutes using scrapers, slushers, muckers, hoists and loaders, and backhoes used to recover both ore and waste. (7-1-93)
  - f.** Hauling, horizontal transportation, to transport ore, waste, men or materials from chutes into cars and the movement of the cars to shaft stations using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
  - g.** Haulage, vertical transportation, to hoist ore, waste, men or materials in skips, using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
  - h.** Transportation to the surface to load the ore, waste, men or materials into main haulage cars for transportation using locomotives, haulage cars, track and track spikes, fuel batteries used to power locomotives, and conveyors and conveyor belts. (7-1-93)
  - i.** Backfilling to pump tailings back underground as hydraulic sandfill to backfill mined-out areas using, pumps, sumps, pipe, and concrete. (7-1-93)
  - j.** Personal equipment including hard hats, miners' lights, belts, and batteries, ~~except any hand tool costing one hundred dollars (\$100) or less.~~ (7-1-93) ( )
  - k.** Sampling/assaying for quality control purposes. (7-1-93)
  - l.** Safety equipment and supplies required by a state or federal agency when used directly in a mining area. (7-1-93)
  - m.** Equipment used primarily to install production equipment. (7-1-93)
  - n.** Equipment used primarily to fabricate production equipment. (7-1-93)
- 02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)

- a. Diamond drilling activities used for exploration. (7-1-93)
  - b. Air ventilation and conditioning if an improvement to real property including fans, motors, vent ducts; coolers; and air doors. (7-1-93)
  - c. Water lines and pumps used to remove water from the mine if improvements to real property. (7-1-93)
  - d. Safety equipment and supplies used somewhere other than a mining area, such as an office, or not required by a state or federal agency even if used in a mining area. (7-1-93)
  - e. Maintenance and cleanup using backhoes, except when the primary use is to recover ore or waste; equipment used to repair or maintain mining equipment; battery maintenance equipment including battery chargers, and shop supplies and other materials or supplies which do not become a component part of production exempt equipment. (7-1-93)
  - f. Sampling/assaying for purposes other than quality control. (7-1-93)
  - g. Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)
- 03. Exemption Certificate.** To claim this exemption underground miners must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**099. OCCASIONAL SALES (RULE 099).**  
[Section 63-3622K, Idaho Code](#)

**01. Occasional Seller.** Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108 [TR](#) to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-15-02) ( )

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Rule 020 of these rules. (3-15-02)

**02. Change in the Form of Doing Business.** A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

**03. Bulk Sale -- Sale of an On-Going Business.** The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale



exemption if: (7-1-98)

- a. The purchaser continues the same type of business operation; and (7-1-93)
- b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)
- c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

**04. Sale of a Motor Vehicle Between Family Members.** Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

**05. Transfers Between Related Parties.** The transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities. (4-11-06)

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

**06. Sales and Rentals to Related Parties.** The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (4-11-06)

**a.** Sales to family members, but only if all parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

**b.** Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

**07. Motor Vehicles.** Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, the purchaser must complete an appropriate exemption claim form prior to applying for an Idaho motor vehicle title. See Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales and the appropriate exemption claim form. (4-11-06)

**08. Sales of Business Assets.** Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

**09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles.** The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

**a.** Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

**b.** 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 legally operated on public roadways and highways. (7-1-93)

**c.** All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

**d.** Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

**e.** Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

**f.** Motor homes. (7-1-93)

**g.** Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing 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)

**h.** Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Rule 037 of these rules regarding other exemption provided for aircraft. (3-15-02)

**i.** Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

**10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles.** Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

**11. Exclusion from the Occasional Sale Exemption.** Section 63-3622K, Idaho Code, excludes from the occasional sale exemption the use of tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property. This exclusion applies only to building materials and fixtures that will be incorporated into real property. Sales of construction equipment such as loaders, backhoes, and excavators may still be included within the definition of "occasional sale" if the seller meets all the other requirements of the exemption. (4-11-06)

**a.** Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner's purchase does not qualify for the occasional sale exemption. (4-11-06)

**b.** Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt occasional sale. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).**  
Section 63-3623 & 63-3638(9), Idaho Code

**01. Filing Returns.** Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (4-6-05)

**02. Reimbursement.** The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property; ~~and each Form ST-108, *Truck-Camper*, Transport Trailer, Office Trailer, and Untitled Boat Certificate;~~ and each Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (4-6-05)(\_\_\_\_)

**03. Financial Institutions.** Financial institutions collecting tax on sales of tangible personal property that they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (4-6-05)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1501

#### 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 2016 and the Revenue Ruling where the federal rate for the calculation can be found.

Rule 400 is being amended to clarify the penalty computation for substantial understatement.

Rule 704 is being amended consistent with 2015 HB236 to allow the Tax Commission to exchange information with the Department of Correction and the Department of Health and Welfare regarding incarcerated persons and food stamp recipients claiming the food tax credit.

**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: NA

**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: NA

**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 28, 2014.

DATED this 19th Day of August, 2015.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**310. INTEREST RATES (RULE 310).**  
Sections 63-3045 and 63-3073, Idaho Code

**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.**

| <b>PERIOD</b>                           | <b>RATE OF INTEREST</b> | <b>INTERNAL REVENUE SERVICE REVENUE RULING</b> |
|---|-------------------------|--|
| 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                         |

| PERIOD                    | RATE OF INTEREST          | INTERNAL REVENUE SERVICE REVENUE RULING |
|---------------------------|---------------------------|---|
| Calendar Year 2014        | 4% simple interest        | Revenue Ruling 2013-18                  |
| Calendar Year 2015        | 4% simple interest        | Revenue Ruling 2014-22                  |
| <u>Calendar Year 2016</u> | <u>4% simple interest</u> | <u>Revenue Ruling 2015-19</u>           |

~~(4-11-15)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. PENALTIES: GENERAL RULES (RULE 400).**

Sections 63-3033 and 63-3046, Idaho Code

**01. Penalty Presumed Appropriate.** If a taxpayer becomes liable to pay the Internal Revenue Service a penalty similar to one provided in Section 63-3046, Idaho Code, it shall be presumed the penalty is appropriate as part of the related state tax deficiency. (3-20-97)

**02. Computation of Tax Due Amounts for Extension of Time Criteria.** For purposes of computing whether the taxpayer has met the extension of time criteria provided in Section 63-3033, Idaho Code, the terms, total tax due on the income tax return when it is filed, total tax due on the income tax return for the prior year, and total tax due under the provisions of this chapter shall mean amounts computed as follows: (3-20-04)

**a.** Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax credits, and any income tax credits. (3-20-04)

**b.** Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. Payments for the amounts included in Subsection 400.02.a. are also excluded for purposes of this calculation. (3-20-04)

**03. Computation of Tax Due Amounts for Failure to File, Failure to Pay, Delinquent Filing, Substantial Understatement, and Extension Penalties.** For purposes of computing the failure to file, failure to pay, substantial understatement, or delinquent filing penalties, provided by Section 63-3046, Idaho Code, and the penalty for failing to meet the extension criteria, provided by Section 63-3033, Idaho Code, the terms tax shown thereon to be due, tax required to be shown on the return, and tax due on such return, and the amount on which the extension penalty is applied shall mean amounts computed as follows: ~~(3-20-04)~~( )

**a.** Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax credits, income tax credits, and any payments for these taxes for that year. (3-20-04)

**b.** Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. (3-20-04)

**04. Net Operating Loss and Capital Loss Carrybacks.** If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the penalty shall be computed on the tax due prior to the application of the carryback. (5-3-03)

**05. Minimum Penalty.** A ten dollar (\$10) minimum penalty applies to each penalty imposed by Subsection (a), (b), (c)(1), (d) or (e) of Section 63-3046 and by Section 63-3033, Idaho Code. For example, if a taxpayer fails to file only one (1) withholding tax statement, which generally results in a penalty of two dollars (\$2) pursuant to Section 63-3046(e)(1), Idaho Code, a penalty of ten dollars (\$10) will be applied. (3-15-02)

**06. Dishonored Checks.** The charge provided by Section 63-3046(h), Idaho Code, for each dishonored check or instrument is: (2-23-01)

- a. Ten dollars (\$10) if dishonored prior to July 1, 2001. (2-23-01)
- b. Twenty dollars (\$20) if dishonored on or after July 1, 2001. (2-23-01)
- c. This charge may be added even if sufficient funds are in the taxpayer's account after the date of dishonor. (2-23-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).**  
Sections 23-907, 39-8405, 49-326, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3634A, and 67-4917C, Idaho Code

**01. Legislature.** The Tax Commission will disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission will disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (4-4-13)

**02. Government Agencies or Officials.** The Tax Commission will disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (4-4-13)

**03. Exchange of Information.** Information may be exchanged between the Tax Commission and: (4-5-00)

- a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
- c. County assessors, limited to: (3-20-04)
  - i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
  - ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
- d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
- e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
- g. Idaho Transportation Department, relating to: (3-20-04)
  - i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
  - ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
  - iii. Tax declaration for blindness as required by Section 49-326, Idaho Code. (4-4-13)

- h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, as allowed by Section 63-3077C, Idaho Code; (3-29-12)
- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
- n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
- o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
- p.** The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. (3-29-10)
- q.** The State Treasurer, as provided in Section 63-3077E, Idaho Code, limited to: (3-29-12)

  - i. The names and addresses of businesses in Idaho; (4-4-13)
  - ii. The names and addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the State Treasurer; and (4-4-13)
  - iii. The taxpayer identifying numbers. (4-4-13)
- r.** The Idaho Department of Correction, as limited by Section 63-3077G, Idaho Code. ( )
- s.** The Idaho Department of Health and Welfare, as limited by Section 63-3077H, Idaho Code. ( )



**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**38.05.01 - RULES OF THE DIVISION OF PURCHASING**

**DOCKET NO. 38-0501-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5717(11), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, pages 119 through 123](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Bill Burns, Administrator, (208) 332-1610.

DATED this 3rd Day of September, 2015.

Bill Burns, Administrator  
Department of Administration  
650 W. State St., Room 100  
P. O. Box 83720  
Boise, ID 83720-0003  
Phone: (208) 332-1610  
Fax: (208) 334-2307

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.22 - RULES GOVERNING REGISTRATION AND PERMIT FEE ADMINISTRATION

DOCKET NO. 39-0222-1501

#### 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 40-312 and 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, no later than October 21, 2015.

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

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

This rule is being changed to:

- 1) Clarify the quarterly reporting of road use fees and ensure IDAPA rule 39.02.22 is in accordance with Section 49-439(7), Idaho Code;
- 2) Provide flexibility to refund money for trip permits if eligible;
- 3) Eliminate delinquent billing processes to match new requirements of payment required before credentials are sent;
- 4) Eliminate fee account billing processes because it is no longer available with the implementation of the cash drawer system, plus, escrow accounts are now available; and
- 5) Clarify that unpaid amounts owed to the Department may be sent to a collection agency.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed 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: There are no materials incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

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 28, 2015.

DATED this 26th Day of August, 2015.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129, Boise, ID 83707-1129  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
Phone: (208) 334-8810

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0222-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**100. QUARTERLY ROAD USE FEE REPORTS FOR ANNUAL OVERWEIGHT PERMITS.**

To comply with Section 49-1001, Idaho Code, the customer will make quarterly reports of laden only mileage to the department for the movements of non-reducible vehicle/loads, at the appropriate permitted weight level of the annual overweight/oversize permits. These fees are in addition to the registration fees *otherwise* required to be paid to the department. Mileage and road use fees for single trip overweight/oversize permits ~~is determined~~ are calculated and collected at the time of issuance and are not reported quarterly. (3-19-07)(    )

**101. QUARTERLY ROAD USE FEE REPORTING.**

**01. Quarterly Reporting Forms Issued.** The department will issue a quarterly report form to customers for each valid annual overweight/oversize permit issued to them. (3-19-07)

**02. Use of Quarterly Reporting Form.** The customer is required to report each quarter's information on the form provided on or before the due date specified on the quarterly report form, even when reporting zero miles traveled. (3-19-07)(    )

**a.** If the customer does not receive a quarterly report form, it is the customer's responsibility to notify the department allowing adequate time to submit the report before the due date. (3-19-07)

**b.** Any report transmitted through the US Postal Service shall be considered filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or wrapper containing the report. A postage meter cancellation shall not be considered as a post office cancellation mark. (3-19-07)

**c.** If the quarterly report form due date falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next business day. ~~In the event the department is late mailing the quarterly report form the due date shall be adjusted by the department.~~ (11-1-94)(    )

**d.** Quarterly reports not submitted will result in the account being suspended. (    )

**03. Information Required on the Quarterly Report Form.** Customers must report the following: (3-19-07)

**a.** The number of laden miles traveled on Idaho highways when operating under an annual overweight/oversize permit with non-reducible vehicles and/or load that exceed eighty thousand (80,000) pounds and/or legal axle weights for the appropriate weight category for the quarter specified on the quarterly report form, rounded to the next full mile; and the road use fee due; and penalty, if the report is filed after the due date. (3-19-07)(    )

**b.** Total amount due. (11-20-91)

**c.** Signature and title of company official, and date of report. All reports filed with the department must be signed by an authorized representative of the company/individual in order to be considered a valid report even if zero miles are being reported. (3-19-07)(    )

**d.** Address change, if different from quarterly report form. (11-20-91)

**e.** Customer telephone number (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

300. REFUNDS.

- 01. Fees Eligible for Refund.** (3-19-07)
- a.** Commercial vehicle registration is eligible for refund when the criteria in Section 49-434, Idaho Code, are met. (3-19-07)
- b.** If account has been overpaid, and no other fees are owed to the department. (3-19-07)
- c.** Unexpired portion of Idaho based fees are refundable for: (3-19-07)
- i.** A vehicle that has been sold or repossessed; (3-29-10)
- ii.** A vehicle that has been damaged beyond repair; or (3-19-07)
- iii.** A vehicle on which the lease has been terminated. (3-19-07)
- iv.** Other refund requests will be reviewed and approved or denied on a case by case basis. ( )
- 02. Fees Not Eligible for Refunds:** ~~(3-19-07)~~
- ~~**a.** Other jurisdiction's fees are not refundable by Idaho. ~~(3-19-07)~~( )~~
- ~~**b.** *Temporary trip permits are issued for specific vehicles only and fees are not refundable, nor transferable to other vehicles.* ~~(3-19-07)~~~~
- 03. Request for Refunds:** (3-19-07)
- a.** Registrant can make a request for refund of fees from the department. The refund request must include: (3-19-07)
- i.** Proof of sale or repossession of the vehicle; (3-29-10)
- ii.** Proof from the insurance company or law enforcement agency that the vehicle has been damaged beyond repair; or (3-19-07)
- iii.** Proof of lease termination from the leasing company. (3-19-07)
- b.** Request shall be subject to audit as provided in Idaho Code. (3-19-07)
- c.** All refund requests shall be reviewed ~~by a Commercial Vehicle Services supervisor~~ to ensure that all requests are valid and eligible. The Revenue Operations supervisor shall also approve/disapprove refunds. If the refund amount is greater than or equal to one thousand (\$1,000) dollars, a Financial Services manager shall also review and approve/disapprove the request before refund is processed. ~~(3-19-07)~~( )
- d.** Approval/disapproval shall be indicated by either signature, or electronic approval by means of the department's financial management system. (3-19-07)

301. -- ~~399.~~ ~~(RESERVED)~~

~~400. DELINQUENT BILLS FOR NONPAYMENT OF OVERLEGAL PERMITS.~~

- ~~**01. Payment Options.** *A customer may request overlegal permits to be issued without prepayment. The customer may pay when he picks up the permit at the nearest Port of Entry or at the department.* ~~(3-19-07)~~~~
- ~~**02. Non-Payment of Overlegal Permits.** *If the customer fails to pick up the permit, the permit fee is*~~

~~still due and not dependent upon receipt of the permit, unless customer has requested to cancel the permit prior to the valid date of the permit.~~ (3-19-07)

~~a. The department will send a billing notice to the customer requesting payment. The amount is due within fifteen (15) days of the date of the notice.~~ (3-19-07)

~~b. The customer's account will be suspended thirty (30) days after the original billing for non-payment of fees. If the account is suspended, it will be subject to a reinstatement fee of forty dollars (\$40).~~ (3-19-07)

~~c. A demand notice will be sent out thirty (30) days after account has been suspended with all the fees due, including original permit amount, and reinstatement fee.~~ (3-19-07)

~~d. The customer account will remain suspended if fees are uncollected. After sixty (60) days from the date of suspension, the account will be assigned to a collection agency.~~ (3-19-07)

~~401.—499. (RESERVED)~~

~~500. NON-PAYMENT OF FEE ACCOUNT BILLINGS FOR OVERLEGAL PERMITS.~~

~~01. **Fee Accounts.** A customer may opt to have a fee account with the department for convenience of ordering overlegal permits. A fee account may be established by the department for the customer provided that the customer:~~ (3-19-07)

~~a. Is not suspended or in revoked status.~~ (3-19-07)

~~b. Pays a cash bond or provides a surety bond. The bond shall be equal to the value of permits required for any consecutive three-month period, except that no bond shall be less than one thousand (\$1,000) dollars.~~ (3-19-07)

~~02. **Charging.** A customer may "charge" over-legal permits to their fee account.~~ (3-19-07)

~~03. **Billing Notice.** The department will send a billing notice to the customer on or about the first of each month. The amount is due within fifteen (15) days of the date of the notice.~~ (3-19-07)

~~04. **Suspension.** The department will suspend customer account(s) thirty (30) days after the original billing notice date if the account is not paid in full.~~ (3-19-07)

~~05. **Second Notice.** The department will send a demand letter for payment to the customer approximately thirty (30) days after the account has been suspended.~~ (3-19-07)

~~06. **Collections.** When the department determines the amount is uncollectible, the account will be assigned to a collection agency.~~ (3-19-07)

~~501.—599. (RESERVED)~~

~~600. INSUFFICIENT FUNDS.~~

~~Insufficient Funds will be indicated by the abbreviation ISF.~~ (3-19-07)

~~01. **Payment With Insufficient Fund Check.** If a customer pays a fee ~~prescribed by law, by check~~ and the check is returned to the department as ISF, the transaction will be cancelled ~~because the fee has not been paid.~~ The department reserves the right to not accept checks from a customer who has written two (2) or more ISF checks within four (4) years to the department. That customer will have to pay with cash, or verifiable check, or credit card. (3-19-07)( )~~

~~02. **Pay the Original Transaction Fees** Suspension of Account. The department will ~~attempt to contact the customer, and allow him to pay the original transaction fees~~ suspend the customer's account until the customer has paid the amount of the ISF check, along with the twenty dollar (\$20) ISF fee. (3-19-07)( )~~

~~03. **Collection.** The department will assign all ISF checks including a twenty dollar (\$20) fee to a credit agency for collection.~~ (3-19-07)

~~043. **No Further Transactions.** The department will not complete further transactions with the customer until the customer has paid the amount of the ISF check along with the twenty dollar (\$20) ISF fee.~~ (3-19-07)

~~05. **Department Reserves the Right to Not Accept Checks.** The department reserves the right to not accept checks from a customer who has written two (2) or more ISF checks within four (4) years to the department. That customer will have to pay with cash, or verifiable check, or credit card.~~ (3-19-07)

**601. ACCEPTANCE OF CHECKS.**

The department will accept personal checks as form of payment with sufficient proof of identification. If check payment is received by mail, the check will be accepted unless the customer has written two (2) or more ISF checks within four (4) years to the department, per Subsection 600.051 of this rule. (3-19-07)(    )

**602. CREDIT CARD PAYMENTS.**

The department will accept only Visa or Mastercard ~~payments that do not exceed ten thousand (\$10,000) dollars~~ for any fees due to or purchases from the department. (3-19-07)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**702. REQUIREMENTS FOR REINSTATEMENT OF REVOKED OR SUSPENDED VEHICLE REGISTRATION.**

**01. Revocation.** In the case of a revocation, a registrant must pay all fees due and a forty dollar (\$40) reinstatement fee to be reinstated and must also re-register to resume operating. (3-19-07)(    )

**02. Suspension.** In the case of a suspension all fees, reports, and records required prior to the suspension must be provided to the department, including a forty dollar\* (\$40) reinstatement fee to be reinstated. (3-19-07)(    )

**703. REQUIREMENTS FOR COLLECTIONS.**

All unpaid amounts owed to the department may be sent to an external collection agency. Collection agencies may charge a fee for their efforts in collection of a debt as per Section 67-2358, Idaho Code. Accounts that have been assigned to a collection agency must pay the collection agency all fees due. The department will not accept the payment once assigned to the collection agency. (    )

~~7034.~~ -- 799. (RESERVED)

**800. ENFORCEMENT.**

**01. Delayed Movement.** If the registration of a vehicle is suspended the Ports of Entry shall delay movement of the vehicle until such time as the registrant complies with the condition(s) that caused the suspension. (3-19-07)

**02. Revoked Registrations.** If a registrant's registrations are revoked for failure to respond to a suspension notice, the motor vehicle cannot be operated on Idaho highways until the registrant complies with Section 702 of this rule. Registrants with suspended outstanding balances owed to the department or revoked registrations are not eligible to purchase trip permits. (3-19-07)(    )

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.01 - RULES GOVERNING DEFINITIONS REGARDING OVERLEGAL PERMITS

DOCKET NO. 39-0301-1501

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 40-312 and 49-201, 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 rule change is necessary so that the Idaho Transportation Department (ITD) is in compliance with the passage of House Bill 70 (HB 70) passed during the 2015 Idaho Legislative Session, and that the rules and statutes affecting ITD are consistent with each other. The passage of HB 70 required a change to the definition of excess weight as well as modifying other definitions.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015, Idaho Administrative Bulletin, [Vol. 15-8, pages 124-128](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

DATED this 26th day of August, 2015.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
Phone: (208) 334-8810

# IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

## 39.03.13 - RULES GOVERNING OVERWEIGHT PERMITS

DOCKET NO. 39-0313-1501

### 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 40-312, 49-201, and 49-1004, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Transportation Department (ITD) staff has determined that the current rule governing bridge analysis is antiquated and inadequate. With the current staffing levels and the increased number of overweight vehicles/loads traveling within and through the State, the Department needs more realistic guidelines for the completion of a bridge analysis when one is required, as well as clarification whether ITD staff or a third party will be required to complete the bridge analysis. Bridge analysis is required to protect the State's infrastructure and the safety of the traveling public. ITD has been using similar guidelines in its normal business practices for some time now, so this will not be completely new to the industry.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015, Idaho Administrative Bulletin, [Volume 15-7, Page 99](#).

**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 incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

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 28, 2015.

DATED this 26th Day of August, 2015.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129, Boise, ID 83707-1129  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
Phone: (208) 334-8810



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0313-1501  
(Only Those Sections With Amendments Are Shown.)

100. GENERAL REQUIREMENTS.

01. **Registration.** Any vehicle hauling or towing non-reducible loads subject to registration, is not required to register for the maximum legal weight it can haul to be eligible for an overweight permit. Farm tractors, ~~road rollers, and road machines~~ off road equipment, etc., are exempt from registration but are not exempt from legal weight limitations. (4-5-00)( )

02. **Overweight Permit Requirements.** Overweight permits will be issued for non-reducible vehicles and/or loads that exceed legal axle weights and/or eighty thousand (80,000) pounds, with weight reduced to a practical minimum, except that a permit may be issued for a machine with an accessory and loaded separately on the transporting vehicle. Vehicles hauling overweight loads will be required to have five (5) or more axles to qualify for an overweight permit. Self-propelled vocational vehicles or vehicles towing overweight loads may have less than five (5) axles to qualify for an overweight permit. (4-5-00)

03. **Variable Load Suspension Axle Requirements.** Any vehicle which is equipped with variable load suspension axles (lift axles) transporting overweight loads shall have all lift axles fully deployed when adjacent axles exceed legal axle weights. (8-25-94)( )

101. -- 199. (RESERVED)

200. MAXIMUM OVERWEIGHT LEVELS FOR ANNUAL OVERWEIGHT/OVERSIZE PERMITS.

01. **Allowable Gross Vehicle Weight.** The gross vehicle weight allowable by overweight permit is subject to the seasonal stability of the roadway and the capacity of the structures on the route of travel. For the purpose of issuing overlegal permits, seven (7) levels of overweight are established, based on the weight formula of  $W = 500((LN/N-1) + 12N + 36)$  and routes for carrying the various levels of overweight are designated by color coding. The Weight Formula ("W") is the maximum weight in pounds (to the nearest five hundred (500) pounds) carried on any group of two (2) or more consecutive axles. "L" is the distance in feet between the extremes of any group of two (2) or more consecutive axles. "N" is the number of axles under consideration. The load factor based on the most critical bridge on the highway route will also be used in determining allowable weights. (3-30-01)( )

a. **Red Routes --** The red routes contain posted bridges and require approval or analysis from the Department. A vehicle configuration may be issued an annual overweight/oversize permit for travel on red routes only, upon completion of an analysis verifying the requested weights are acceptable. The annual permit will be issued for a specific vehicle configuration, operating on a specific route, at specific weights. All information will be listed on the annual permit and will be subject to revocation at such time the vehicle configuration changes (such as axle spacings), the approved weights change, or a bridge rating changes. Annual permits issued for red routes will be in addition to the annual permit required for other routes. (8-4-95)

b. **Yellow Routes --** The yellow overweight level is based on a single axle loading of twenty-two thousand five hundred (22,500) pounds, a tandem axle loading of thirty-eight thousand (38,000) pounds, and a tridem axle loading of forty-eight thousand (48,000) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 560 ((LN/N-1) + 12N + 36)$ . (8-25-94)

c. **Orange Routes --** Orange overweight level is based on a single axle loading of twenty-four thousand (24,000) pounds, a tandem axle loading of forty-one thousand (41,000) pounds, and a tridem axle loading of fifty-one thousand five hundred (51,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 600 ((LN/N-1) + 12N + 36)$ . (3-30-01)

d. **Green Routes --** The green overweight level is based on a single axle loading of twenty-five

thousand five hundred (25,500) pounds, a tandem axle loading of forty-three thousand five hundred (43,500) pounds, and a tridem axle loading of fifty-four thousand five hundred (54,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 640 ((LN/N-1) + 12N + 36)$ . (8-25-94)

e. Blue Routes -- Blue overweight level is based on a single axle loading of twenty-seven thousand (27,000) pounds, a tandem axle loading of forty-six thousand (46,000) pounds, and a tridem axle loading of fifty-seven thousand five hundred (57,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 675 ((LN/N-1) + 12N + 36)$ . (3-30-01)

f. Purple Routes -- The purple overweight level is based on a single axle loading of thirty thousand (30,000) pounds, a tandem axle loading of fifty-one thousand five hundred (51,500) pounds, and a tridem axle loading of sixty-four thousand five hundred (64,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 755 ((LN/N-1) + 12N + 36)$ . (3-30-01)

g. Black Routes -- The black overweight level is based on a single axle loading of thirty-three thousand (33,000) pounds, a tandem axle loading of fifty-six thousand (56,000) pounds, and a tridem axle loading of seventy thousand five hundred (70,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 825 ((LN/N-1) + 12N + 36)$ . (8-25-94)

**02. Vehicles or Loads Exceeding Annual Permitted Weights.** Vehicles or loads exceeding the axle weights, groups of axle weights, or total gross weights allowed on any of the overweight levels described in Subsection 200.01 must operate by single trip permits only if approved. (4-5-00)( )

**03. Maximum Tire Weights.** The maximum overweight levels shall not exceed eight hundred (800) pounds per inch width of tire ~~nor the maximum weights authorized by Subsection 200.01.~~ (4-5-00)( )

**04. Map Resources.** Route capacity maps are available at the Idaho Transportation Department Headquarters Overlegal Permit office, Ports of entry, and ~~all District Offices~~ online at <http://itd.idaho.gov/dmv/poe/poe.htm>. A route capacity map will accompany each annual overweight/oversize permit. (4-5-00)( )

~~**05. Weight Formula.** "W" is the maximum weight in pounds (to the nearest five hundred (500) pounds) carried on any group of two (2) or more consecutive axles. "L" is the distance in feet between the extremes of any group of two (2) or more consecutive axles, "N" is the number of axles under consideration and "F" is the load factor most appropriate based on the most critical bridge on the highway route. (8-25-94)~~

~~201. -- 299. (RESERVED)~~

~~**300. ADDITIONAL WEIGHT ABOVE ALLOWED MAXIMUMS.** Increased loading of weight above the maximum weights in this rule may be allowed for wide axles, extra tires or both. Increased loading requires Department approval based on an engineering analysis. (8-25-94)~~

~~301. — 399. (RESERVED)~~

~~**400. OVERLEGAL PERMIT FOR LOADS IN EXCESS OF MAXIMUM WEIGHT LIMITS OVERWEIGHT PERMITS REQUIRING BRIDGE ANALYSIS.**~~

Requests to transport vehicles and/or loads at weights in excess of the ~~maximum~~ weights normally allowed on a routine basis will require, at a minimum, an additional review and approval from the overlegal permit office and may require an engineering analysis when structures are involved on the route(s) to be traveled. The Department may waive the requirement for engineering analysis provided sufficient prior analyses for similar loadings have been performed by the Department for the involved structures. ~~The Department may take up to twenty-four (24) working hours to approve or deny the request when a simple analysis is required.~~ The following information may be requested, to be provided to the overlegal permit office when an ~~in-depth~~ engineering analysis is required: (4-5-00)( )

**01. Drawing of Vehicle.** A schematic drawing or other specific information with regard to placement of axles, distance between axles and/or wheels, and distribution of gross weight on axles and/or wheels. (10-2-89)

~~02. **Required Information.** The applicant shall provide the Department the information required for conducting the analysis as soon as possible. A minimum of two (2) weeks shall be expected prior to approval or denial of the proposed move. (1-3-92)~~

~~03. **Engineering Analysis Fee.** The applicant shall deposit one hundred dollars (\$100) with the Department as a deposit on the cost required to undertake the engineering analysis of the vehicle combination. (8-25-94)~~

~~04. **Additional Fee for Movement Requiring an Inspector.** At the time a permit is issued which requires an inspector, the issuing office shall require a deposit of one hundred dollars (\$100) in addition to permit fee. This deposit shall be applied to the cost incurred by the Department in furnishing the inspector with vehicle and equipment necessary in the inspection surveillance. (8-25-94)~~

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

**500. BRIDGE ANALYSIS CRITERIA AND TIME FRAMES.**

The Department may take up to five (5) business days for an analysis on a vehicle or vehicle combination not in excess of two hundred fifty thousand (250,000) pounds and up to ten (10) business days for an analysis on a vehicle or vehicle combination over two hundred fifty thousand (250,000) pounds. Up to ten (10) business days will also be used for the review process of an analysis done by a third party. The following criteria will be used to determine bridge analysis work and whether it is to be completed by the Department or a qualified and pre-approved third party. If a third party is required, the applicant is responsible for finding, initiating and paying for the cost of that analysis.

( )

01. **Vehicle Combinations in Excess of Eight Hundred Thousand (800,000) Pounds.** Vehicle combinations in excess of eight hundred thousand (800,000) pounds will be required to have a third party complete the bridge analysis. The analysis will then be reviewed by the Department for final approval or denial.

( )

02. **Preliminary Information or Bid Work.** When a permit request is placed and paid for, the Department will complete the analysis, otherwise a third party will be required to complete the bridge analysis. An analysis completed by a third party may be used when a permit request is made and it will be reviewed by the Department for final approval or denial.

( )

03. **Overweight Permit Requests with Multiple Configurations.** Requests made to analyze multiple vehicle configurations for a specific route to determine which vehicle combination will be approved requires the analysis to be completed by a third party. The analysis will then be reviewed by the Department for final approval or denial.

( )

04. **Overweight Permit Requests with Multiple Routes.** Requests made to analyze multiple routes for a specific vehicle combination in order to determine which route will be approved requires the analysis to be completed by a third party. The analysis will then be reviewed by the Department for final approval or denial.

( )

05. **Extenuating Circumstances.** The department may under extenuating circumstances require that a bridge analysis be completed by a third party.

( )

**4501. -- 999. (RESERVED)**

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.17 - RULES GOVERNING PERMITS FOR MANUFACTURED HOMES,**  
**MODULAR BUILDINGS, AND OFFICE TRAILERS**

**DOCKET NO. 39-0317-1501**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2015.

**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 40-312 and 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rule change authorizes anyone transporting a load up to sixteen (16) feet wide to do so using an annual permit rather than having to purchase a single trip permit as currently required. Industry representatives asked the Department to increase the allowable load widths that can be transported using an annual permit from the fourteen feet six inches (14' 6") that is currently authorized to sixteen (16) feet.

**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 change confers a benefit.

**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 RULE-MAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is temporary.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 26th Day of August, 2015.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 39-0317-1501  
(Only Those Sections With Amendments Are Shown.)**

**100. REGISTRATION AND LICENSING REQUIREMENTS.**

All manufactured homes ~~and office trailers~~ moved on their own axles on any public highway are required to be licensed, permanently or temporarily, with the exception of, new manufactured homes, being transported either prior to first sale at retail or to the initial setup location of the original purchaser. The manufactured home ~~and office trailer~~ registration (if required) and general property tax receipt shall be made available for inspection upon demand of any enforcement officer. ~~(3-30-01)~~(8-20-15)T

**101. INSURANCE REQUIREMENTS.**

The permittee or the driver of the vehicle hauling or towing overwidth manufactured homes, modular buildings, and office trailers shall be required to carry evidence of general liability insurance in the permitted vehicle written by a company licensed in Idaho showing coverage in the minimum amounts of three hundred thousand dollars (\$300,000) when hauling permittee's own manufactured home. When hauling for hire permittee must carry a minimum amount of seven hundred and fifty thousand dollars (\$750,000) insurance coverage, and have proper authority. ~~(4-5-00)~~(8-20-15)T

**102. -- 199. (RESERVED)**

**200. MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS BEING TOWED ON THEIR OWN AXELS.**

**01. Connection Device.** Shall meet the requirements of Federal Motor Carrier Safety Regulations, 49 CFR part 393. (4-2-08)

**02. Length.** Not in excess of eighty (80) feet including tongue. (10-2-89)

**03. Width.** Shall be limited to a maximum of sixteen (16) feet at the base and shall not exceed eighteen (18) feet overall width including the eaves, except on a case-by-case basis as approved by the department. All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before an overlegal permit is issued.

\*\* Determination of manufactured home, modular building, or office trailer width shall be exclusive of such appurtenances as clearance lights, door handles, window fasteners, door and window trim, moldings and load securement devices up to but not in excess of three (3) inches on each side of load. ~~(3-29-10)~~(8-20-15)T

**04. Eaves.** No restrictions on eaves as long as the eighteen (18) feet maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. (3-29-10)

**05. Weight.** The maximum allowable load for any vehicle tire operated on any public highway shall be in accordance with Code of Federal Regulations, Title 24, Chapter 20, Office of Assistant Secretary for Housing - Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Subpart J, (CFR Title 24). (3-23-98)

**06. Running Gear Assembly -- General.** The entire system (frame, drawbar, and coupling mechanism, running gear assembly including brake systems, axles and lights) shall be in accordance with CFR Title 24, for the year the manufactured home was built. In addition thereto, all tires used in transportation of manufactured homes under this category shall be in accordance with Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

**07. Construction.** Construction shall be in accordance with CFR Title 24, for the year the manufactured home was built. (3-23-98)

**08. Axles.** All axles shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have a minimum of four (4) axles. (3-23-98)

**09. Brakes.** Brakes shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have brakes on a minimum of three (3) axles. (3-23-98)

**10. Lights.** The unit shall have stop lights, turn signals and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

**11. Safety Chains.** Two (2) safety chains shall be used, one (1) each on right and left sides of, but separate from, the coupling mechanism connecting the tow vehicle and the manufactured home while in transit. Chain shall be three-eighths (3/8) inch diameter steel. Chains shall be strongly fastened at each end to connect the tow vehicle and manufactured home and assure that in the event of a coupling failure the manufactured home will track behind the tow vehicle. (3-23-98)

**201. VEHICLES FOR TOWING/HAULING MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS.**

**01. Towing Vehicle.** Tow vehicles for manufactured homes, modular buildings, and office trailers shall comply with the following minimum requirements:

| Manufactured Homes and Office Trailers Width | Tire Width | Drive Axle Tire Rating | Min. Unladen Weight | Rear Axle Rating |
|--|------------|------------------------|---------------------|------------------|
| Over 8' to 10'                               | 7.00"      | 6 Ply                  | 6,000#              | None             |
| Over 10'to 12'                               | 8.00"      | 8 Ply                  | 8,000#              | 15,000#          |
| Over 12'                                     | 8.25"      | 10 Ply                 | 12,000#             | 15,000#          |

~~(3-23-98)~~(8-20-15)T

**02. Brakes.** Shall be in accordance with Federal Motor Carrier Safety Regulations part 393. (8-25-94)

**03. Rear Axle.** Towing vehicle shall have a minimum of a single axle with dual mounted tires. (8-25-94)

**04. Connection Device.** Shall meet the requirements of Federal Motor Carrier Safety Regulations, part 393. (4-2-08)

**05. Horsepower Requirement.** When towing/hauling a manufactured home, modular building, or office trailer a minimum speed of twenty-five (25) mph must be maintained. ~~(3-23-98)~~(8-20-15)T

**06. Two-Way Radio.** (3-23-98)

**a.** On all movements requiring a pilot/escort vehicle, both the towing unit and the pilot/escort vehicle(s) shall be equipped with two-way radio equipment, licensed under Federal Communications Commission regulations adequate to provide reliable voice communication between the drivers thereof at all times during the movement of the escorted load. Transmitting and receiving capabilities of the radio equipment used shall be adequate to provide the required communication over a minimum distance of one-half (1/2) mile separation under conditions normally encountered along the proposed route. (4-5-00)

b. Radio communication shall be open and monitored between pilot/escort vehicle(s) and oversize load at all times during movement. (4-5-00)

**07. Operator Requirements.** Operators of vehicles towing manufactured homes, modular buildings and office trailers over ten (10) feet wide at the base shall have a class A or B Commercial Driver's License (CDL) as appropriate. (3-23-98)

**08. Speed Limit Requirements.** Vehicles towing manufactured homes, ~~modular buildings and or offices;~~ trailers on their own axles shall be limited to a maximum of sixty (60) miles per hour. ~~(3-23-98)~~ (8-20-15)T

**202. -- 299. (RESERVED)**

**300. MANUFACTURED HOME, MODULAR BUILDING, OR OFFICES TRAILER BEING HAULED.**

**01. Length.** Not in excess of eighty (80) feet. (10-2-89)

**02. Width.** Not in excess of sixteen (16) feet at the base and eighteen (18) feet overall, except on a case-by-case basis as approved by the department. All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before an overlegal permit is issued. (3-29-10)

**03. Eaves.** No restrictions on eaves as long as the eighteen (18) foot maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. (3-29-10)

**301. HAULING EQUIPMENT FOR A MANUFACTURED HOME, MODULAR BUILDING OR OFFICE TRAILER.**

**01. Hauling Equipment.** Vehicles used to haul manufactured homes, modular buildings and office trailers shall be combinations designed to meet the requirements of Federal Motor Carrier Safety Regulations for vehicles engaged in interstate commerce. Such vehicles shall be of structural capacity to safely accommodate the loading at all times. (8-25-94)

**02. Lights.** The unit shall have stop lights, turn signals and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. (8-25-94)

**03. Securing Loads.** A minimum of four (4) steel, three fourths (3/4) inch diameter bolts will be used to directly connect the main support members of the modular building, manufactured home or office trailer to the support frame of moving equipment. Two (2) bolts each shall be located not less than twelve (12) feet from the forward and rear ends of the modular building, manufactured home or office trailer. Each of the four (4) bolts shall be at least four (4) feet apart. Equivalent methods of fastening, such as chains or binders, may be used as alternatives. (8-25-94)

**302. -- 399. (RESERVED)**

**400. GENERAL PROVISIONS.**

**01. Paneling of Open Sides of Multi-Section Modular Buildings, Manufactured Homes or Office Trailers.** Shall be rigid material, or six (6) mil plastic sheathing (or stronger) backed by a grillwork to prevent billowing and fully enclose open sides of section in transit. (3-23-98)

**02. Interior Loading.** If the manufactured home, modular building, or office trailer is to transport furnishings or other loose objects, they shall be secured in position for safe travel. ~~(8-25-94)~~ (8-20-15)T

**03. Construction.** Modular buildings shall be constructed in accordance with the Uniform Building Code as applies to design and construction requirements that will affect overall structural strength and roadability.

Manufactured homes and offices trailers shall be constructed in accordance with Federal HUD Manufactured Home Construction and Safety Standards. ~~(8-25-94)~~(8-20-15)T

~~04. **Oversize Manufactured Homes or Office Trailers.** Oversize manufactured Homes or Office Trailers must be transported under authority of the rule. IDAPA 39.03.16, "Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads," does not apply to the transport of Manufactured Homes or Office Trailers. (4-5-00)~~

**054. Manufactured Homes, Modular Buildings, and Office Trailers Components.** This rule applies only to Manufactured Homes, Modular Buildings, and Office Trailers and does not apply to individual components utilized in the manufacturing ~~of Manufactured Homes~~. Permits may be issued to authorize transport of components for Manufactured Homes, Modular Buildings, or Office Trailers under IDAPA 39.03.16, "Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads." ~~(4-5-00)~~(8-20-15)T

**065. Signs.** All manufactured homes, modular buildings and office trailers whether hauled or towed shall be required to display an oversize load sign, even if no pilot/escort vehicle is required. The sign shall meet the following minimum dimensions: ~~eighteen (18) inches high by seven (7) feet wide, letter height ten (10) inches, letter type standard series C, stroke width one and five eighths (1 5/8) inch,~~ twelve (12) inches high, five (5) feet wide, and eight (8) inch high letters with a one (1) inch stroke width, and black letters on yellow background. ~~(4-5-00)~~(8-20-15)T

**076. Warning Flags.** All manufactured homes, modular buildings and office trailers whether hauled or towed shall be required to display flags on all four (4) corners. The flags may be red or fluorescent orange. (3-23-98)

**087. Permits.** Annual permits will allow travel on the following routes at the following dimensions:

| Route   | Base Width     | Overall Width  | Height            | Overall Length  |
|---|----------------|----------------|-------------------|-----------------|
| Red   |                | 12' 6"         | 15' 6"            | 110'            |
| <del>Black</del>  | <del>14'</del> | <del>18'</del> | <del>15' 6"</del> | <del>110'</del> |
| <del>Double Black</del><br><u>Other</u>   | 16'            | 18'            | 15' 6"            | 110'            |
| <p><del>**The double black routes are the interstate and 4 lane highways.</del></p> <p>**The routes referred to above are on the Pilot/Escort Vehicle and Travel Time Requirements Map.</p> <p>**When exceeding the above maximum dimensions allowed for a route, movement will be allowed only by single trip permit.</p> <p><del>**Manufactured homes, modular buildings and offices exceeding sixteen (16) feet overall width being towed on their own axles on two lane highways, will be required to submit for approval a traffic control plan, that lists at a minimum the following information: date of move, routes of travel, turnouts for traffic relief, and dimensions of load.</del></p> |                |                |                   |                 |

~~(4-5-00)~~(8-20-15)T

**098. Hazardous Travel Conditions Restrictions.** Extreme caution in the operation of vehicle combinations shall be exercised when hazardous conditions exist. The movement by overlegal permit of manufactured homes, modular buildings and office trailers shall be prohibited and otherwise valid permits shall automatically become invalid enroute when travel conditions become hazardous due to ice, snow or frost; when visibility is restricted to less than five hundred (500) feet by fog, dust, smoke or smog or other atmospheric condition; or when wind velocity exceeds thirty (30) miles per hour. (5-8-09)

**109. Time of Travel Requirements.** Manufactured homes, modular buildings, and office trailers exceeding ten (10) feet in width, will have daylight travel only. When less than ten (10) feet wide, twenty-four (24) hour travel will be allowed, and must meet the following requirements: (4-5-00)



- a. The lights must be visible from five hundred (500) feet; (4-5-00)
- b. The lights shall be steady burning; (4-5-00)
- c. The color of the lights shall be as follows: (4-5-00)
  - i. Lights visible from the front of the load and the extremities in the middle or near the front of the load shall be amber. (4-5-00)
  - ii. Lights visible from the back of the load and the extremities near the back of the load shall be red. (4-5-00)

# IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

## 39.03.21 - RULES GOVERNING OVERLEGAL PERMIT FEES

DOCKET NO. 39-0321-1501

### 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 40-312 and 49-201, Idaho Code, and Section 49-1004, 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, no later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 simply removes the option of establishing and using a “fee account” for the monthly charging and payment of permit fees along with other non-substantive edits to the rule. The new cash drawer system now in place at the Idaho Transportation Department (ITD) allows a carrier the option of establishing an escrow account for payment of permit fees. Elimination of the fee account process will allow ITD to streamline business processes and be more efficient and effective. This change is needed so that ITD’s administrative rules are consistent with the processes used under the new cash drawer system.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed 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: There are no materials incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

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 28, 2015.

DATED this 26th Day of August, 2015.

Ramon S. Hobdey-Sanchez  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0321-1501  
(Only Those Sections With Amendments Are Shown.)

200. PAYMENT OF OVERLEGAL PERMIT FEES.

01. **Payment of Fees.** The Idaho Constitution prohibits the state from extending credit to any individual, corporation, municipality or association. Permit fees are collectible at the time of issuance *except that the permittee may guarantee payment of permit fees in advance by posting a bond in a minimum amount as specified in Section 300, Permit Fee Account Procedures of this rule.* (8-25-94)(    )

02. **Refund.** Permit fees are not refundable once they have been processed into the Department's accounting system, unless the permittee contacts the Overlegal Permit Office no more than two (2) working days (during office hours) following the start date of the overlegal permit or the Department issued the overlegal permit in error. (3-19-07)

03. **Permit Costs.** Overlegal (~~oversize and/or overweight~~) permit fees listed below are intended to cover cost of administration and are subject to periodic change depending on costs incurred in processing, issuance and enforcement of overlegal permit rules. (3-19-07)(    )

04. **Current Schedule of Fees.** Periodic changes to the fee schedule will be subject to legislative review and approval procedures in accordance with Chapter 52, Title 67, Idaho Code, Administrative Procedure Act. (3-19-07)

a. Oversize only, single trip, twenty-eight dollars (\$28). (3-19-07)

b. Oversize only, two (2) trips, thirty-three dollars (\$33). (3-19-07)

c. Oversize single trip exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, seventy-one dollars (\$71). (3-21-12)

d. Oversize only, two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, eighty-nine dollars (\$89). (3-21-12)

e. Oversize only, annual, twelve (12) consecutive months: ~~Extra length combinations exceeding the limits imposed in Section 49-1010, Idaho Code, on designated routes; Overlength only;~~ Manufactured homes, modular building and office trailers; ~~Recreation vehicles up to twelve (12) feet wide, legal length/height;~~ Farm tractors exceeding nine (9) feet width on Interstate and implements of husbandry; Cylindrical hay bales, two (2) wide; Emergency removal of disabled vehicles; Multiple width loads of crane booms; Multiple width loads of conveyer units; **multiple width loads of kiln stacked lumber;** Reducible loads, up to and including fourteen (14) feet nine (9) inches high; and exceeding sixty-five (65) feet overall combination length on magenta coded routes; forty-three dollars (\$43). (3-19-07)(    )

f. Excess weight **or Extra Length (reducible)** annual, twelve (12) consecutive months, authority to exceed eighty thousand (80,000) lbs. on reducible loads up to one hundred five thousand five hundred (105,500) pounds, **or exceeding the length limits imposed in Section 49-1010, Idaho Code,** forty-three dollars (\$43). (3-19-07)(    )

g. Extra Length/Excess Weight (reducible) combination, annual, twelve (12) consecutive months, fifty-three dollars (\$53). (3-19-07)

h. Overweight/Oversize or Overweight only (non-reducible) single trip, seventy-one dollars (\$71). (3-21-12)

- i. Overweight/Oversize or Overweight only (non-reducible), two (2) trips, eighty-one dollars (\$81). (3-21-12)
  - j. Overweight/Oversize (non-reducible) single trip, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, one hundred three dollars (\$103). (3-21-12)
  - k. Overweight/Oversize (non-reducible) two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, one hundred sixteen dollars (\$116). (3-21-12)
  - l. Overweight/Oversize (non-reducible) annual permit fee for twelve (12) consecutive months, one hundred twenty-eight dollars (\$128). (3-21-12)
  - ~~m.~~ ~~Overlegal permit manual (plus current sales tax for Idaho residents), five dollars (\$5). (3-19-07)~~
  - ~~m.~~ Fee for reissuance or transfers, fifteen dollars (\$15). (3-19-07)
- 05. Additional Fees.** The department may require reimbursement of actual costs incurred for extraordinary services provided, incidental and necessary to the planning and/or movement of overlegal loads moving under the requirements of a traffic control plan. (3-21-12)

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

**~~300. PERMIT FEE ACCOUNT PROCEDURES.~~**

~~**01. Permit Fee Account.** To establish a basis for the issuance of overlegal permits on other than a cash basis, the permittee may guarantee permit fees by posting a surety bond. The bond shall have a minimum value of one thousand dollars (\$1,000) or be equal to the value of permits required by the permittee during any three (3) consecutive months, whichever is greater. (3-19-07)~~

~~**02. Bond Requirements.** Surety bonds for this purpose shall be furnished by a bonding or insurance company licensed to do business in Idaho. Applications to establish permit fee accounts shall be obtained from and filed with the Department along with the required bond. (3-19-07)~~

**~~301. -- 999. (RESERVED)~~**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.22 - RULES GOVERNING OVERLEGAL PERMITS FOR EXTRA-LENGTH, EXCESS WEIGHT, AND UP TO 129,000 POUND VEHICLE COMBINATIONS

DOCKET NO. 39-0322-1501

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, 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 rule change is necessary, so that the Idaho Transportation Department (ITD) is in compliance with the passage of HB 70, passed during the 2015 Idaho Legislative Session, and that the rules and statutes affecting ITD are consistent. The passage of HB 70 required a change to this rule, so that tire limitation restrictions match those now currently under Idaho Code. It allows more flexibility in the amount of weight carried on steer axles.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015, Idaho Administrative Bulletin, [Vol. 15-8, pages 129-132](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

DATED this 26th Day of August, 2015.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
Phone: (208) 334-8810

**IDAPA 42 - IDAHO WHEAT COMMISSION**  
**42.01.01 - RULES OF THE IDAHO WHEAT COMMISSION**  
**DOCKET NO. 42-0101-1501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-3309, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, pages 133 through 136](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Blaine Jacobson, Executive Director, at (208) 334-2353.

DATED this 3rd Day of September, 2015.

Blaine Jacobson, Executive Director  
Idaho Wheat Commission  
821 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0099  
Phone: (208) 334-2353  
Fax: (208) 334-2505

## **IDAPA 46 - BOARD OF VETERINARY MEDICINE**

### **46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE**

**DOCKET NO. 46-0101-1501**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2105, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, pages 137 through 139](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jodie Ellis, Executive Director, at (208) 332-8588.

DATED this 3rd Day of September, 2015.

Jodie Ellis, Executive Director  
Board of Veterinary Medicine  
2270 Old Penitentiary Rd.  
P. O. Box 7249  
Boise, ID 83707  
Phone: (208) 332-8588  
Fax: (208) 334-2170

## IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD

### 49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

#### DOCKET NO. 49-0101-1501 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2614 (Bureau of Occupational Licenses), and 54-3107, 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 21, 2015.

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

#### **DESCRIPTIVE SUMMARY:**

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

During the 2015 regular legislative session the Legislature passed House Bill (HB) 117. The bill amended Section 67-2614, Idaho Code, the Idaho Bureau of Occupational License's (IBOL) section on renewal or reinstatement of licenses or registrations. HB 117 simplified and standardized the license renewal process for licensing boards served by the Bureau. While boards have the option of maintaining their individual licensing requirements, this Board has decided to amend its rules to align them with the Bureau's statute. Other boards are in the process of amending their statutes to allow them to align their rules, and the statutes and rules of other boards are already in synch with the Bureau's statute. The changes contained in this rule were discussed and decided upon by the Board at a properly noticed open Board meeting.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The Board operates solely on dedicated funds derived primarily from licensing and registration fees.

This rule will increase the reinstatement fee from \$25 to \$35. The number of annual renewal fees collected will be capped at just one (1) rather than one (1) for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. The statute authorizing the reinstatement fee is Section 67-2614, 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:

There will be no fiscal impact to the state general fund since licensing and registration fees collected are dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Board discussed and decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

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 28, 2015.

DATED this 17th Day of September, 2015.



Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W State St.  
P O Box 83720  
Boise, ID 83720-0063  
(208) 334-3233 ph / (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 49-0101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**125. FEES (RULE 125).**

Fees are established in accordance with Section 54-3110, Idaho Code as follows: (4-9-09)

- 01. Application Fee.** Application Fee (Certificate/Temporary Permit) -- Fifty dollars (\$50). (4-9-09)
- 02. Examination Fee.** Examination-Reexamination Fee -- Fifty dollars (\$50). (4-9-09)
- 03. Annual Renewal Fee.** Renewal Fee (Certificate/Temporary Permit) -- Seventy-Five dollars (\$75). (4-9-09)
- 04. Reinstatement Fee.** Reinstatement ~~Fee -- Twenty-Five dollars (\$25)~~ is as provided in Section 67-2614, Idaho Code. ~~(4-9-09)~~ ( )
- 05. Examination Preparation Materials.** Examination Preparation Materials -- Twenty dollars (\$20) (4-9-09)
- 06. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination or reinstatement of a license. (4-9-09)

**IDAPA 50 - COMMISSION OF PARDONS AND PAROLE**  
**50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE**

**DOCKET NO. 50-0101-1501**

**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 20-223, 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 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 update and revise the rules to include changes passed through the legislative session for 2015; to implement violation hearing officers' authority to impose sanctions; mirror statutory language from JRI and correct minor clerical errors. To allow the implementation of firearm restoration guidelines, implement the firearm application to include conditions to be met; to make additions to confidential evaluations of substance abuse; additional explanation of executive director's authority to recall a decision; additional explanation of conditions of parole contract; remove ambiguous terms such as "excessive" in excessive alcohol use; removal of instructional parole due to no benefit of parolee; to include the authority of Violation Hearing Officers to implement 90/180 day sanctions without appearing before the commission; to clarify public records requests regarding hearing officer reports and interviews as confidential; and further clarify and mirror statutory language in rules; to include guidelines for Foreign National Treaty transfer; to remove institutional parole.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and legislation passed in the 2015 session. The commission will be correcting minor clerical errors and mirroring statutory language found when implementing the Justice Reinvestment Initiative and further clarifying the Justice Reinvestment Initiative parole guidelines to be placed into current practice. The Commission anticipates prosecuting attorneys, law enforcement agencies, the judiciary, and the Idaho Department of Corrections will support the proposed rules. It is unlikely that defense attorneys, offenders and their families will support the rule changes, as they will be perceived as disadvantageous to these groups' interest. Consequently, negotiated rulemaking is not a viable option and will unnecessarily expend commission resources.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mary Schoeler, Paralegal (208) 334-2520.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Sandy Jones, Executive Director  
Idaho Commission of Pardons and Parole  
3506 Elder St.  
Boise, Idaho 83705  
(208) 332-2520

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 50-0101-1501**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- 01. Abscond.** An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (4-11-15)
- 02. Case Worker/Manager.** For purposes of reference, the case worker/manager is an Idaho Department of Correction employee who is involved with assisting offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (4-11-15)
- 03. Commission.** The Idaho Commission of Pardons and Parole. (4-11-15)
- 04. Commission Warrant.** Warrant of arrest for alleged parole violation issued by the executive director or a commissioner. This warrant is a non-bondable warrant. (3-23-98)
- 05. Commutation.** Clemency powers granted to the commission, or the governor, or both, which allow for a sentence to be modified. (4-11-15)
- 06. Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)
- 07. Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)
- 08. Confidential.** Privileged from disclosure. (3-23-98)
- 09. Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)
- 10. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 11. Detainer.** A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. (4-11-15)
- 12. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 13. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 14. Early Parole Discharge.** Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. (4-11-15)

15. **Escape.** Flight from confinement. (3-23-98)
16. **Evidence Based Program.** A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. (4-11-15)
17. **Executive Session.** Any meeting or part of a meeting of the commission which is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
18. **Fixed Term.** Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)
19. **Full Term Release Date.** The date an offender completes the term of sentence without good time credits. (4-11-15)
20. **Good Time Release Date.** The date an offender completes the term of sentence, minus statutory good time credits when applicable. Good time credit applies to offenses committed prior to July 1, 1986, and for which an offender is confined to a correctional institution for a definite term other than life. (4-11-15)
21. **Hearing.** The opportunity to be interviewed by the commission, a commissioner, or other designated commission staff. (4-11-15)
22. **Hearing Officer.** An impartial person employed by the commission and selected by the executive director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)
23. **Hearing Session.** A series of hearings conducted by the commission. (3-23-98)
24. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
25. **Institutional Parole.** Parole granted on one (1) or more consecutive sentences where the offender/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes regular parole. (4-11-15)
26. **Jacket, File, or Case Review.** Review of central file, commission file, and/or additional information submitted, without testimony or interview of offender or parolee. (4-11-15)
27. **NCIC.** National Crime Information Center. (3-23-98)
28. **Non Restricted Sentence.** Sentence not restricted by statute. (3-23-98)
29. **Non Technical Violation.** Violation of parole by absconding or a new felony or violent misdemeanor ~~or infraction~~. (4-11-15) ( )
30. **Offender.** A person under the legal care, custody, supervision, or authority of the board or correction, including a person within or without Idaho pursuant to agreement with another state or contractor. (4-11-15)
31. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence which must be held reasonably near the site of the alleged violation(s). (4-11-15)
32. **Open Parole Date.** Tentative parole granted without setting an actual tentative release date and subject to release by commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. A tentative parole date will become an open parole date if the tentative parole date passes without the offender being released to an acceptable plan on the specific date. (4-11-15)

33. **Pardon.** Clemency powers granted to the commission or the governor that allows release from consequences of conviction of a crime and restores a persons' civil rights. (4-11-15)
34. **Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. (4-11-15)
35. **Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)
36. **Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)
37. **Parole Violation Hearing.** A fact-finding hearing conducted by a hearing officer to determine a subject's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the executive director or the hearing officer. (4-11-15)
38. **Parolee.** Offender being supervised on parole. (4-11-15)
39. **Permanently Incapacitated.** As defined in Section 20-223, Idaho Code, permanently incapacitated means a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. (4-11-15)
40. **Rescission.** Cancellation of a previous decision. (4-11-15)
41. **Reprieve.** Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)
42. **Restricted Sentence.** Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. (4-11-15)
43. **Return of Service.** The document that establishes what legal documents were served on whom, by whom, and when. (4-11-15)
44. **Revocation/Violation File.** File containing the documents pertinent to a particular violation/revocation proceeding. (4-11-15)
45. **Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)
46. **Session.** See "Hearing Session." (4-11-15)
47. **Statutory Release Date.** Maximum full-term expiration date, minus any good time credits accumulated during incarceration. The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole. (4-11-15)
48. **Substantive Conditions of Parole.** Conditions of parole which relate to the rehabilitation of a parolee including, but not limited to, performance of community service, use of alcohol, use of a motor vehicle, limitations on financial matters, use of drugs, associations with other felons, employment requirements, residence requirements, traveling outside of their district, etc. (4-11-15)
49. **Technical Violation.** Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction ~~or infraction~~. (4-11-15) ( )

**50. Terminally Ill.** As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (3-23-98)

**51. Victim.** As defined by Section 19-5306, Idaho Code, "Any individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense." Including as defined by Section 19-5304, Idaho Code, "will mean a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and will also include the immediate family of a minor and the immediate family of the actual victim in homicide cases." (~~4-11-15~~)(    )

**52. Witness.** Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. HEARING SESSIONS.**

**01. Number of Hearings Scheduled.** The executive director or designee will schedule hearing sessions according to the number of hearings ~~scheduled~~ required for the specific month. (~~4-11-15~~)(    )

**02. Designation of Presiding Officer.** The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session, or a business meeting. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.**

**01. Commutation, Pardon, Restoration of Firearms, and Remission.** The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, restoration of firearms, and remission of fines. (~~4-11-15~~)(    )

**02. Restoration of Firearms.** The commission is granted the authority by Section 18-310, Idaho Code, to restore the civil right to ship, transport, possess, or receive a firearm. (    )

**023. Decision to Release to Parole.** The commission has the power to decide whether or not any offender eligible for parole may be released to parole. (4-11-15)

**034. Advisory Commission to Board of Correction.** The commission may act as the advisory commission to the board of correction. The commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201, Idaho Code and other applicable provisions of Idaho law. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. COMMISSION AND STAFF.**

**01. Commission Members.** (3-23-98)

**a.** The commission is composed of five (5) members appointed by the governor for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed.

- (4-11-15)
- i. No more than three (3) members will be from one (1) political party. (4-11-15)
  - ii. Appointments are subject to the advice and consent of the senate. (3-23-98)
- b.** The commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code. (4-11-15)
- 02. Commission Staff.** (3-23-98)
- a.** The executive director is the official representative for the commission and is responsible for the managing and administration of commission business and will have other duties and responsibilities as assigned by the governor. (4-11-15)
  - i. The commission has delegated to the executive director the authority to approve recommended conditions of parole following the hearing process, issue commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, restoration of firearms and remissions of fines. ~~(3-23-98)~~( )
  - ii. The executive director shall assume all authority and duties as may be delegated by the commission and the governor. (3-30-01)
  - b.** The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. HEARING PROCESS.**

- 01. Information for Scheduled Commission Hearings.** (3-30-01)
- a.** A schedule of commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the commission office. (4-11-15)
  - b.** The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings and will be published on the commission website. (4-11-15)
- 02. Location of Hearings.** The executive director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the commission's control, it may be necessary to change the location and date of a hearing or hearing session. (4-11-15)
- a.** It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. (4-11-15)
- 03. Interview Method.** For parole hearing, commutation hearings, ~~and~~ pardon hearings, remission of fines hearing, and restoration of firearms hearing, an interview may be conducted by face-to face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the executive director. If an interview is not required, the offender may simply appear before the commission for a hearing. ~~(4-11-15)~~( )
- i. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the commission. The in-depth investigational report is exempt from public

disclosure pursuant to Section 20-223, Idaho Code.

~~(4-11-15)~~( )

ii. The commission will determine if they will conduct another hearing or make a decision based upon the report. (3-30-01)

**04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other.** ~~(4-11-15)~~( )

a. A psychological report, or SORA, or both, will be prepared for the commission for all offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-223, Idaho Code. (4-11-15)

b. The commission, the executive director, or a hearing officer can order any psychological report, evaluation, or assessment for an offender serving a commitment for any crime. (4-11-15)

c. All psychological, ~~or~~ SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. ~~(4-11-15)~~( )

**05. Interview/Hearing.** The offender who is the subject of an interview/hearing may be required to be present at a scheduled interview/hearing. (4-11-15)

a. Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the Inmate Refusal to Participate in Parole Interview/Hearing Process form and state the reason for not participating to the commission. A decision may be made by the commission based upon available information. ~~(4-11-15)~~( )

b. Parole Revocation/Violation. The parolee is required to be present at the revocation/violation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

c. Commutation. The offender is required to be present at the scheduled commutation hearing, unless the commission determines otherwise. (4-11-15)

d. Pardon and Remission of Fine. The offender ~~of the hearing~~ is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. ~~(4-11-15)~~( )

e. Medical Parole. The offender is encouraged to be present at the hearing; the commission may make such an appearance mandatory or may make a final decision based on information available. (4-11-15)

f. Restoration of Firearms. The offender is encouraged to be present at the hearing. The commission may make such appearance mandatory or may make a final decision based upon the information that is available. ( )

**06. Witnesses and Documents.** The commission allows for the offender/parolee participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or offender/parolee of the hearing. (4-11-15)

a. Persons who want to participate in a hearing must notify the commission staff five (5) days in advance of the scheduled hearing. Children under the age of sixteen (16) will not be allowed to attend the hearings without prior approval of the executive director. (4-11-15)

b. All written documents and letters to be considered must be submitted seven (7) days in advance of the scheduled hearing to ensure they will be considered; other documents may be allowed by unanimous consent from the commissioners present. (4-11-15)

c. An attorney or others as determined by the executive director or commission may be seated with



the offender/parolee at the hearing. (3-23-98)

**d.** Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the commission. Victims will be allowed to testify. Victim testimony is normally taken following comments of offender's attorney and family or friends of the offender/parolee. All persons who testify will direct their comments to the commission. Persons will keep their comments to the relevance of parole. (4-11-15)

**e.** Contacts from the public to an individual commissioner outside of the hearing process, are to be forwarded to the executive director in order that all commissioners will receive the information. (3-23-98)

**07. Conflict of Interest.** A commissioner who has personal knowledge of a case will make such knowledge available to the sitting commissioners prior to the scheduled hearing, and the sitting members of the commission will decide whether that commissioner should be disqualified from participating in deliberation and voting. (4-11-15)

**a.** A commissioner may remove themselves from the hearing. The commissioner may step down from the panel and leave the room during the hearing and deliberations. ( )

**08. Decisions.** (3-23-98)

**a.** Any decision of the commission requires a majority vote of three (3) or more commissioners. (4-11-15)

**b.** Decisions will be given orally following the hearing and deliberation of a case by the commission. Written notice of the decision may be submitted at a later date. The decision may be sent to the offender in writing with specific information/conditions. (4-11-15)

**c.** Following the decision being given orally, further testimony is allowed only at the discretion of the commission, or the executive director, or hearing officer. (4-11-15)

**d.** In the case of a review by the commission without a commission hearing, the decision will be published within a reasonable time. Individual written decisions may not be submitted, but will be available on the commission's website in a published list of a session's action taken. (4-11-15)

**~~e.~~** Any decision made by the commission may be reconsidered at any time. The commission or executive director may bring forward any case determined to need reconsideration before the next hearing session as described in Section 105. ~~(3-23-98)~~( )

**09. Rules of Conduct at Hearings.** (3-23-98)

**a.** All persons attending any hearing will conduct themselves in a manner which does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (3-23-98)

**b.** All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held, and pertinent statutes; number of witnesses allowed in the hearing room will be in line with life and safety codes; and all persons may be screened through metal detectors or similar technology and will be subject to search. (4-11-15)

**c.** Audio recording or video recording of any hearing or any hearing session may be allowed at the discretion of the commission or the executive director; such recordings will proceed only at the direction of the commission or the executive director as to the placement, manner and type of equipment. (4-11-15)

**d.** The media is invited to attend any hearing or session of the commission. (3-23-98)

**i.** Interviews with offenders or witnesses will not be allowed during the hearing process and the

commission and staff will not be responsible for arranging any interviews. (4-11-15)

ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (3-23-98)

iii. Arrangements for interviewing the commission or staff should be made in advance. (4-11-15)

**10. Official Record of Hearing/Review.** The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained in the commission office. (3-30-01)

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

**250. PAROLE.**

**01. Parole Determination.** The commission will use clear, evidence-based parole guidelines in making parole determinations, while still maintaining discretion of individual cases. (4-11-15)

a. The commission may release an offender to parole on or after the date of parole eligibility, or not at all. During a minimum term of confinement, an offender will not be eligible for parole, discharge, credit, or reduction of sentence for good conduct, except for meritorious conduct reduction service, or as provided in Section 20-101D, Idaho Code. (4-11-15)

b. Parole consideration is determined by the individual merits of each case. (4-11-15)

c. The commission uses evidence based parole consideration factors that are embedded in the clear parole guidelines; these guidelines will include the use of a validated risk and needs assessment. The commission still retains the discretion to deny parole of individual cases based on countervailing, discrete, individual case factors. Factors considered include, but are not limited to: (4-11-15)

i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)

ii. Prior criminal history of the offender. (4-11-15)

iii. Failure or success of past probation and parole. (3-23-98)

iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)

v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)

vi. Information or reports regarding physical or psychological condition. (3-23-98)

vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)

viii. Outcome of a validated risk and needs assessment. (4-11-15)

**02. Primary Review.** For offenders eligible for parole ~~4a~~ review for the purpose of setting the initial parole hearing will be conducted on all offenders, ~~except those serving a court retained jurisdiction and those offenders sentenced to death.~~ ~~†~~The commission is not responsible for the setting of a hearing until an official sentence calculation document has been received. (4-11-15)( )

a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. The month and year of the initial parole hearing will be established based upon the sentence calculation. (4-11-15)

i. In cases of offender serving a court-retained jurisdiction, the primary review will not be scheduled on that conviction until the court-retained jurisdiction has been adjudicated. ( )

ii. In cases where the offender has a death sentence a primary hearing will not be scheduled. ( )

iii. In cases of specified minimum terms, the initial hearing will be set approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation. (4-11-15)

iv. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled six (6) months prior to the parole eligibility date, during the month of parole eligibility, or as noted in Subsection 250.02.b.vi. (4-11-15)

~~iv.~~ v. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (3-23-98)

~~v.~~ vi. Concurrent Sentences. The initial hearing will not be scheduled until all fixed terms have been served. (4-11-15)

vii. If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any additional commitments and the time to conduct an interview and report. (4-11-15)

viii. If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled six (6) months from the month the commission was notified of the commitment. (4-11-15)

~~ix.~~ x. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office. (4-11-15)

**03. General Conditions of Parole.** The commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and acknowledged by the parolee. Parolee will sign the agreement indicating the parolee's understanding of the conditions of parole. Conditions of parole include: (4-11-15)( )

**a.** The parolee is required to enter into and comply with an agreement of supervision with the board of correction. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the board. (4-11-15)( )

**b.** Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (3-23-98)

**c.** The parolee will: (4-11-15)

**i.** Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (3-23-98)

**ii.** Support dependents to the best of parolee's ability. (4-11-15)

**iii.** Live within lawful income without incurring unnecessary indebtedness. (3-23-98)

**d.** The parolee must submit a complete and truthful report to the assigned parole officer. (4-11-15)

**e.** If at any time it becomes necessary to communicate with the assigned parole officer or other

- official designee who is unavailable, communication will be directed to the district section supervisor. (4-11-15)
- f.** The parolee will: (3-23-98)
    - i. Obey all municipal, county, state, and federal laws. (3-23-98)
    - ii. Conduct himself or herself in a manner that is not, nor intended to be, harmful to himself or herself or others. (4-11-15)
    - iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)
    - iv. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (4-11-15)
    - v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)
  - g.** The parolee will: (4-11-15)
    - i. Abstain from ~~excessive~~ use of alcoholic beverages. (~~3-23-98~~)( )
    - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
    - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee's expense. (4-11-15)
    - iv. Participate in treatment programs as specified by the commission or ordered by the parole officer. (3-23-98)
  - h.** The parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by any agent of field services or the commission, and the parolee waives the constitutional right to be free from such searches. (4-11-15)
  - i.** The parolee is fully advised that written permission is required to: (3-23-98)
    - i. Willfully change employment; (3-23-98)
    - ii. Willfully change residence; and (3-23-98)
    - iii. Leave the assigned district. (3-23-98)
  - j.** The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)
- 04. Special Conditions of Parole.** (3-23-98)
- a.** In addition to general conditions of parole, the commission may add special conditions appropriate to the individual case. (3-23-98)
  - b.** The commission delegates the authority to the executive director to add **additional** special conditions, before an offender has been released to parole or while on parole, ~~once~~ **after** the offender has signed a statement ~~agreeing to~~ **acknowledging** the special conditions. The commission will establish the special conditions of parole using the offender's most current risk and needs assessment to guide the imposition of necessary conditions. (~~4-11-15~~)( )

~~05.~~ ***Institutional Parole.*** (3-23-98)

~~a.~~ *An offender committed to the department of correction, who has a consecutive sentence and one (1) or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated.* (4-11-15)

~~b.~~ *Institutional parole may be considered at the discretion of the commission.* (3-23-98)

~~c.~~ *While serving institutional parole, the parolee/offender is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed.* (4-11-15)

~~d.~~ *If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. In the case of a report of violation, established rules of the violation/revocation process will apply.* (4-11-15)

~~e.~~ *Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and if any time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole.* (4-11-15)

**065.** **Medical Parole.** The commission may parole an offender for medical reasons during the determinate portion of a sentence. (4-11-15)

**a.** Consideration will occur when the offender is permanently incapacitated or terminally ill and when the commission reasonably believes the offender no longer poses a threat to the safety of society. (4-11-15)

**b.** An offender or designated department of correction personnel may petition the commission to consider medical parole. (4-11-15)

**c.** The commission may conduct an actual hearing or review of the case, or may designate commission staff to provide additional information and will require specific medical information in reference to the condition, the treatment or care plan if released, and any other information deemed necessary. (4-11-15)

**d.** An annual report will be submitted to the house and senate judiciary committees of the legislature and will contain aggregate health information and the names, medical condition, current status, and crime of all persons granted medical parole. (4-11-15)

~~076.~~ ***Discharge from Parole.*** (3-23-98)

**a.** When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term release date. (4-11-15)

**b.** The commission may issue a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. When notification of a discharge is received, the victims will be notified of the request and allowed to respond. The commission may, without a hearing, consider the request. (4-11-15)

**i.** The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-233, Idaho Code. (4-11-15)

**ii.** The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

**iii.** A parole officer or other designated agent can petition the commission to consider an early discharge upon reaching the timelines established in Subsection 250.09.b.i. (4-11-15)

iv. Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (3-23-98)

c. If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. The executive director may issue a commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the commission. Such adverse information will be submitted to the commission at the next available hearing session for reconsideration. If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. (4-11-15)

d. If the parolee is incapacitated, the commission may consider or grant, or both, an early discharge after one (1) year for any crime. (4-11-15)

**087. Detainers.** (3-23-98)

a. The commission may grant a parole to any county, state, or federal detainer which has been lodged against an offender. (4-11-15)

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to commission staff or the supervising authority. (4-11-15)

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. The parolee must abide by all regular rules of parole and any special conditions ordered by the commission. (4-11-15)

b. The commission may grant a parole to a federal immigration detainer in order that the offender may be deported to the country of citizenship. (4-11-15)

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (4-11-15)

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered a violation of the parole contract. (4-11-15)

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. (4-11-15)

**098. Special Progress Reports.** A special progress report may be submitted by the supervising authority to request modification of a special condition of parole or advise of problems that have developed. (4-11-15)

**109. Interstate Compact.** The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision outlined in Section 20-301, Idaho Code. (4-11-15)

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. (4-11-15)

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the commission's bond. (4-11-15)

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the commission is five hundred dollars (\$500.) (4-11-15)

i. A bond may be posted by the offender, the offender's family, or other interested party. The bond must be posted at the commission office. A cashier check or money order shall be the only acceptable means of posting bond. (4-11-15)

ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. (4-11-15)

iii. Upon successful completion of parole, the amount of the bond may be returned to payee, less an amount for administrative costs as determined by the commission rule. (4-11-15)

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. (4-11-15)

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

**300. VICTIMS.**

**01. Program Process for Victims.** The commission has established a program process for victims of criminal offenses for which an offender is currently incarcerated and is not serving a court-ordered jurisdiction. Victims of non-adjudicated cases may be given courtesy treatment. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Witness Coordinator will verify the victims with the prosecutor when not included with the instant offense. ~~(4-11-15)~~( )

a. The commission will establish a record for victims of offenders who may be considered for parole, early discharge, or commutation, or pardon. To establish a victim record, the commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; the commission will use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. If the commission has not received official notice of the victim, the commission or staff may be advised of the victim's identity directly by the victim, victim's family or other individual. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. ~~(4-11-15)~~( )

b. The commission will notify legal victims of offenders of the instant offense of their right to be notified of parole, early discharge, and commutation hearings and the decision of these hearings; their right to submit written statements or information; and, their right to provide testimony. (4-11-15)

c. Notice of rights, hearings, decisions, early discharges, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address. (4-11-15)

d. A victim may request not be notified or contacted. (4-11-15)

e. Victims will receive notices of releases to parole and offenders who have absconded, but the commission is not responsible to advise of any other releases such as offender transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission. (4-11-15)

**02. Confidentiality of Victim's Address and Written Testimony.** The victim's record maintained by the commission to include the address and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. The commission may release to the Idaho Department of Corrections the victim's address only. ~~(3-23-98)~~( )

**03. Testimony of Victim.** (3-23-98)

a. The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony. (4-11-15)

b. The executive director and the commission may consent to allow for the victim's testimony away from the actual hearing process. Testimony may be given to the executive director or commissioner(s) at the commission office or other locations, or the victim may be allowed to testify before the commission during a hearing session, but at a time separate from the actual hearing with the offender. Such testimony will be made a part of the record. (4-11-15)

c. If the commission was not officially notified of the victim and does become aware of the victim's desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the commission. (3-23-98)

i. The commission may review any written testimony by the victim and may elect to take no further action, or may schedule another hearing, or may void the release date and reconsider the parole grant. (4-11-15)

ii. The executive director may schedule a hearing without the vote of the commission to allow for the victim's testimony. (3-23-98)

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

**350. PAROLE PLAN AND RELEASE PROCEDURES.**

**01. Parole Plan.** ~~The parole plan needs to provide a positive re-entry of the offender into the community~~ **An IDOC approved parole plan should provide a positive re-entry into the community for the offender.** (4-11-15)( )

~~a. The case manager will discuss the parole plan with the offender.~~ (4-11-15)

~~b.~~ **a.** The proposed parole plan ~~must~~ **should** be available at the parole hearing interview and parole consideration hearing and ~~must~~ **should** include a stable residence, employment, or a maintenance and care plan, and treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment that is used by the department of correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. (4-11-15)( )

~~b.~~ **b.** Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. (4-11-15)

~~d.~~ ~~In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the executive director can approve or deny a subsequent plan.~~ (3-30-01)

~~c.~~ **c.** All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. An Idaho plan can take a minimum of six (6) weeks and an out of state plan up to three (3) months to submit, investigate, and plan for release. (4-11-15)

**02. Interstate Compact Parole Plan.** The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision Act, as outlined in Subsection 250.12. (4-11-15)

**03. Tentative Parole Dates.** All parole release dates granted by the commission are tentative. (3-23-98)

a. The parole plan must be approved and received at the commission office before the actual release date can be set to allow time for processing the release. (4-11-15)



b. If the offender should have disciplinary problems following the parole hearing, or the commission receives information that was not available at the time of the hearing, the commission may reconsider the decision, and the tentative parole date may be voided. (4-11-15)

04. **Contract.** Prior to any release to parole, the offender must sign a contract with the commission and must ~~agree to~~ **acknowledge** all general and special conditions of parole. (4-11-15)(    )

~~05. **Reporting and Release Instructions.** (3-23-98)~~

a. The parolee will be ~~given~~ **issued** reporting instructions that will include the address and the telephone number of the supervising office. (4-11-15)(    )

~~b. *It is the responsibility of the parolee to arrange for transportation upon release and the parolee must go directly to the destination approved by the commission or executive director. The parolee must request permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date.* (4-11-15)~~

351. -- 399. (RESERVED)

**400. PAROLE REVOCATION PROCESS.**

01. **Initiated.** The parole revocation process is initiated by a written or verbal report describing the conditions of parole which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

02. **Warrants.** A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising agency may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission. (4-11-15)

b. A commission warrant may be signed by the executive director or by a member or members of the commission. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (4-11-15)

i. If the location of the offender is unknown, the warrant will be entered into NCIC, I-HOT, or other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. (4-11-15)

ii. If an offender is being held in custody on new charges **in a state other than Idaho**, the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. (4-11-15)(    )

iii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

03. **Due Process.** Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process, the right to appear at a hearing and address the allegations, and to confront and cross-examine person(s) who have given adverse information on which the charges have been based. (4-11-15)

04. **Intermediate Sanctions on Technical Violations and Absconding Supervision.** If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process.

(4-11-15)

a. The commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately ~~upon entering the decision on the initial violation.~~ upon either: (4-11-15)( )

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing; or ( )

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ( )

b. For a second parole violation, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately ~~upon entering the decision.~~ upon either: (4-11-15)( )

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or ( )

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. ( )

c. For a third or subsequent parole violation, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

d. If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. (4-11-15)( )

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

f. During any period of confinement on an intermediate sanction, the commission or hearing officer may reduce the period of confinement by up to thirty (30) days if the commission or hearing officer finds that there has been no instance of misconduct during the period of time the parolee is confined. (4-11-15)( )

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision ~~unless prior to completing the sanction, the parolee is convicted of a violent misdemeanor or felony crime. If convicted of a violent misdemeanor or felony crime, the parolee will then be moved to non-technical status and will proceed through the formal violation process.~~ (4-11-15)( )

h. The commission or hearing officer will ~~establish criteria~~ use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine ~~the necessary~~ length of confinement ~~up to the allowed periods of time.~~ The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. (4-11-15)

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. ~~The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration.~~ (4-11-15)( )

**05. Witnesses.** The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. The alleged

parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (4-11-15)

**b.** If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

**c.** It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. (4-11-15)

**06. Attorney.** The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

**a.** An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

**b.** It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the commission office of any hearings and if requested in writing, the commission office will provide the attorney with any and all copies of reports and or documents; in addition, the subject's attorney may also obtain copies by making a request to the commission office that are public records according to the public records act. (4-11-15)(\_\_\_\_)

**07. Hearings.** The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. The hearing officer or executive director will determine the location of all hearings. (4-11-15)

**a.** The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

**b.** The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

**i.** Non-technical Violations. If the alleged parole violator is charged with a conviction for a violent misdemeanor, or new felony criminal conviction, or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (4-11-15)

**ii.** Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a violent misdemeanor, or new felony criminal conviction, or absconding from supervision, the subject is entitled to a preliminary hearing conducted by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a hearing officer. The hearing is to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (4-11-15)

**c.** Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (4-11-15)

**d.** On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than

Idaho. (4-11-15)

e. Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (4-11-15)

f. Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

i. The commission has full discretion in granting reinstatement on parole or revocation of parole. A hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections [400.06.h.i](#), [400.07.g.i](#), and [400.06.h.ii](#), [400.07.g.ii](#).) The Commission will consider whether the parole will be reinstated or revoked and will state the reasoning if parole is revoked. (4-11-15)(      )

g. Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

i. If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

ii. If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

**08. Miscellaneous Revocation Information.** (3-23-98)

a. The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

c. The alleged parole violator can request a continuance of any hearing. The hearing officer, executive director, or the commission will determine if the continuance will be granted. If the alleged parole violator requests a continuance of any hearing, said request will constitute a waiver of any and all time limits involved. (4-11-15)

**09. Inability to Assist in Defense.** (3-23-98)

a. Specific time limits pertinent to the case may be waived. (3-23-98)

b. At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. (4-11-15)

c. A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. (4-11-15)

d. A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

**10. Findings/Decisions.** (3-23-98)

a. At any time following arrest on a commission warrant, the executive director or the commission

will decide if the parolee will be released to continue parole. (5-3-03)

**b.** If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

**c.** After a violation hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

**i.** The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

**ii.** The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)

**11. Forfeiture of Time on Parole.** If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an agent's warrant and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. (4-11-15)

**a.** The time the offender is incarcerated on an agent's warrant and a commission warrant will be credited toward the sentence. (4-11-15)

**b.** If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (3-23-98)

**c.** The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (3-23-98)

**d.** The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SELF-INITIATED PROGRESS REPORT.**

An offender may appeal the last parole decision of the commission. (4-11-15)

**01. Petition.** An offender making a request for reconsideration of parole denial must initiate the process by submitting an application. (4-11-15)

**a.** The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)

**i.** The petition must be the original petition. (4-11-15)

**ii.** The Case Manager is to include with the petition, once signed by the offender and the Case Manger, the disciplinary history, classes history, and the assessments. (4-11-15)

**b.** The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)

**c.** The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)

**d.** A petition may be filed by any offender who is currently incarcerated. (4-11-15)

- e.** Following the initial submission, the commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (4-11-15)
- i.** A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: (4-11-15)
- (a)** Regular parole hearings; (4-11-15)
  - (b)** Parole revocation hearings; (4-11-15)
  - (c)** Hearing officer reviews; and (4-11-15)
  - (d)** SIPR hearings. (4-11-15)
- ii.** A petition may be submitted once every twelve (12) months if a hearing is not granted. (4-11-15)
- f.** Petitions may be considered at any time by the commission. (3-30-01)
- g.** Petitions must be received no later than the first day of the month prior to the next ~~month's~~ hearing session. ~~(4-11-15)~~( )
- h.** Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)
- i.** Any petition may be continued for additional information or for further consideration. (3-23-98)
- j.** The petitioner will be sent written notice of the decision. (3-23-98)
- k.** The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)
- l.** The petition must be readable or it may be returned. (5-3-03)
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)
- a.** If a ~~special~~ hearing is scheduled, the commission will determine the date of the hearing. ~~(3-23-98)~~( )
  - b.** If a ~~special~~ hearing is scheduled, the previous decision of the commission ~~may be~~ is considered null and void. ~~(3-23-98)~~( )
- 03. Amended Decision.** The commission may elect to amend any decision without conducting another hearing. (3-23-98)
- 501. -- 549. (RESERVED)**
- 550. PARDON.**  
A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (3-23-98)
- 01. General.** An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)
- a.** Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (3-23-98)
  - b.** Applications for pardon for violent or sex crimes or other crimes against a person may be submitted five (5) years after completion of the sentence. (3-23-98)

**02. Application.** A pardon application can be obtained from the commission office or on the commission website. (4-11-15)

- a.** The application must be completed and returned to the commission office. (3-23-98)
- i.** The completed application must include the reasons why the pardon is requested. (3-23-98)
  - ii.** The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)
  - iii.** The applicant must include copies of all court judgment and conviction documents for each crime a pardon is requested for. (4-11-15)
  - iv.** A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the commission. (4-11-15)

**b.** Following receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area in which the applicant resides, and the report shall include, but shall not be limited to the following: ~~(3-23-98)~~ ( )

- i.** A criminal record check of the applicant. (3-23-98)
  - ii.** The applicant's employment history since completion of sentence. (3-23-98)
  - iii.** The applicant's status as a good citizen. (3-23-98)
  - iv.** An interview with the applicant should be conducted and a summary of the interview provided. (3-23-98)

**v.** Evidence of all restitution and fines as ordered by the sentencing court are paid. ( )

**vi.** Any additional information as deemed necessary or appropriate. (3-23-98)

**c.** If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed. (4-11-15)

**03. Report.** Pursuant to the receipt of the completed report, a review may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed. (4-11-15)

**a.** The commission will conduct such review in executive session. (3-23-98)

**b.** The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-23-98)

**c.** Any application may be continued for further consideration or additional information. (3-23-98)

**04. Hearing.** The scheduling of a hearing is at the complete discretion of the commission. If a pardon hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)

**a.** Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

**b.** A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

- c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)
- i. The applicant's appearance at the hearing is not mandatory but is encouraged. (3-23-98)
- ii. The commission may continue the hearing to a later date in order for the applicant to make a personal appearance and such continuance will not require additional publication of the hearing. (3-23-98)
- d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)
- e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)
- i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (3-23-98)
- ii. All written material considered in the decision process, with the exception of the presentence investigation report, ~~and~~ victim information, mental health records, criminal history information, and medical records, will be submitted to the office of the secretary of state and will be a matter of public record. ~~(3-23-98)~~(    )
- f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

**05. Authority to Grant.** The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (3-23-98)

- a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (3-23-98)
- b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)
- c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

**d.** The granting of a pardon does not expunge the crime from the Idaho criminal history. (    )

**551. RESTORATION OF FIREARMS RIGHTS UNDER SECTION 18-310, IDAHO CODE.**

**01. General.** An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime, nor is the Idaho criminal record expunged. ~~(4-11-15)~~(    )

**02. Application.** An application may not be made until five (5) years after the date of final discharge. (4-11-15)

- a. An application may be obtained from the commission office or on the commission website. (4-11-15)
- b. The application must be the original and returned to the commission office. (4-11-15)
- i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)



- ii. The application must be in writing and legible. (4-11-15)
- iii. All court conviction and dismissal documents must accompany the application. (4-11-15)
- iv. An application may be submitted once every twelve (12) months, or at the commission's discretion. (4-11-15)
- v. The petition must state the reason for the request. (4-11-15)
- vi. Review or deliberation on the petition will be conducted in executive session. (4-11-15)

c. Following receipt of the completed application, a request for an investigation will be made of correctional field personnel or hearing officer in the area where the applicant resides. The report shall include, but shall not be limited to, the following: ( )

- i. A criminal record check of the applicant. ( )
- ii. The applicant's employment history since completion of sentence. ( )
- iii. The applicant's status as a good citizen. ( )
- iv. An interview with the applicant should be conducted and a summary of the interview provided. ( )
- v. Evidence of all restitution and fines ordered by the sentencing court have been paid. ( )

**03. Hearing.** The scheduling of a hearing is at the complete discretion of the commission or the executive director. (4-11-15)

- a. If a hearing is scheduled, the commission will determine the date of the hearing. (4-11-15)
- b. Any petition may be continued for additional information. (4-11-15)

**04. Authority to Grant.** The commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. (4-11-15)

**05. Exceptions.** See the exceptions listed in Section 18-310, Idaho Code. (4-11-15)

a. Persons convicted of the felonies enumerated in Sections 18-310(2)(s) and (t), Idaho Code, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess, or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by the use of a firearm. (4-11-15)

b. The commission shall not restore the right to ship, transport, possess, or receive a firearm to any person convicted of murder in the first degree (Section 18-4003, Idaho Code), murder in the second degree (Section 18-4003, Idaho Code), or any felony enumerated in Sections 18-310(2)(a) through (jj), Idaho Code, upon which the sentence was enhanced for the use of a firearm during the commission of said felony. (4-11-15)

**~~552. STAFF PROGRESS REPORT.~~**

~~A staff member making a request for parole must initiate the process by submitting an application. (4-11-15)~~

~~**01. Acceptable Form.** The only acceptable form is the one provided by the commission, and it must be signed by the offender and staff member. (4-11-15)~~

- ~~a. The petition must be the original petition. (4-11-15)~~
- ~~b. The petition must be completed correctly per instructions on the form or it may be returned.~~

- ~~(4-11-15)~~
- ~~e. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (4-11-15)~~
- ~~d. The application must include progress reports, C notes, and other documents to support the request. (4-11-15)~~
- ~~02. **Time of Consideration.** Petitions may be considered at any time by the commission. (4-11-15)~~
- ~~a. Petitions must be received no later than the first day of the month. (4-11-15)~~
- ~~b. Review or deliberation on the petition by the commission will be conducted in executive session. (4-11-15)~~
- ~~e. The staff member and offender will be sent written notice of the decision. (4-11-15)~~
- ~~d. The petition is limited to no more than four (4) pages. The petition may be returned before submission to the commission if the document exceeds this number. (4-11-15)~~
- ~~e. The petition must be legible or it may be returned. (4-11-15)~~
- ~~03. **Case Manager Guidelines.** (4-11-15)~~
- ~~a. The staff member will identify an offender using the following criteria: (4-11-15)~~
- ~~i. The offender must not have any assaults on staff members in the last twenty-four (24) months. (4-11-15)~~
- ~~ii. The offender must not have been charged with any new crimes during his current incarceration. (4-11-15)~~
- ~~iii. The offender must have been medication compliant for the last six (6) months. (4-11-15)~~
- ~~iv. The offender must not have introduced any contraband in the last eighteen (18) months. (4-11-15)~~
- ~~v. The offender must have a written verified parole plan. (4-11-15)~~
- ~~b. Timeline for consideration of petition for parole. The following timeline is for determining the eligibility of the offender: (4-11-15)~~
- ~~i. The staff member identifies the offender twenty-four (24) to thirty-one (31) months prior to his full term release date. (4-11-15)~~
- ~~ii. The parole hearing officer is notified of the offender to be interviewed when offender is twenty (20) months from full term date. (4-11-15)~~
- ~~iii. When the offender has eighteen (18) months remaining on his sentence, the offender will be interviewed by a parole hearing officer. (4-11-15)~~
- ~~iv. The offender will be scheduled for a hearing before the commission when there are fifteen (15) months until his full term release date. (4-11-15)~~
- ~~v. The commission will grant a release date twelve (12) months prior to offender's full term date. (4-11-15)~~
- ~~04. **Exceptions to the Staff Progress Report.** An offender will not be seen by the commission if the~~

- ~~offender has the following on his record:~~ (4-11-15)
- ~~a. Class A DOR in the last six (6) months;~~ (4-11-15)
  - ~~b. Sexual DORs in the last six (6) months including physical touching;~~ (4-11-15)
  - ~~c. Is in segregation status;~~ (4-11-15)
  - ~~d. Offender has refused to participate in the hearing/interview process;~~ (4-11-15)
  - ~~e. Offender has refused programming and has a tentative parole date;~~ (4-11-15)
  - ~~f. The offender has a parole eligibility date;~~ (4-11-15)
  - ~~g. The offender is a parole violator; or~~ (4-11-15)
  - ~~h. The offender has a violent crime, including injury to a person, has a sexual crime involving statutory rape or a property offense that was pled down, but which had a violent component.~~ (4-11-15)
- ~~05. **Hearing.** The scheduling of a hearing is at the complete discretion of the commission. If a special hearing is scheduled, the commission will determine the date of the hearing.~~ (4-11-15)
- ~~06. **Amended Decision.** The commission may elect to amend any decision without conducting another hearing.~~ (4-11-15)
- 553~~2~~. -- 599. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. FOREIGN NATIONAL TREATY.**

Under Section 20-104, Idaho Code, an offender may be transferred, upon request, to his country of citizenship if a treaty exists between his country and the United States. The commission's decision is only a recommendation to the Governor as the Governor will have final approval of the transfer. ( )

01. **Request for Transfer.** An offender may request a transfer to his country of citizenship. ( )

a. The offender makes an application and a release request to the Idaho Department of Correction's central records. The release shall provide consent to the release of medical, psychological, programming, educational records, and other such information as relevant. The Attorney General will request the PSI. ( )

b. Upon gathering the documentation, central records will forward the application and packet to the commission. ( )

i. The commission will set the matter for consideration at a time and place of its choosing. ( )

(1) The commission has complete discretion and authority to make a recommendation to the Governor. ( )

(2) The commission may request additional information from the parties, the offender making the application, the offender's victim, or any other source the commission deems appropriate. ( )

(3) The offender is not entitled to be present, to have counsel, to present witnesses or evidence, to have any particular evidence considered or to designate the location or time. ( )

ii. Following the commission's consideration, a non-binding recommendation will be issued to the

Governor. A copy of the recommendation will be sent to the Department's central records. ( )

(1) The offender is not entitled to appeal the commission's recommendation. ( )

(2) The offender may reapply two (2) years from the date of denial by either the Governor or the commission. ( )

iii. If the Governor approves the transfer and the receiving state accepts the offender for transfer, the packet is sent to the Department of Justice. ( )

**02. Eligibility Requirements for Transfer.** ( )

**a.** The offender must be a citizen of the country to which he is requesting a transfer. ( )

**b.** The offender must not have a life sentence. ( )

**c.** The offender cannot be less than two (2) years from his parole eligibility date. ( )

**IDAPA 50 - COMMISSION OF PARDONS AND PAROLE**  
**50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE**  
**DOCKET NO. 50-0101-1502**  
**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2015.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 20-223, Idaho Code.

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

To update rules to comply with statutory language of IC20-229B, effective 10-1-2015. To implement violation hearing officers' authority to impose 90/180 day sanctions.

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

To update rule to be in compliance with IC20-229B language to implement violation hearing officers' authority to impose 90/180 day sanctions.

**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 Mary Schoeler, (208) 332-2520.

DATED this 2nd Day of September, 2015.

Sandy Jones  
Executive Direction  
Idaho Commission of Pardons and Parole  
3506 Elder St.  
Boise, Idaho 83705  
(208) 332-2520

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 50-0101-1502**

**400. PAROLE REVOCATION PROCESS.**

**01. Initiated.** The parole revocation process is initiated by a written or verbal report describing the conditions of parole which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

**02. Warrants.** A warrant may be issued for the offender's arrest. (3-23-98)

**a.** A supervising agency may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission. (4-11-15)

b. A commission warrant may be signed by the executive director or by a member or members of the commission. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (4-11-15)

i. If the location of the offender is unknown, the warrant will be entered into NCIC, I-HOT, or other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. (4-11-15)

ii. If an offender is being held in custody on new charges, in a state other than Idaho the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. ~~(4-11-15)~~(10-1-15)T

iii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

**03. Due Process.** Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process, the right to appear at a hearing and address the allegations, and to confront and cross-examine person(s) who have given adverse information on which the charges have been based. (4-11-15)

**04. Intermediate Sanctions on Technical Violations and Absconding Supervision.** If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process. (4-11-15)

a. The commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately ~~upon entering the decision on the initial violation.~~ upon either: ~~(4-11-15)~~(10-1-15)T

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of violation hearing; or (10-1-15)T

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (10-1-15)T

b. For a second parole violation, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately ~~upon entering the decision.~~ upon either: ~~(4-11-15)~~(10-1-15)T

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing; or (10-1-15)T

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (10-1-15)T

c. For a third or subsequent parole violation, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

d. If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. ~~(4-11-15)~~(10-1-15)T

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (4-11-15)

f. During any period of confinement on an intermediate sanction, the commission or hearing officer may reduce the period of confinement by up to thirty (30) days if the commission or hearing officer finds that there has been no instance of misconduct during the period of time the parolee is confined. ~~(4-11-15)~~(10-1-15)T

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision unless prior to completing the sanction, the parolee is convicted of a violent misdemeanor or felony crime. If convicted of a violent misdemeanor or felony crime, the parolee will then be moved to non-technical status and will proceed through the formal violation process. ~~(4-11-15)~~(10-1-15)T

h. The commission or hearing officer will establish criteria use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine the necessary length of confinement up to the allowed periods of time. The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. ~~(4-11-15)~~(10-1-15)T

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration. ~~(4-11-15)~~(10-1-15)T

**05. Witnesses.** The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (4-11-15)

b. If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

c. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. (4-11-15)

**06. Attorney.** The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the commission office of any hearings and if requested in writing, the commission office will provide the attorney with any and all copies of reports and or documents; ~~in addition, the subject's attorney may also obtain copies by making a request to the commission office~~ that are public records according to the public records act. ~~(4-11-15)~~(10-1-15)T

**07. Hearings.** The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. The hearing officer or executive director will determine the location of all hearings. (4-11-15)

a. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

**b.** The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

**i.** Nontechnical Violations. If the alleged parole violator is charged with a conviction for a violent misdemeanor, or new felony criminal conviction, or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (4-11-15)

**ii.** Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a violent misdemeanor, or new felony criminal conviction, or absconding from supervision, the subject is entitled to a preliminary hearing conducted by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a hearing officer. The hearing is to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (4-11-15)

**c.** Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (4-11-15)

**d.** On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. (4-11-15)

**e.** Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (4-11-15)

**f.** Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

**i.** The commission has full discretion in granting reinstatement on parole or revocation of parole. A hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections 400.067.hg.i. and 400.067.hg.ii.) The Commission will consider whether the parole will be reinstated or revoked and will state the reasoning if parole is revoked. ~~(4-11-15)~~(10-1-15)T

**g.** Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

**i.** If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

**ii.** If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

**08. Miscellaneous Revocation Information.** (3-23-98)

**a.** The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

**b.** The commission, through the executive director shall designate the county, state, or other facility



where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

**c.** The alleged parole violator can request a continuance of any hearing. The hearing officer, executive director, or the commission will determine if the continuance will be granted. If the alleged parole violator requests a continuance of any hearing, said request will constitute a waiver of any and all time limits involved. (4-11-15)

**09. Inability to Assist in Defense.** (3-23-98)

**a.** Specific time limits pertinent to the case may be waived. (3-23-98)

**b.** At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. (4-11-15)

**c.** A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. (4-11-15)

**d.** A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

**10. Findings/Decisions.** (3-23-98)

**a.** At any time following arrest on a commission warrant, the executive director or the commission will decide if the parolee will be released to continue parole. (5-3-03)

**b.** If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

**c.** After a violation hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

**i.** The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

**ii.** The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)

**11. Forfeiture of Time on Parole.** If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an agent's warrant and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. (4-11-15)

**a.** The time the offender is incarcerated on an agent's warrant and a commission warrant will be credited toward the sentence. (4-11-15)

**b.** If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (3-23-98)

**c.** The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (3-23-98)

**d.** The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**SALT RIVER SUBBASIN TOTAL MAXIMUM DAILY LOAD (TMDL) (HUC ID 17040105)**  
**DOCKET NO. 58-0000-1502**  
**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Salt River Subbasin Total Maximum Daily Load (TMDL.)

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Salt River Subbasin TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Salt River Subbasin TMDL (Hydrologic Unit Code 17040105) establishes seventeen assessment unit (AU) /pollutant combination TMDLs for water quality impaired stream reaches identified in Idaho's section 303(d) list contained in the 2012 Integrated Report. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/media/60177199/salt-river-subbasin-assessment-tmdl.pdf> or by contacting Paula Wilson, (208)373-0418, [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov).

Dated this 7th Day of October, 2015.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**PRIEST RIVER SUBBASIN ASSESSMENT (SBA) AND TOTAL MAXIMUM DAILY LOAD (TMDL):**  
**2015 TEMPERATURE ADDENDUM (HUC ID 17010215)**

**DOCKET NO. 58-0000-1503**

**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Priest River Subbasin Assessment (SBA) and Total Maximum Daily Load (TMDL): 2015 Temperature Addendum.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Priest River SBA and TMDL: 2015 Temperature Addendum. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Priest River SBA and TMDL: 2015 Temperature Addendum (Hydrologic Unit Code 17010215) addresses twenty-eight (28) assessment units (AUs) listed as impaired for temperature in Idaho's 2012 Integrated Report. Each AU received a temperature TMDL based upon the Potential Natural Vegetation methodology using shade as a surrogate for temperature at natural conditions. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/media/60177185/priest-river-subbasin-assessment-tmdl-2015-temperature-addendum-0815.pdf> or by contacting Paula Wilson, (208)373-0418, [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov).

Dated this 7th Day of October, 2015.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### LOWER BOISE RIVER TOTAL MAXIMUM DAILY LOAD (TMDL): 2015 TOTAL PHOSPHORUS ADDENDUM (HUC ID 17050114)

DOCKET NO. 58-0000-1504

#### NOTICE OF FINAL DECISION

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Lower Boise River Total Maximum Daily Load (TMDL): 2015 Total Phosphorus Addendum.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Lower Boise River TMDL: 2015 Total Phosphorus Addendum. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Lower Boise River TMDL: 2015 Total Phosphorus Addendum (Hydrologic Unit Code 17050114) establishes two (2) new total phosphorus TMDLs on water quality impaired stream reaches (assessment units). DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/media/60177184/lower-boise-river-tmdl-total-phosphorus-addendum-0715.pdf> or by contacting Paula Wilson, (208)373-0418, [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov).

Dated this 7th Day of October, 2015.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
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**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 - WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-1201**

**NOTICE OF RULEMAKING - PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

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

**\*ORIGINATING LOCATION – LIVE HEARING\***

DEQ State Office  
Conference Room C  
1410 N. Hilton, Boise, Idaho

**Tuesday, October 27, 2015**  
**3 p.m. Mountain Time**

**\*VIDEO CONFERENCING LOCATIONS\***

DEQ Coeur d'Alene Regional Office  
2110 Ironwood Parkway  
Coeur d'Alene, Idaho

DEQ Pocatello Regional Office  
444 Hospital Way #300  
Pocatello, Idaho

Department of Environmental Quality  
1118 F Street  
Lewiston, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** On May 10, 2012, the United States Environmental Protection Agency (EPA) disapproved the July 7, 2006 Idaho DEQ water quality standard rule submittal. The disapproval affects 167 of Idaho's revised human health criteria for 88 toxic pollutants. In addition to incorporating newer toxicity information, DEQ's 2006 rule changed the fish consumption basis for determining the toxic standard from 6.5 g/day to 17.5 g/day, based on EPA's nationally recommended fish consumption rate. EPA disapproved the proposed criteria because EPA believes that the resulting criteria do not protect Idaho's designated uses. As a result, EPA was unable to determine that the 17.5 g/day fish consumption rate was consistent with 40 CFR 131.11(a). EPA identified several sources of information on local and regional fish consumption, which they claim that Idaho did not consider before using the national default fish consumption rate. According to EPA, the information that EPA reviewed suggests that fish consumption among some Idaho population groups is greater than 17.5 g/day.

Over the span from October 2012 to August 2015, DEQ met with interested parties in eighteen negotiated meetings. DEQ planned a statewide Idaho fish consumption survey then executed a yearlong survey and, while the survey was underway, discussed the various policy decisions involved in derivation of criteria protective of human health. At the same time as Idaho's fish consumption survey was being conducted, the Nez Perce Tribe and Shoshone-Bannock Tribes were conducting similar surveys to inform DEQ's knowledge of the potential magnitude of exposure to toxic substances through consumption of fish with the help of EPA and the intent that this information would also inform DEQ's revision of human health criteria. In May 2014 EPA proposed updates to its national 304(a)

criteria, recommendations to states and tribes, for protection of human health. These updates were based on a new national fish consumption rate of 22 g/day, as well as new information on body-weight, drinking water intake, chemical toxicity, bioaccumulation of toxins in fish tissue, and the relative magnitude of contribution to exposure to toxins from various sources other than fish and water. EPA's proposal was finalized on June 29, 2015, providing new or updated criteria for 94 chemicals, some not currently present in Idaho's rules.

EPA's national action expanded what DEQ considered in its rulemaking. In addition to recent information on fish consumption in Idaho, these criteria changes also incorporate new information on body-weight, drinking water intake, toxicity, bioaccumulation, and relative source contribution. DEQ is also updating more criteria than just those EPA acted on in 2012.

The current rule proposal is to update Idaho's human health criteria for 104 toxic substances (10 of which are new), plus an additional fish-plus-water criterion for copper based on the drinking water maximum contaminant level (MCL). There are 208 revised or new criteria, consisting of 94 revised and 10 new criteria based on exposure to toxic substances from the consumption of fish and ingestion of water plus an additional fish-plus-water criterion for copper, and 94 revised and 10 new criteria based on exposure to toxic substances from the consumption of fish alone. In addition, although new input values were used, the values for the antimony fish only criterion and the bromoform fish-plus-water criterion did not change; these are counted as revised criteria. With this proposal, Idaho will have updated all of its human health criteria except those for arsenic, methylmercury, and asbestos.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in December 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the September 2012 Idaho Administrative Bulletin, **Vol. 12-9**. Eighteen meetings were held between October 2012 and August 2015. A preliminary draft rule was made available for public review in August 2015. Members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at [www.deq.idaho.gov/58-0102-1201](http://www.deq.idaho.gov/58-0102-1201).

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before November 6, 2015.

DATED this 7th Day of October, 2015.

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1201**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

**01. Activity.** For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act. (3-18-11)

**02. Acute.** A stimulus severe enough to induce a rapid response. In aquatic toxicity tests, acute refers to a single or short-term (i.e., ninety-six (96) hours or less) exposure to a concentration of a toxic substance or effluent which results in death to fifty percent (50%) of the test organisms. When referring to human health, an acute effect is not always measured in terms of lethality. (3-30-07)

**03. Acute Criteria.** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity due to exposure to the toxic substance or effluent. Acute criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Maximum Concentration (CMC). There are no specific acute criteria for human health; however, the human health criteria are based on chronic health effects and are expected to adequately protect against acute effects. (3-30-07)

**04. Aquatic Species.** Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

**05. Assigned Criteria.** Criteria associated with beneficial uses from Section 100 of these rules. (3-18-11)

**06. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (8-24-94)

**07. Basin Advisory Group.** No less than one (1) advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies

pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

**08. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

**09. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

**10. Bioaccumulation.** The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

**11. Bioaccumulative Pollutants.** A compound with a bioaccumulation factor of greater than one thousand (1,000) or a bioconcentration factor of greater than one thousand (1,000). (4-11-15)

**12. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

**13. Board.** The Idaho Board of Environmental Quality. (7-1-93)

**14. Chronic.** A stimulus that persists or continues for a long period of time relative to the life span of an organism. In aquatic toxicity tests, chronic refers to continuous exposure to a concentration of a toxic substance or effluent which results in mortality, injury, reduced growth, impaired reproduction, or other adverse effect to aquatic organisms. The test duration is long enough that sub-lethal effects can be reliably measured. When referring to human health, a chronic effect is usually measured in terms of estimated changes in rates (# of cases/ 1000 persons) of illness over a lifetime of exposure. (3-30-07)

**15. Chronic Criteria.** Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity due to exposure to the toxic substance or effluent. Chronic criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Continuous Concentration (CCC). Human health chronic criteria are based on lifetime exposure. (3-30-07)

**16. Compliance Schedule or Schedule Of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

**17. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources.** All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. (3-18-11)

**18. Daily Maximum (Minimum).** The highest (lowest) value measured during one (1) calendar day or a twenty-four (24) hour period, as appropriate. For ambient monitoring of dissolved oxygen, pH, and temperature, multiple measurements should be obtained at intervals short enough that the difference between consecutive measurements around the daily maximum (minimum) is less than zero point two (0.2) ppm for dissolved oxygen, zero point one (0.1) SU for pH, or zero point five (0.5) degree C for temperature. (3-30-07)

**19. Daily Mean.** The average of at least two (2) appropriately spaced measurements, acceptable to the



Department, calculated over a period of one (1) day: (3-20-97)

**a.** Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

**b.** If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

**c.** In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

**d.** For ambient monitoring of temperature, the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C. (3-30-07)

**20. Degradation or Lower Water Quality.** “Degradation” or “lower water quality” means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body. (3-29-12)

**21. Deleterious Material.** Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

**22. Department.** The Idaho Department of Environmental Quality. (7-1-93)

**23. Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

**24. Designated Agency.** The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department’s division of environmental quality for all other activities. (3-20-97)

**25. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

**26. Desirable Species.** Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

**27. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

**28. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For purposes of antidegradation review, means “discharge” as used in Section 401 of the Clean Water Act. (3-18-11)

**29. Dissolved Oxygen (DO).** The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

**30. Dissolved Product.** Petroleum product constituents found in solution with water. (8-24-94)

**31. Dynamic Model.** A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic

- techniques. (8-24-94)
32. **E. coli (Escherichia coli).** A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)
33. **Effluent.** Any wastewater discharged from a treatment facility. (7-1-93)
34. **Effluent Biomonitoring.** The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)
35. **EPA.** The United States Environmental Protection Agency. (7-1-93)
36. **Ephemeral Waters.** A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-11-06)
37. **Existing Activity or Discharge.** An activity or discharge that has been previously authorized or did not previously require authorization. (3-18-11)
38. **Existing Beneficial Use Or Existing Use.** Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards." (4-11-06)
39. **Facility.** As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)
40. **Four Day Average.** The average of all measurements within a period of ninety-six (96) consecutive hours. While a minimum of one (1) measurement per each twenty-four (24) hours is preferred, for toxic chemicals in Section 210, any number of data points is acceptable. (3-30-07)
41. **Free Product.** A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)
42. **Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water.** Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)
43. **General Permit.** An NPDES permit issued by the U.S. Environmental Protection Agency authorizing a category of discharges under the federal Clean Water Act or a nationwide or regional permit issued by the U.S. Army Corps of Engineers under the federal Clean Water Act. (3-29-12)
44. **Geometric Mean.** The geometric mean of "n" quantities is the "nth" root of the product of the quantities. (7-1-93)
45. **Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-07)
46. **Harmonic Mean *Flow*.** The number of daily *flow* measurements divided by the sum of the reciprocals of the *flows measurements* (i.e., the reciprocal of the mean of reciprocals). (8-24-94)( )
47. **Hazardous Material.** A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent

revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

**48. Highest Statutory and Regulatory Requirements for Point Sources.** All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. (3-18-11)

**49. Hydrologic Unit Code (HUC).** A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

**50. Hydrologically-Based Design Flow.** A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one (1) or more excursions below the design flow can occur. (8-24-94)

**51. Hypolimnion.** The bottom layer in a thermally-stratified body of water. It is fairly uniform in temperature and lays beneath a zone of water which exhibits a rapid temperature drop with depth such that mixing with overlying water is inhibited. (3-30-07)

**52. Integrated Report.** Refers to the consolidated listing and reporting of the state's water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. (3-18-11)

**53. Inter-Departmental Coordination.** Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

**54. Intermittent Waters.** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-11-06)

**55. Load Allocation (LA).** The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

**56. Loading Capacity.** The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

**57. Lowest Observed Effect Concentration (LOEC).** The lowest concentration of a toxic substance or an effluent that results in observable adverse effects in the aquatic test population. (3-30-07)

**58. Man-Made Waterways.** Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance. (3-30-07)

**59. Maximum Weekly Maximum Temperature (MWMT).** The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period ending on the day of calculation. When used seasonally, e.g., spawning periods, the first applicable WMT occurs on the seventh day into the time period. The MWMT is the single highest WMT that occurs during a given year or other period of interest, e.g., a spawning period. (3-30-07)

**60. Milligrams Per Liter (mg/l).** Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

**61. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a

wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

**62. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

**63. Natural Background Conditions.** The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place. (3-30-07)

**64. Nephelometric Turbidity Units (NTU).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

**65. New Activity or Discharge.** An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new unless the Director determines to the contrary based on review of available evidence. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted. (3-18-11)

**66. Nonpoint Source Activities.** Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a.** Irrigated and nonirrigated lands used for: (7-1-93)
  - i.** Grazing; (7-1-93)
  - ii.** Crop production; (7-1-93)
  - iii.** Silviculture; (7-1-93)
- b.** Log storage or rafting; (7-1-93)
- c.** Construction sites; (7-1-93)
- d.** Recreation sites; (3-20-97)
- e.** Septic tank disposal fields. (8-24-94)
- f.** Mining; (3-20-97)
- g.** Runoff from storms or other weather related events; and (3-20-97)
- h.** Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

**67. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

**68. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

- 69. One Day Minimum.** The lowest daily instantaneous value measured. (3-20-97)
- 70. One Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)
- 71. Operator.** For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)
- 72. Outstanding Resource Water (ORW).** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)
- 73. Owner.** For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)
- 74. Permit or License.** A permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses. (3-18-11)
- 75. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)
- 76. Petroleum Products.** Products derived from petroleum through various refining processes. (7-1-93)
- 77. Petroleum Storage Tank (PST) System.** Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)
- 78. Point Source.** Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)
- 79. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)
- 80. Project Plans.** Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)
- 81. Public Swimming Beaches.** Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other

unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

**82. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

**83. Reference Stream or Condition.** A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

**84. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

**85. Resident Species.** Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

**a.** Are usually present at the site; (8-24-94)

**b.** Are present only seasonally due to migration; (8-24-94)

**c.** Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

**d.** Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

**e.** Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

**86. Responsible Persons in Charge.** Any person who: (8-24-94)

**a.** By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

**b.** Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

**c.** Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

**87. Sediment.** Undissolved inorganic matter. (3-30-07)

**88. Seven Day Mean.** The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

**89. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

**90. Short-Term or Temporary Activity.** An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-30-07)

- 91. Silviculture.** Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)
- 92. Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)
- 93. Specialized Best Management Practices.** Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)
- 94. State.** The state of Idaho. (7-1-93)
- 95. State Water Quality Management Plan.** The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)
- 96. Suspended Sediment.** The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)
- 97. Suspended Solids.** The undissolved organic and inorganic matter suspended in surface water. (3-30-07)
- 98. Technology-Based Effluent Limitation.** Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)
- 99. Thermal Shock.** A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. (4-11-15)
- 100. Total Maximum Daily Load (TMDL).** The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)
- 101. Toxicity Test.** A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)
- 102. Toxic Substance.** Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)
- 103. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)
- 104. Treatment System.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (4-11-06)

**105. Twenty-Four Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

**106. Unique Ecological Significance.** The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

**107. Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

**108. Wastewater.** Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

**109. Water Body Unit.** Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

**110. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

**111. Water Quality-Based Effluent Limitation.** An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

**112. Water Quality Limited Water Body.** After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

**113. Waters and Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

**114. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

**115. Watershed Advisory Group.** An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

**116. Whole-Effluent Toxicity.** The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

**117. Zone of Initial Dilution (ZID).** An area within a Department authorized mixing zone where acute



criteria may be exceeded. This area shall be no larger than necessary and shall be sized to prevent lethality to swimming or drifting organisms by ensuring that organisms are not exposed to concentrations exceeding acute criteria for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. APPLICATION OF STANDARDS.**

**01. Multiple Criteria.** In the application of the use designation, the most stringent criterion of a multiple criteria applies. (4-5-00)

**02. Application of Standards to Nonpoint Source Activities.** The application of water quality standards to nonpoint source activities shall be in accordance with Section 350. (7-1-93)

**03. Application of Standards to Point Source Discharges.** The application of water quality standards to point source discharges shall be in accordance with Sections 400 and 401. (4-11-06)

**04. Applicability of Gas Supersaturation Standard.** The application of gas supersaturation standard shall be in accordance with Section 300. (4-5-00)

**05. Mixing Zones.** The application of water quality standards to mixing zones shall be in accordance with Section 060. (7-1-93)

**06. Application of Standards to Intermittent Waters.** Numeric water quality standards only apply to intermittent waters during optimum flow periods sufficient to support the uses for which the water body is designated. For recreation, optimum flow is equal to or greater than five (5) cubic feet per second (cfs). For aquatic life uses, optimum flow is equal to or greater than one (1) cfs. (3-30-01)

**07. Temperature Criteria.** In the application of temperature criteria, the Director may, at his discretion, waive or raise the temperature criteria as they pertain to a specific water body. Any such determination shall be made consistent with 40 CFR 131.11 and shall be based on a finding that the designated aquatic life use is not an existing use in such water body or would be fully supported at a higher temperature criteria. For any determination, the Director shall, prior to making a determination, provide for public notice and comment on the proposed determination. For any such proposed determination, the Director shall prepare and make available to the public a technical support document addressing the proposed modification. (4-5-00)

**08. Protection of Downstream Water Quality.** All waters shall maintain a level of water quality at their pour point into downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including waters of another state or tribe. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

**01. Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

a. Columns B1, ~~and B2, and C2~~ of the following table apply to waters designated for aquatic life use. ~~(5-3-03)~~( )

b. Column C2 of the following table applies to waters designated for primary or secondary contact

recreation use.

(5-3-03)( )

c. Column C1 of the following table applies to waters designated for domestic water supply use.

Note: In 2006, Idaho updated 167 human health criteria for 88 chemicals. On May 10, 2012, EPA disapproved Idaho's 2006 update of 167 human health criteria for toxic substances and the use of 17.5 g/day fish consumption rate for human health criteria (see IDAPA 58.01.02.210.05.b.i). This action was based on EPA's judgment that the fish consumption rate used in criteria derivation was not adequately protective. As a result of this action, the human health criteria published in the 2005 version of IDAPA 58.01.02.210.01 continue to apply and are effective for federal Clean Water Act purposes. These criteria are summarized in "Numeric Criteria for Toxic Substances (2005)" located at [http://www.deq.idaho.gov/media/451725-human\\_health\\_criteria.pdf](http://www.deq.idaho.gov/media/451725-human_health_criteria.pdf).

For more information regarding this EPA disapproval, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

| A   |              | B<br>Aquatic life |       |              |    | C<br>Human health for consumption of: |                               |             |                            |  |
|---|--------------|-------------------|-------|--------------|----|---------------------------------------|-------------------------------|-------------|----------------------------|--|
| (Number) Compound   | a CAS Number | b CMC (µg/L)      |       | b CCC (µg/L) |    | Carcinogen?                           | Water & organisms fish (µg/L) |             | Organisms Fish only (µg/L) |  |
|   |              | B1                | B2    | B1           | B2 |                                       | C1                            | C2          |                            |  |
| 1 Antimony  | 7440360      |                   |       |              |    |                                       | <del>5-6</del> 3.2 c          | 640 c       |                            |  |
| 2 Arsenic   | 7440382      | 340 e             | 150 e | Y            |    | 10 dfq                                | 10 dfq                        |             |                            |  |
| 3 Beryllium   | 7440417      |                   |       |              |    |                                       | h                             |             | h                          |  |
| 4 Cadmium   | 7440439      | 1.3 i             | 0.6 i |              |    |                                       | h                             |             | h                          |  |
| 5a Chromium III   | 16065831     | 570 i             | 74 i  |              |    |                                       | h                             |             | h                          |  |
| 5b Chromium VI  | 18540299     | 16 e              | 11 e  |              |    |                                       | h                             |             | h                          |  |
| 6 Copper  | 7440508      | 17 i              | 11 i  |              |    | 1,300 q                               |                               |             |                            |  |
| 7 Lead  | 7439921      | 65 i              | 2.5 i |              |    |                                       | h                             |             | h                          |  |
| 8a Mercury  | 7439976      |                   | g     |              |    |                                       |                               |             |                            |  |
| <p>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health. The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury effective for federal Clean Water Act purposes are located at <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a>.</p> |              |                   |       |              |    |                                       |                               |             |                            |  |
| 8b Methylmercury  | 22967926     |                   |       |              |    |                                       |                               | 0.3 mg/kg p |                            |  |
| 9 Nickel  | 7440020      | 470 i             | 52 i  |              |    | <del>640</del> 75 c                   | <del>4600</del> 330 c         |             |                            |  |
| 10 Selenium   | 7782492      | 20 f              | 5 f   |              |    | <del>470</del> 20 c                   | <del>4200</del> 800 c         |             |                            |  |

| A                            |              | B<br>Aquatic life |   |              |   | C<br>Human health for consumption of: |                                       |    |  |    |
|------------------------------|--------------|-------------------|---|--------------|---|---------------------------------------|---------------------------------------|----|--|----|
| (Number) Compound            | a CAS Number | b CMC (µg/L)      |   | b CCC (µg/L) |   | Carcinogen?                           | Water & organisms fish (µg/L)         |    | Organisms Fish only (µg/L)             |    |
|                              |              | B1                |   | B2           |   |                                       | C1                                    |    | C2                                     |    |
| 11 Silver                    | 7440224      | 3.4               | i |              |   |                                       |                                       |    |  |    |
| 12 Thallium                  | 7440280      |                   |   |              |   |                                       | <del>0.24</del> <u>0.038</u>          | c  | <del>0.47</del> <u>0.075</u>           | c  |
| 13 Zinc                      | 7440666      | 120               | i | 120          | i |                                       | <del>7400</del> <u>1.100</u>          | c  | <del>26000</del> <u>4,800</u>          | c  |
| 14 Cyanide                   | 57125        | 22                | j | 5.2          | j |                                       | <del>140</del> <u>2.4</u>             | c  | <del>140</del> <u>460</u>              | c  |
| 15 Asbestos                  | 1332214      |                   |   |              |   |                                       | 7,000,000 fibers/L                    | kg |  |    |
| 16 2, 3, 7, 8-TCDD Dioxin    | 1746016      |                   |   |              |   | Y                                     | <del>0.000000005</del> <u>5.8E-09</u> | cl | <del>0.0000000054</del> <u>6.1E-09</u> | cl |
| 17 Acrolein                  | 107028       |                   |   |              |   |                                       | <del>190</del> <u>2.0</u>             | c  | <del>290</del> <u>400</u>              | c  |
| 18 Acrylonitrile             | 107131       |                   |   |              |   | Y                                     | <del>0.054</del> <u>0.036</u>         | cl | <del>0.25</del> <u>7.0</u>             | cl |
| 19 Benzene                   | 71432        |                   |   |              |   | Y                                     | <del>2.2</del> <u>0.83</u>            | cl | <del>54</del> <u>37</u>                | cl |
| 20 Bromoform                 | 75252        |                   |   |              |   | Y                                     | 4.3                                   | cl | <del>140</del> <u>110</u>              | cl |
| 21 Carbon Tetrachloride      | 56235        |                   |   |              |   | Y                                     | <del>0.238</del> <u>0.238</u>         | cl | <del>4.6</del> <u>4.3</u>              | cl |
| 22 Chlorobenzene             | 108907       |                   |   |              |   |                                       | <del>130</del> <u>75</u>              | c  | <del>1600</del> <u>780</u>             | c  |
| 23 Chlorodibromomethane      | 124481       |                   |   |              |   | Y                                     | <del>0.408</del> <u>0.408</u>         | cl | <del>13</del> <u>20</u>                | cl |
| 24 Chloroethane              | 75003        |                   |   |              |   |                                       |                                       |    |  |    |
| 25 2-Chloroethylvinyl Ether  | 110758       |                   |   |              |   |                                       |                                       |    |  |    |
| 26 Chloroform                | 67663        |                   |   |              |   |                                       | <del>5.7</del> <u>39</u>              | lc | <del>470</del> <u>2,300</u>            | lc |
| 27 Dichlorobromomethane      | 75274        |                   |   |              |   | Y                                     | <del>0.556</del> <u>0.556</u>         | cl | <del>17</del> <u>26</u>                | cl |
| 28 1,1-Dichloroethane        | 75343        |                   |   |              |   |                                       |                                       |    |  |    |
| 29 1,2-Dichloroethane        | 107062       |                   |   |              |   | Y                                     | <del>0.3</del> <u>6.28</u>            | cl | <del>37</del> <u>640</u>               | cl |
| 30 1,1-Dichloroethylene      | 75354        |                   |   |              |   |                                       | <del>330</del> <u>200</u>             | lc | <del>7100</del> <u>16,000</u>          | lc |
| 31 1,2-Dichloropropane       | 78875        |                   |   |              |   | Y                                     | <del>0.506</del> <u>0.506</u>         | cl | <del>15</del> <u>30</u>                | cl |
| 32 1,3-Dichloropropene       | 542756       |                   |   |              |   | Y                                     | <del>0.34</del> <u>0.17</u>           | cl | <del>24</del> <u>11</u>                | cl |
| 33 Ethylbenzene              | 100414       |                   |   |              |   |                                       | <del>530</del> <u>70</u>              | c  | <del>2100</del> <u>120</u>             | c  |
| 34 Methyl Bromide            | 74839        |                   |   |              |   |                                       | <del>47</del> <u>80</u>               | c  | <del>1500</del> <u>12,000</u>          | c  |
| 35 Methyl Chloride           | 74873        |                   |   |              |   |                                       |                                       | h  |  | h  |
| 36 Methylene Chloride        | 75092        |                   |   |              |   | Y                                     | <del>4.6</del> <u>1.0</u>             | cl | <del>590</del> <u>1,300</u>            | cl |
| 37 1,1,2,2-Tetrachloroethane | 79345        |                   |   |              |   | Y                                     | <del>0.170</del> <u>0.170</u>         | cl | <del>4.0</del> <u>2.5</u>              | cl |
| 38 Tetrachloroethylene       | 127184       |                   |   |              |   | Y                                     | <del>0.69</del> <u>8.6</u>            | cl | <del>3.3</del> <u>28</u>               | cl |

| A                 |                            | B<br>Aquatic life |              |             | C<br>Human health for consumption of: |                                     |  |
|-------------------|----------------------------|-------------------|--------------|-------------|---------------------------------------|-------------------------------------|--|
| (Number) Compound | a CAS Number               | b CMC (µg/L)      | b CCC (µg/L) | Carcinogen? | Water & organisms fish (µg/L)         | Organisms Fish only (µg/L)          |  |
|                   |                            | B1                | B2           |             | C1                                    | C2                                  |  |
| 39                | Toluene                    | 108883            |              |             | <del>1300</del> <u>36</u> c           | <del>15000</del> <u>500</u> c       |  |
| 40                | 1,2-Trans-Dichloroethylene | 156605            |              |             | <del>140</del> <u>81</u> c            | <del>10000</del> <u>3,700</u> c     |  |
| 41                | 1,1,1-Trichloroethane      | 71556             |              |             | <del>7.800</del> <u>#c</u>            | <del>170,000</del> <u>#c</u>        |  |
| 42                | 1,1,2-Trichloroethane      | 79005             |              | Y           | <del>0.59</del> <u>0.34</u> cl        | <del>16</del> <u>8.2</u> cl         |  |
| 43                | Trichloroethylene          | 79016             |              | Y           | <del>2.5</del> <u>0.39</u> cl         | <del>30</del> <u>6.7</u> cl         |  |
| 44                | Vinyl Chloride             | 75014             |              | Y           | <del>0.025</del> <u>0.013</u> cl      | <del>2.4</del> <u>1.6</u> cl        |  |
| 45                | 2-Chlorophenol             | 95578             |              |             | <del>81</del> <u>19</u> c             | <del>150</del> <u>810</u> c         |  |
| 46                | 2,4-Dichlorophenol         | 120832            |              |             | <del>77</del> <u>11</u> c             | <del>290</del> <u>55</u> c          |  |
| 47                | 2,4-Dimethylphenol         | 105679            |              |             | <del>380</del> <u>80</u> c            | <del>850</del> <u>2,400</u> c       |  |
| 48                | 2-Methyl-4,6-Dinitrophenol | 534521            |              |             | <del>13</del> <u>1.1</u> c            | <del>280</del> <u>26</u> c          |  |
| 49                | 2,4-Dinitrophenol          | 51285             |              |             | <del>69</del> <u>8</u> c              | <del>5300</del> <u>350</u> c        |  |
| 50                | 2-Nitrophenol              | 88755             |              |             |                                       |                                     |  |
| 51                | 4-Nitrophenol              | 100027            |              |             |                                       |                                     |  |
| 52                | 3-Methyl-4-Chlorophenol    | 59507             |              |             | <del>360</del>                        | <del>2,200</del>                    |  |
| 53                | Pentachlorophenol          | 87865             | 20 m         | 13 m        | Y <del>0.27</del> <u>0.023</u> cl     | <del>3.0</del> <u>0.027</u> cl      |  |
| 54                | Phenol                     | 108952            |              |             | <del>21000</del> <u>2,500</u> c       | <del>1700000</del> <u>270,000</u> c |  |
| 55                | 2,4,6-Trichlorophenol      | 88062             |              | Y           | <del>1.4</del> <u>1.5</u> cl          | <del>2.4</del> <u>2.6</u> cl        |  |
| 56                | Acenaphthene               | 83329             |              |             | <del>670</del> <u>78</u> c            | <del>990</del> <u>94</u> c          |  |
| 57                | Acenaphthylene             | 208968            |              |             |                                       |                                     |  |
| 58                | Anthracene                 | 120127            |              |             | <del>8300</del> <u>340</u> c          | <del>40000</del> <u>370</u> c       |  |
| 59                | Benzidine                  | 92875             |              | Y           | <del>0.000086</del> <u>9.0E-05</u> cl | <del>0.00020</del> <u>0.011</u> cl  |  |
| 60                | Benzo(a)Anthracene         | 56553             |              | Y           | <del>0.0038</del> <u>0.0013</u> cl    | <del>0.018</del> <u>0.0014</u> cl   |  |
| 61                | Benzo(a)Pyrene             | 50328             |              | Y           | <del>0.0038</del> <u>0.00013</u> cl   | <del>0.018</del> <u>0.00014</u> cl  |  |
| 62                | Benzo(b)Fluoranthene       | 205992            |              | Y           | <del>0.0038</del> <u>0.0013</u> cl    | <del>0.018</del> <u>0.0014</u> cl   |  |
| 63                | Benzo(ghi)Perylene         | 191242            |              |             |                                       |                                     |  |

| A                 |                              | B<br>Aquatic life |                 | C<br>Human health for consumption of: |  |                                  |  |    |
|-------------------|------------------------------|-------------------|-----------------|---------------------------------------|--|----------------------------------|--|----|
| (Number) Compound | a CAS Number                 | b CMC<br>(µg/L)   | b CCC<br>(µg/L) | Carcinogen?<br>Y                      | Water &<br>organisms fish<br>(µg/L)      | Organisms Fish<br>only<br>(µg/L) |  |    |
|                   |                              | B1                | B2              |                                       | C1                                       | C2                               |  |    |
| 64                | Benzo(k)Fluoranthene         | 207089            |                 |                                       | <del>0.0038</del> <u>0.013</u>           | cl                               | <del>0.018</del> <u>0.014</u>            | cl |
| 65                | Bis(2-Chloroethoxy) Methane  | 111911            |                 |                                       |  |                                  |  |    |
| 66                | Bis(2-Chloroethyl)Ether      | 111444            |                 |                                       | <del>0.030</del> <u>0.019</u>            | cl                               | <del>0.53</del> <u>2.2</u>               | cl |
| 67                | Bis(2-Chloroisopropyl) Ether | 108601            |                 |                                       | <del>1400</del> <u>150</u>               | c                                | <del>65000</del> <u>3,500</u>            | c  |
| 68                | Bis(2-Ethylhexyl) Phthalate  | 117817            |                 |                                       | <del>1.2</del> <u>0.36</u>               | cl                               | <del>2.2</del> <u>0.39</u>               | cl |
| 69                | 4-Bromophenyl Phenyl Ether   | 101553            |                 |                                       |  |                                  |  |    |
| 70                | Butylbenzyl Phthalate        | 85687             |                 |                                       | <del>1500</del> <u>0.11</u>              | c                                | <del>1900</del> <u>0.11</u>              | c  |
| 71                | 2-Chloronaphthalene          | 91587             |                 |                                       | <del>1000</del> <u>880</u>               | c                                | <del>1600</del> <u>1,100</u>             | c  |
| 72                | 4-Chlorophenyl Phenyl Ether  | 7005723           |                 |                                       |  |                                  |  |    |
| 73                | Chrysene                     | 218019            |                 |                                       | <del>0.0038</del> <u>0.14</u>            | cl                               | <del>0.018</del> <u>0.14</u>             | cl |
| 74                | Dibenzo (a,h) Anthracene     | 53703             |                 |                                       | <del>0.0038</del><br><del>0.00013</del>  | cl                               | <del>0.018</del> <u>0.00014</u>          | cl |
| 75                | 1,2-Dichlorobenzene          | 95501             |                 |                                       | <del>420</del> <u>1,100</u>              | c                                | <del>1300</del> <u>3,100</u>             | c  |
| 76                | 1,3-Dichlorobenzene          | 541731            |                 |                                       | <del>320</del> <u>6.8</u>                | c                                | <del>960</del> <u>11</u>                 | c  |
| 77                | 1,4-Dichlorobenzene          | 106467            |                 |                                       | <del>63</del> <u>250</u>                 | c                                | <del>190</del> <u>810</u>                | c  |
| 78                | 3,3'-Dichlorobenzidine       | 91941             |                 |                                       | <del>0.021</del> <u>0.039</u>            | cl                               | <del>0.028</del> <u>0.14</u>             | cl |
| 79                | Diethyl Phthalate            | 84662             |                 |                                       | <del>17000</del> <u>620</u>              | c                                | <del>44000</del> <u>700</u>              | c  |
| 80                | Dimethyl Phthalate           | 131113            |                 |                                       | <del>270000</del> <u>2,000</u>           | c                                | <del>1100000</del> <u>2,000</u>          | c  |
| 81                | Di-n-Butyl Phthalate         | 84742             |                 |                                       | <del>2000</del> <u>27</u>                | c                                | <del>4500</del> <u>27</u>                | c  |
| 82                | 2,4-Dinitrotoluene           | 121142            |                 |                                       | <del>0.11</del> <u>0.030</u>             | cl                               | <del>3.4</del> <u>1.6</u>                | cl |
| 83                | 2,6-Dinitrotoluene           | 606202            |                 |                                       |  |                                  |  |    |
| 84                | Di-n-Octyl Phthalate         | 117840            |                 |                                       |  |                                  |  |    |
| 85                | 1,2-Diphenylhydrazine        | 122667            |                 |                                       | <del>0.036</del> <u>0.023</u>            | cl                               | <del>0.20</del> <u>0.19</u>              | cl |
| 86                | Fluoranthene                 | 206440            |                 |                                       | <del>130</del> <u>20</u>                 | c                                | <del>140</del> <u>20</u>                 | c  |
| 87                | Fluorene                     | 86737             |                 |                                       | <del>1100</del> <u>51</u>                | c                                | <del>5300</del> <u>58</u>                | c  |
| 88                | Hexachlorobenzene            | 118741            |                 |                                       | <del>0.00028</del><br><del>6.0E-05</del> | cl                               | <del>0.00029</del><br><del>6.0E-05</del> | cl |

| A                 |                            | B<br>Aquatic life |              | C<br>Human health for consumption of: |                                    |                            |                                    |               |
|-------------------|----------------------------|-------------------|--------------|---------------------------------------|------------------------------------|----------------------------|------------------------------------|---------------|
| (Number) Compound | a CAS Number               | b CMC (µg/L)      | b CCC (µg/L) | Carcinogen?                           | Water & organisms fish (µg/L)      | Organisms Fish only (µg/L) |                                    |               |
|                   |                            | B1                | B2           |                                       | C1                                 | C2                         |                                    |               |
| 89                | Hexachlorobutadiene        | 87683             |              |                                       | <del>0.44</del> <u>0.017</u>       | cl                         | <del>18</del> <u>0.017</u>         | cl            |
| 90                | Hexachloro-cyclopentadiene | 77474             |              |                                       | <del>40</del> <u>3.7</u>           | <del>c</del>               | <del>1100</del> <u>3.9</u>         | <del>c</del>  |
| 91                | Hexachloroethane           | 67721             |              |                                       | <del>1.4</del> <u>0.14</u>         | cl                         | <del>3.3</del> <u>0.15</u>         | cl            |
| 92                | Ideno (1,2,3-cd) Pyrene    | 193395            |              |                                       | <del>0.0038</del> <u>0.0014</u>    | cl                         | <del>0.018</del> <u>0.0014</u>     | cl            |
| 93                | Isophorone                 | 78591             |              |                                       | <del>35</del> <u>22</u>            | cl                         | <del>960</del> <u>1,700</u>        | cl            |
| 94                | Naphthalene                | 91203             |              |                                       |                                    |                            |                                    |               |
| 95                | Nitrobenzene               | 98953             |              |                                       | <del>17</del> <u>8.1</u>           | c                          | <del>690</del> <u>540</u>          | c             |
| 96                | N-Nitrosodimethylamine     | 62759             |              |                                       | <del>0.00069</del> <u>0.00040</u>  | cl                         | <del>3.0</del> <u>2.8</u>          | cl            |
| 97                | N-Nitrosodi-n-Propylamine  | 621647            |              |                                       | <del>0.0050</del> <u>0.0030</u>    | cl                         | <del>0.51</del> <u>0.49</u>        | cl            |
| 98                | N-Nitrosodiphenylamine     | 86306             |              |                                       | <del>3.32</del>                    | cl                         | <del>6.0</del> <u>5.8</u>          | cl            |
| 99                | Phenanthrene               | 85018             |              |                                       |                                    |                            |                                    |               |
| 100               | Pyrene                     | 129000            |              |                                       | <del>830</del> <u>26</u>           | c                          | <del>4000</del> <u>27</u>          | c             |
| 101               | 1,2,4-Trichlorobenzene     | 120821            |              |                                       | <del>35</del> <u>0.11</u>          | <del>c</del>               | <del>70</del> <u>0.11</u>          | <del>c</del>  |
| 102               | Aldrin                     | 309002            | 3            |                                       | <del>0.000049</del> <u>5.1E-07</u> | cl                         | <del>0.000050</del> <u>5.3E-07</u> | cl            |
| 103               | alpha-BHC                  | 319846            |              |                                       | <del>0.0026</del> <u>0.00040</u>   | cl                         | <del>0.0049</del> <u>0.00042</u>   | cl            |
| 104               | beta-BHC                   | 319857            |              |                                       | <del>0.0097</del> <u>0.0084</u>    | cl                         | <del>0.017</del> <u>0.014</u>      | cl            |
| 105               | gamma-BHC (Lindane)        | 58899             | 2            | 0.08                                  | <del>0.98</del> <u>3.9</u>         | <del>lc</del>              | <del>1.8</del> <u>4.2</u>          | <del>lc</del> |
| 106               | delta-BHC                  | 319868            |              |                                       |                                    |                            |                                    |               |
| 107               | Chlordane                  | 57749             | 2.4          | 0.0043                                | <del>0.00080</del> <u>0.00024</u>  | cl                         | <del>0.00081</del> <u>0.00024</u>  | cl            |
| 108               | 4,4'-DDT                   | 50293             | 1.1          | 0.001                                 | <del>0.00022</del> <u>1.7E-05</u>  | cl                         | <del>0.00022</del> <u>1.7E-05</u>  | cl            |
| 109               | 4,4'-DDE                   | 72559             |              |                                       | <del>0.00022</del> <u>1.2E-05</u>  | cl                         | <del>0.00022</del> <u>1.2E-05</u>  | cl            |
| 110               | 4,4'-DDD                   | 72548             |              |                                       | <del>0.00031</del> <u>9.4E-05</u>  | cl                         | <del>0.00031</del> <u>9.8E-05</u>  | cl            |

| A                 |   | B<br>Aquatic life |              |             |                               | C<br>Human health for consumption of: |                            |                                |     |
|-------------------|---|-------------------|--------------|-------------|-------------------------------|---------------------------------------|----------------------------|--------------------------------|-----|
| (Number) Compound | a CAS Number                                | b CMC (µg/L)      | b CCC (µg/L) | Carcinogen? | Water & organisms fish (µg/L) |                                       | Organisms Fish only (µg/L) |                                |     |
|                   |   | B1                | B2           |             | C1                            |                                       | C2                         |                                |     |
| 111               | Dieldrin                                    | 60571             | 2.5          | 0.0019      | Y                             | <del>0.000052</del><br>8.8E-07        | cl                         | <del>0.000054</del><br>8.9E-07 | cl  |
| 112               | alpha-Endosulfan                            | 959988            | 0.22         | 0.056       |                               | <del>62</del> 18                      | c                          | <del>89</del> 26               | c   |
| 113               | beta-Endosulfan                             | 33213659          | 0.22         | 0.056       |                               | <del>62</del> 20                      | c                          | <del>89</del> 40               | c   |
| 114               | Endosulfan Sulfate                          | 1031078           |              |             |                               | <del>62</del> 20                      | c                          | <del>89</del> 36               | c   |
| 115               | Endrin                                      | 72208             | 0.18         | 0.0023      |                               | <del>0.059</del> 0.026                | c                          | <del>0.060</del> 0.026         | c   |
| 116               | Endrin Aldehyde                             | 7421934           |              |             |                               | <del>0.29</del> 1.1                   | c                          | <del>0.30</del> 1.2            | c   |
| 117               | Heptachlor                                  | 76448             | 0.52         | 0.0038      | Y                             | <del>0.000079</del><br>4.1E-06        | cl                         | <del>0.000079</del><br>4.1E-06 | cl  |
| 118               | Heptachlor Epoxide                          | 1024573           | 0.52         | 0.0038      | Y                             | <del>0.000039</del><br>2.6E-05        | cl                         | <del>0.000039</del><br>2.6E-05 | cl  |
| 119               | Polychlorinated Biphenyls PCBs:             | n                 |              | 0.014 n     | Y                             | <del>0.000064</del><br>6.1E-05        | clo                        | <del>0.000064</del><br>6.3E-05 | clo |
| 120               | Toxaphene                                   | 8001352           | 0.73         | 0.0002      | Y                             | <del>0.00028</del><br>0.00064         | cl                         | <del>0.00028</del><br>0.00067  | cl  |
| 121               | Chlorine                                    |                   | 19 k         | 11 k        |                               |                                       |                            |                                |     |
| 122               | 1,2,4,5-Tetrachlorobenzene                  | 95943             |              |             |                               | 0.049                                 | c                          | 0.050                          | c   |
| 123               | 2,4,5-Trichlorophenol                       | 95954             |              |             |                               | 310                                   | c                          | 560                            | c   |
| 124               | Bis (Chloromethyl) Ether                    | 542881            |              |             | Y                             | 9.0E-05                               | cl                         | 0.018                          | cl  |
| 125               | Chlorophenoxy Herbicide (2,4,5-TP) [Silvex] | 93721             |              |             |                               | 110                                   | c                          | 420                            | c   |
| 126               | Chlorophenoxy Herbicide (2,4-D)             | 94757             |              |             |                               | 800                                   | c                          | 13.000                         | c   |
| 127               | Dinitrophenols                              | 25550587          |              |             |                               | 8.0                                   | c                          | 1.000                          | c   |
| 128               | Hexachlorocyclohexane (HCH)-Technical       | 608731            |              |             | Y                             | 0.0075                                | cl                         | 0.0096                         | cl  |
| 129               | Methoxychlor                                | 72435             |              |             |                               | 0.016                                 | c                          | 0.016                          | c   |
| 130               | Pentachlorobenzene                          | 608935            |              |             |                               | 0.085                                 | c                          | 0.089                          | c   |
| Table Footnotes   |   |                   |              |             |                               |                                       |                            |                                |     |

| A   |                         | B<br>Aquatic life             |                               | C<br>Human health for consumption of: |                                     |                                  |
|---|-------------------------|-------------------------------|-------------------------------|---------------------------------------|-------------------------------------|----------------------------------|
| (Number) Compound   | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L)<br>B1 | <sup>b</sup> CCC (µg/L)<br>B2 | Carcinogen?                           | Water & organisms fish (µg/L)<br>C1 | Organisms Fish only (µg/L)<br>C2 |
| a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.   |                         |                               |                               |                                       |                                     |                                  |
| b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.  |                         |                               |                               |                                       |                                     |                                  |
| c. <del>This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.</del> This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document for Human Health Criteria Calculations - 2015. |                         |                               |                               |                                       |                                     |                                  |
| d. Inorganic forms only.  |                         |                               |                               |                                       |                                     |                                  |
| e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.   |                         |                               |                               |                                       |                                     |                                  |
| f. Criterion expressed as total recoverable (unfiltered) concentrations.  |                         |                               |                               |                                       |                                     |                                  |
| g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.   |                         |                               |                               |                                       |                                     |                                  |
| h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.   |                         |                               |                               |                                       |                                     |                                  |
| i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).        |                         |                               |                               |                                       |                                     |                                  |
| j. Criteria are expressed as weak acid dissociable (WAD) cyanide.   |                         |                               |                               |                                       |                                     |                                  |
| k. Total chlorine residual concentrations.  |                         |                               |                               |                                       |                                     |                                  |
| l. EPA guidance allows states to choose a risk factor from a range of 10 <sup>-4</sup> to 10 <sup>-6</sup> for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 <sup>-6</sup> risk.  |                         |                               |                               |                                       |                                     |                                  |
| m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8).<br>CMC = exp(1.005(pH)-4.830)<br>CCC = exp(1.005(pH)-5.290)  |                         |                               |                               |                                       |                                     |                                  |
| n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.   |                         |                               |                               |                                       |                                     |                                  |
| o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).   |                         |                               |                               |                                       |                                     |                                  |



| A  |              | B<br>Aquatic life |                 | C<br>Human health for consumption of: |                                     |                                  |
|--|--------------|-------------------|-----------------|---------------------------------------|-------------------------------------|----------------------------------|
| (Number) Compound  | a CAS Number | b CMC<br>(µg/L)   | b CCC<br>(µg/L) | Carcinogen?                           | Water &<br>organisms fish<br>(µg/L) | Organisms Fish<br>only<br>(µg/L) |
|  |              | B1                | B2              |                                       | C1                                  | C2                               |
| <p>p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p> |              |                   |                 |                                       |                                     |                                  |
| <p>q. <u>This criterion is based on the drinking water Maximum Containment Level (MCL).</u></p>  |              |                   |                 |                                       |                                     |                                  |

(3-29-10)( )

02. **Factors for Calculating Hardness Dependent Metals Criteria.** Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a.  $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\}$  X Acute Conversion Factor. (5-3-03)

b.  $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\}$  X Chronic Conversion Factor.

| Metal          | mA     | bA     | mc     | bc     | aAcute Conversion Factor | aChronic Conversion Factor |
|----------------|--------|--------|--------|--------|--------------------------|----------------------------|
| Arsenic        | b      | b      | b      | b      | 1.0                      | 1.0                        |
| Cadmium        | 0.8367 | -3.560 | 0.6247 | -3.344 | 0.944<br>see footnote a  | 0.909                      |
| Chromium (III) | 0.819  | 3.7256 | 0.8190 | 0.6848 | 0.316                    | 0.860                      |
| Chromium (VI)  | b      | b      | b      | b      | 0.982                    | 0.962                      |
| Copper         | 0.9422 | -1.464 | 0.8545 | -1.465 | 0.960                    | 0.960                      |
| Lead           | 1.273  | -1.460 | 1.273  | -4.705 | 0.791                    | 0.791                      |
| Mercury        | b      | b      | b      | b      | 0.85                     | 0.85                       |
| Nickel         | 0.846  | 2.255  | 0.8460 | 0.0584 | 0.998                    | 0.997                      |
| Silver         | 1.72   | -6.52  | c      | c      | 0.85                     | c                          |
| Zinc           | 0.8473 | 0.884  | 0.8473 | 0.884  | 0.978                    | 0.986                      |

Note to table: The term "exp" represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$  NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic):  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

(3-29-10)

**03. Applicability.** The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications *including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters.* Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (5-3-03)( )

a. For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the appropriate locations specified within or at the boundary of the mixing zone(s) and beyond; ~~otherwise the~~ Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (4-11-06)( )

b. Low flow design discharge conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical standards can only criteria may be exceeded in perennial streams permitted discharges outside any applicable mixing zone only when flows are less than the following these values:

| Aquatic Life             |             | Human Health    |   |
|--------------------------|-------------|-----------------|---|
| CMC ("acute" criteria)   | 1Q10 or 1B3 | Non-carcinogens | <del>30Q5</del> <u>Harmonic mean flow</u> |
| CCC ("chronic" criteria) | 7Q10 or 4B3 | Carcinogens     | Harmonic mean flow                        |

(4-11-06)( )

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where "1B3" is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where "4B3" is biologically based and indicates an allowable exceedance for four (4) consecutive

days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

~~v. Where "30Q5" is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and (5-3-03)~~

vi. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (5-3-03)( )

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" is available at the

Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at [http://www.deq.idaho.gov/media/639808-idaho\\_mercury\\_wq\\_guidance.pdf](http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf). (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

**d. Application of toxics criteria.** ( )

**i.** Frequency and duration for aquatic life toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (4-11-06) ( )

**ii.** Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean. ( )

**04. National Pollutant Discharge Elimination System Permitting.** For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

**a.** “Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria,” EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

**b.** “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

**c.** “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

**d.** “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

**e.** “Technical Support Document for Water Quality-Based Toxics Control.” EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. ( )

**05. Development of Toxic Substance Criteria.** (4-5-00)

**a.** Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

**i.** Site-specific criteria developed pursuant to Section 275; (4-5-00)

**ii.** Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

- iii. The most recent recommended criteria defined in EPA's ~~Aquatic Toxicity Information Retrieval (ACQUIRE)~~ ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or ~~(4-5-00)~~ ( )
- iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)
  - i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department ~~from the most recent recommended criteria~~ using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. ( )
  - ii. When using ~~EPA recommended criteria~~ toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate ~~of seventeen point five (17.5) grams/day, a representative of the population to be protected, a mean adult body weight, and adult 90th percentile~~ water ingestion rate ~~of two (2) liters/day, a trophic level weighted BAF or BCF,~~ and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10<sup>-6</sup> for carcinogens shall be utilized. ~~(4-11-06)~~ ( )

Note: In 2006, Idaho updated 167 human health criteria for 88 chemicals. On May 10, 2012, EPA disapproved Idaho's 2006 update of 167 human health criteria for toxic substances (see IDAPA 58.01.02.210.01) and the use of 17.5 g/day fish consumption rate for human health criteria. This action was based on EPA's judgment that the fish consumption rate used in criteria derivation was not adequately protective. As a result of this action, the fish consumption rate of 6.5 g/day published in the 2005 version of IDAPA 58.01.02.210.05.b.i. continues to apply and is effective for federal Clean Water Act purposes. For more information regarding this EPA disapproval, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

**(BREAK IN CONTINUITY OF SECTIONS)**

**284. SOUTH FORK COEUR D'ALENE SUBBASIN, SUBSECTION 110.09, HUC 17010302, AQUATIC LIFE CRITERIA FOR CADMIUM, LEAD AND ZINC.**

The following criteria are to be met dependent upon the hardness, expressed as mg/l of calcium carbonate, of the water. Criterion maximum concentrations (CMC), one (1) hour average concentrations, and criterion continuous concentrations (CCC), four (4) day average concentrations, of the dissolved metals (in µg/l) are not to exceed, more than once every three (3) years, the values calculated using the following equations: (3-15-02)

- 01. Cadmium.** (3-15-02)
  - a.  $CMC = 0.973 \times e^{[(1.0166 \times \ln(\text{hardness})) - 3.924]}$  (3-15-02)
  - b.  $CCC = [1.101672 - (\ln(\text{hardness}) \times 0.041838)] \times e^{[(0.7852 \times \ln(\text{hardness})) - 3.490]}$  (3-15-02)
- 02. Lead.** (3-15-02)
  - a.  $CMC = e^{[(0.9402 \times \ln(\text{hardness})) + 1.1834]}$  (3-15-02)
  - b.  $CCC = e^{[(0.9402 \times \ln(\text{hardness})) - 0.9875]}$  (3-15-02)
- 03. Zinc.** (3-15-02)
  - a.  $CMC = e^{[(0.6624 \times \ln(\text{hardness})) + 2.2235]}$  (3-15-02)

- b.  $CCC = e^{[(0.6624 \times \ln(\text{hardness})) + 2.2235]}$  (3-15-02)
04. **Application.** (3-15-02)
- a. The maximum hardness allowed for use in the equations in Section 284 shall not be greater than four hundred (400) mg/l even if the actual ambient hardness is greater than four hundred (400) mg/l. (3-15-02)
- b. The criteria described in Section 284 apply to ~~the South Fork Coeur d'Alene River subbasin, units P-11 and P-13.~~ (3-15-02)
- ~~e. In addition to the waters listed in subsection 284.04.b, the criteria described in Section 284 apply to all surface waters within the subbasin, except for natural lakes, for which the statewide criteria given in Section 210 apply.~~ (3-15-02) ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. RULES GOVERNING POINT SOURCE DISCHARGES.**

01. **Implementation Policy.** (7-1-93)
- a. As provided for in Subsection 080.01, and Sections 200, 210, 250, 251, 252, 253, 275, and 400 for point source discharges, failure to meet general or specific water quality criteria is a violation of the water quality standards. (4-5-00)
- b. No unauthorized discharge from a point source shall occur to waters of the state. (4-11-06)
02. **Limitations to Point Source Restrictions.** So long as a point source discharge or wastewater treatment facility is regulated by the terms and conditions of an authorization pursuant to Subsection 080.02, a Board order, decree or compliance schedule, or a valid NPDES permit issued by the EPA, the discharge or facility will not be subject to additional restrictions or conditions based on Subsection 080.01 and Sections 200, 210, 250, 251, 252, and 253. (3-29-12)
03. **Compliance Schedules for Water Quality-Based Effluent Limitations.** Discharge permits for point sources may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time. (3-15-02)
04. **Wetlands Used for Wastewater Treatment.** (8-24-94)
- a. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of wastewater or stormwater treatment, and operated in compliance with NPDES permit conditions, shall not be subject to the application of general water quality-based or site-specific criteria and standards. (8-24-94)
- b. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of treatment of nonpoint sources of pollution, and operated in compliance with best management practices, shall not be subject to the application of general water quality-based or site specific criteria and standards. (8-24-94)
- c. Discharges from treatment systems described in Sections 400.04.a. and 400.04.b. to waters of the state are subject to all applicable rules and requirements governing such discharges. (8-24-94)
05. **Flow Tiered NPDES Permit Limitations.** Discharge permits for point sources discharging to waters exhibiting unidirectional flow may incorporate tiered limitations for conventional and toxic constituents at the discretion of the department. (8-24-94)
06. **Intake Credits for Water Quality-Based Effluent Limitations.** Discharge permits for point sources may incorporate intake credits for water quality-based effluent limits. These credits are subject to the limitations specified in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program." ( )

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1502

### NOTICE OF NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the meetings at one of the following locations. The public may participate by telephone and web conferencing at any of the meeting locations or with individual connections. For those who cannot participate by attending the meetings, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meetings will be held as follows. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone and web conferencing or scheduling of additional meetings, contact the undersigned. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the dates provided in the table below.

#### \*ORIGINATING LOCATION – LIVE MEETING\*

**DEQ State Office  
Conference Center  
1410 N. Hilton, Boise, Idaho**

#### \*TELEPHONE AND WEB CONFERENCE LOCATIONS\*

|   |  |
|---|--|
| <b>DEQ Coeur d'Alene Regional Office<br/>2110 Ironwood Parkway<br/>Coeur d'Alene, Idaho</b> | <b>DEQ Pocatello Regional Office<br/>444 Hospital Way #300<br/>Pocatello, Idaho</b>  |
| <b>Meeting Dates and Times</b>  | <b>Telephone &amp; Web Conferencing Information</b>  |
| October 28, 2015<br>9:00 a.m. to 3:00 p.m. Mountain Time                                    | Contact the undersigned by <b>October 20, 2015</b> to make arrangements for participation by telephone and web conferencing  |
| November 24, 2015<br>9:00 a.m. to 3:00 p.m. Mountain Time                                   | Contact the undersigned by <b>November 17, 2015</b> to make arrangements for participation by telephone and web conferencing |

**PRELIMINARY DRAFT:** The preliminary draft rule can be obtained at [www.deq.idaho.gov/58-0102-1502](http://www.deq.idaho.gov/58-0102-1502) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to update DEQ's existing hardness dependent criteria by using EPA's 2007 304(a) copper criteria. This update is a Reasonable and Prudent Alternative identified in National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life.

The toxicity of copper to aquatic life is highly variable depending on physicochemical factors within a water body. The effect of hardness on metal toxicity has long been acknowledged as one such factor and is reflected in DEQ's current hardness dependent criteria, whereby the acute and chronic criteria are determined based on the total hardness of the receiving water body. However, DEQ's current hardness dependent criteria do not take into account the effects of other physicochemical properties of the receiving water body which affect toxicity, leading to DEQ's current criteria being either over- or under-protective of aquatic life.

This action is identified in NOAA's biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current copper criteria (as well as other toxics criteria) were under-protective of aquatic life support and would result in adverse modification of critical habitat. NOAA's recommendation is to use EPA's 2007 304(a) copper criteria, which uses other physicochemical properties of the water (e.g., pH, DOC, etc.) to predict water-body specific criteria known as the Biotic Ligand Model (BLM). NOAA has called for state adoption and EPA approval or EPA promulgation of these criteria by May 2017. Because of this, DEQ's 2014 triennial review identified revision of the aquatic life criteria for copper as a high priority. By adopting a copper criterion based on the BLM, DEQ will be able to use the most current state of the science to ensure that the criteria are more precise and are neither unnecessarily burdening dischargers nor increasing risk to aquatic life.

In short, this rule will replace the existing hardness dependent criteria for copper with a similar, albeit more detailed, modeled approach. DEQ will also explore an alternative, simplified version of the BLM, using a multiple linear regression model for copper toxicity which could be adopted as an equation. DEQ anticipates there may also be need for language dealing with how the BLM for copper is to be applied in situations where data on physiochemical properties of a water body are limited, such as default model inputs. Additionally, DEQ anticipates there may be need for language dealing with implementation of the BLM criteria for assessment and permitting purposes; e.g., providing a single reference value to account for the variability in multiple instantaneous criteria.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2016 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2016. If adopted by the Board, the rule will be reviewed by the 2017 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Jason Pappani at [Jason.pappani@deq.idaho.gov](mailto:Jason.pappani@deq.idaho.gov), (208)373-0515.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or email at the address below. Written comments on the preliminary draft rule must be received by November 9, 2015. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 7th Day of October, 2015.

Paula J. Wilson, Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)



# **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES**

**DOCKET NO. 58-0103-1501**

### **NOTICE OF NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the meeting at one of the following locations. Participation by telephone and web conferencing will be made available to the public. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meeting will be held as follows. Individuals interested in participating by telephone and web conferencing should contact the undersigned by October 20, 2015.

#### **\*ORIGINATING LOCATION – LIVE MEETING\***

**DEQ State Office  
Conference Center  
1410 N. Hilton, Boise, Idaho**

**October 22, 2015**

**9 a.m. to 12:30 p.m. Mountain Time**

To make arrangements for individual participation  
by telephone and web conferencing, contact Paula Wilson at  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418, by **October 20, 2015**

#### **\*TELEPHONE AND WEB CONFERENCE LOCATIONS\***

**DEQ Coeur d'Alene Regional Office  
2110 Ironwood Parkway  
Coeur d'Alene, Idaho**

**DEQ Idaho Falls Regional Office  
900 N. Skyline, Suite B  
Idaho Falls, Idaho**

**PRELIMINARY DRAFT:** The preliminary draft of the rule can be obtained at [www.deq.idaho.gov/58-0103-1501](http://www.deq.idaho.gov/58-0103-1501) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to create an effective and useful means of approving and overseeing service providers for DEQ and the health districts and will expand choices of service for private property owners.

Complex alternative septic systems are engineered and/or manufactured systems and products that contain many different mechanical components to achieve secondary wastewater treatment. Without complex alternative septic systems, an individual property owner's options for subsurface sewage disposal system installation may be extremely limited in many environmentally sensitive areas. It is important that complex alternative septic systems undergo a minimum of annual operation, maintenance, and monitoring by a qualified service technician that is familiar with the technology to ensure system functionality and efficacy. Without the proper operation, maintenance, and monitoring, these wastewater treatment systems do not achieve their designed treatment levels prior to discharge. Improper

wastewater treatment prior to discharge to the subsurface may result in degradation of Idaho's ground water resources where these systems are located.

Currently, DEQ's ability to approve qualified service technicians and ensure that they have baseline knowledge of the technology that they are servicing is limited because there are no state requirements supported by rule for the minimum qualifications, responsibilities, and approval of service providers for complex alternative treatment systems. DEQ is currently limited to approving service providers through guidance and has found that manufacturers of the treatment technology are limiting the number of service providers they are willing to train. The limited training of service providers by manufacturers under DEQ's current guidance system has resulted in a limited number of service providers who can conduct routine operation, maintenance and repair for private property owners.

Several private property owners have requested via public comment that DEQ develop an approval process for service providers that allows the property owner to have a larger base of service providers from which to choose. The private property owners also hope that an unlimited service provider system would help foster healthy and open competition for their business, resulting in better service and effective cost control for the provider's services. DEQ also received recommendation from its Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal, authorized by IDAPA 58.01.03.004.07, to pursue a service provider based operation, maintenance, and monitoring model for complex alternative treatment units for septic systems during the committee's March and May 2015 meetings. The Idaho Attorney General's Office has advised that approval and oversight of service providers should be done under authorized agency rule.

DEQ is responding to the desires of the private property owners that have complex alternative treatment systems installed on their property and the Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal by pursuing an amendment to IDAPA 58.01.03.006. The amendment to IDAPA 58.01.03.006 will allow DEQ to authorize individuals to be service providers for complex alternative treatment systems through the issuance of a complex installer's registration permit with a service provider certification. The rule amendment creates minimum application contents and responsibilities that service providers would have to meet.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans who own or purchase property that necessitates the installation of a complex alternative subsurface sewage disposal system and permitted installers may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in 2016 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule. If adopted by the Board, the rule will be reviewed by the 2017 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Tyler Fortunati at [tyler.fortunati@deq.idaho.gov](mailto:tyler.fortunati@deq.idaho.gov) or (208)373-0140.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or email at the address below. Written comments on the preliminary draft rule must be received by November 6, 2015. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 7th Day of October, 2015.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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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.

*The written comment submission deadline is October 21, 2015 unless otherwise noted.*

*Public hearing request deadline is October 28, 2015 unless otherwise noted.*

*(Temp & Prop) indicates the rule is both Temporary and Proposed.*

*(\*PH) indicates that a public hearing has been scheduled.*

#### IDAPA 07 - DIVISION OF BUILDING SAFETY

PO Box 83720, Meridian, ID 83642

**07-0203-1501, Rules Governing Permit Fee Schedule.** Increases the inspection fee for a separate water or sewer inspection to the standard DBS base inspection rate of \$65.

##### **07.03.01 - Rules of Building Safety**

**07-0301-1501,** Increases the threshold to 50 occupants before a manual fire alarm system is required in Group E; clarifies the methods for constructing fire-resistive wall systems between townhome units to negate the need for fire sprinkler systems; corrects code references; removes obsolete language; exempts buildings or rooms that are heated or cooled only to maintain the required operating temperature of industrial, electronic, or manufacturing equipment.

**07-0301-1502,** Allows a state agency or organization that regularly employs qualified trade person(s) to secure an annual permit from DBS to perform minor alterations in buildings and structures or on the premises or campus owned or operated by the applicant in lieu of obtaining individual permits for each alteration; requires entity to keep records of alterations; defines a "minor alteration" that would require a permit and establishes a fee for inspecting such work.

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

PO Box 83720, Boise, ID 83720-0037

**08-0109-1501, Rules Governing the GEAR UP Idaho Scholarship Program.** Allows applications to be submitted after March 1 and specifies that applications received after that date may not receive an award until the following year; expands the scholarship award renewal period to 10 continuous semesters; reduces number of days prior to the first day of the academic term for students who have an interruption in their enrollment; clarifies the initial application process, the selection of recipients, and continuing eligibility requirements.

**08-0113-1501, Rules Governing the Opportunity Scholarship Program.** Clarifies eligibility and application requirements; specifies that grade point average used is the cumulative, unweighted GPA; authorizes the Board's Director to establish the application form; clarifies that after the initial awards are made, additional funds available may be awarded; allows Director to approve extensions of the award for certain students; amends credit hour requirements to 24 credits in an academic year rather than 12 credits in each semester.

**08-0201-1501, Rules Governing Administration.** Specifies that the High School Equivalency Certificate requests go to the Division of Professional Technical Education; removes the "cut scores" allowing the scoring rubric and passing requirement established by the GED Testing Service to be used for the high school equivalency certificate; addresses how test takers obtain records or copies of transcripts to show successful completion.

##### **08.02.02 - Rules Governing Uniformity**

**08-0202-1501,** Reorganizes certain sections by subject matter for clarity; amends alternate route certification for the

content specialist; adds the renewal requirement for administrator certification pursuant to Idaho Code; clarifies that approved alternate authorization programs must be aligned with the Idaho Standards for Initial Certification and be reviewed under the same timeline as approved postsecondary teacher preparation programs.

*\*08-0202-1504, (\*PH)* Revises the following endorsements for the Idaho Standards for Initial Certification of Professional School Personnel: Blended Early Childhood Education, Blind and Visually Impaired, Communication Arts Foundation, Deaf/Hard of Hearing, Economics, Geography, Government/Civics, Health, History, Journalism, Physical Education, School Psychologist, School Social Worker, Social Studies Foundation, and Speech and Debate.

#### **08.02.03 - Rules Governing Thoroughness**

*08-0203-1505*, Redefines “Advanced Opportunities” to align it with Idaho public postsecondary institution program offerings and include replacing “Tech Prep” with “Technical Competency Credit.”

*\*08-0203-1508, (Temp & Prop) (\*PH)* Limits to 60 days the total timeline for determination of eligibility for special education and related services from the date of receipt of written parental consent for an initial evaluation, with certain exceptions, unless all parties agree to an extension.

*\*08-0203-1509, (\*PH)* Revises standards by expanding the fine arts to include media arts and by allowing Idaho schools to select best-suited science standards as per local control.

*\*08-0203-1510, (\*PH)* Adds physical education to subject area of curricular materials reviewed for adoption as part of the scheduled curriculum review.

*\*08-0203-1511, (\*PH)* Removes obsolete standards and updates the Idaho English Language Assessment achievement standards; changes achievement standards terminology to Level 1 through Level 5 on the IELA.

*08-0501-1501, Rules Governing Seed and Plant Certification.* Incorporates by reference recently revised standards of the Idaho Crop Improvement Association, Inc. for seed certification.

#### **IDAPA 11 - IDAHO STATE POLICE 700 S Stratford Drive, Meridian, ID 83642**

##### **ISP - IDAHO STATE RACING COMMISSION**

*11-0411-1502, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses.* Defines “Board Approved Primary Laboratory,” “Primary Laboratory” and “Referee Laboratory”; clarifies the exact process for split sample testing and allows for additional time for samples to be sent to a referee laboratory.

##### **ISP - ALCOHOL BEVERAGE CONTROL BUREAU**

*11-0501-1501, Rules Governing Alcohol Beverage Control.* (Temp & Prop) Creates a “growler” endorsement for retail alcohol licenses; defines “growler” and provides the procedures for the sale and transportation of “growlers” within the state of Idaho and a tamper-proof tape seal to be affixed to the growler at the time of refill purchase. The tamper-proof tape is provided by ISP to retailers for \$20 per box.

##### **ISP - PUBLIC SAFETY AND SECURITY INFORMATION BUREAU**

*11-1003-1501, Rules Governing the Sex Offender Registry.* (Temp & Prop) Provides a mechanism for Idaho State Police to determine what convictions in other jurisdictions are “substantially equivalent” to an Idaho conviction that require a person to be registered as a sex offender in Idaho. This determination will be made before a person moves to, begins working in or becomes a student in Idaho.

##### **ISP - POST**

*11-1101-1501, Rules of the Idaho Peace Officer Standards and Training Council.* Defines “POST Certified Instructor”; makes all academies open campus; deletes language regarding class attendance; updates fingerprint requirements; deletes the Physical Readiness Testing from challenge requirement; addresses reactivating certification; adds decertification investigation language; changes “Vo-tech” to “college” programs; revamps the instructor and school certification rules to decrease regulation and increase support offered by POST to improve training.

*11-1104-1501, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers.* Updates fingerprint requirements to reflect current Bureau of Criminal Identification requirements; amends language pertaining to reactivating a certification; deletes the Physical Agility Testing from the challenge requirements; adds firearms qualification to correction officer challenge requirements; adds decertification investigation language to align with other similar sections.

**ISP - MOTOR VEHICLE BUREAU**

**11-1301-1501, *The Motor Carrier Rules.*** (Temp & Prop) Updates the incorporation by reference of the Federal Motor Carrier Safety Regulations.

**IDAPA 12 - DEPARTMENT OF FINANCE**

**PO Box 83720, Boise, ID 83720-0031**

**12-0110-1501, *Rules Pursuant to the Idaho Residential Mortgage Practices Act.*** Updates references to incorporated federal laws and regulations; eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers/lenders.

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

**PO Box 25, Boise, ID 83707**

**13-0102-1501, *Rules Governing Hunter Education and Mentored Hunting.*** Clarifies the limits of the Hunting Passport for 8 year old children.

**13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho**

**13-0108-1501,** (Temp & Prop) Clarifies which disabled hunters are eligible for designated hunter companion exceptions; and clarifies which senior and disabled hunters are eligible to purchase leftover youth controlled hunt tags.

**13-0108-1502,** Clarifies the eligibility requirements for controlled hunt tags designated to a child or grandchild.

**13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

**13-0109-1501,** (Temp & Prop) Increases goose hunting opportunities in the Hagerman Valley by partially rescinding the goose hunting closure in Gooding and Twin Falls Counties. The rescission would not affect the Hagerman Wildlife Management Area Waterfowl Closure.

**13-0109-1502,** Allows a new method of take (crossbow) for forest grouse, which is already an approved method of take for certain other big game species in general hunts so the weapon allowance does not represent new weaponry or new technology.

**13.01.11 - Rules Governing Fish**

**13-0111-1501,** Establishes specific conditions to allow the removal of the heads and tails of trout, bass, and tiger muskie for transit or while in the field.

**13-0111-1502,** (Temp & Prop) Allows for a Coho salmon fishing season and harvest and amends the rule to allow take and possession of Coho salmon with an intact adipose fin in the Clearwater drainage.

**13-0116-1501, *The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.*** Establishes a mandatory trapper education class, the class length, required subject matter to be covered and a course fee.

**13-0117-1501, *Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.*** Clarifies the term “established roadway” as part of the location criteria for placing bait for black bear.

**IDAPA 14 - BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS**

**PO Box 83720, Boise, ID 83720-0063**

**14.01.01 - Rules of Procedure of the Board of Registration for Professional Geologists**

**14-0101-1501,** Allows applicants to take one of the required examinations while still in college; clarifies the examination, re-examination, and examination scores.

**14-0101-1502,** Removes the reinstatement fee from rule because the fee is in statute.

**IDAPA 15 - OFFICE OF THE GOVERNOR  
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**PO Box 83720, Boise, ID 83720-0012**

**15-0202-1501, *Vocational Rehabilitation Services.*** Increases ICBVI's contribution of goods and services to VR clients; updates terminology in the VR Policy Manual to be consistent with Rehabilitation Services Administration regulations.

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

PO Box 83720, Boise, ID 83720-0036

**16-0202-1501, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission.** Updates the incorporated by reference of the EMS Standards Manual to the latest edition.

**16-0301-1501, Eligibility for Health Care Assistance for Families and Children.** Under the Medicare Access and CHIP Reauthorization Act of 2015, changes are being made to align this chapter of rules with federal regulations approved in that act. Transitional Medicaid (TM) previously thought to have a sunset clause was extended, and is being added. A change for eligibility for “authorized employment” is being removed to ensure eligibility determinations are correctly determined. Language is being removed that is not necessary for eligible institutions.

**16-0304-1501, Rules Governing the Food Stamp Program in Idaho.** Reduces the food stamp applicant resource limit from \$5,000 to \$2,250, or \$3,250 for certain households, and clarifies the description of such households.

**16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)**

**16-0305-1501, (Temp & Prop)** Updates and aligns rule with the current State Plan approved by CMS in January 2015; adds additional types of allowable pre-existing medical expenses towards a participant's liability.

**16-0305-1502,** Aligns rules with the federal requirements for eligibility and the Department's current business practice for determining countable self-employment income; removes authorized employment and the self-employment standard deduction provisions from rule.

**16.03.09 - Medicaid Basic Plan Benefits**

**\*16-0309-1501, (\*PH)** Clarifies gaps that have been identified in these rules and aligns rules to changes in current Medicaid practice regarding school-based services and therapy services; eases requirements to make compliance easier for providers.

**\*16-0309-1502, (\*PH)** Revisions provide for the services and service provider changes need to support outcome-based health care initiatives.

**\*16-0310-1501, Medicaid Enhanced Plan Benefits. (\*PH)** Aligns rules to federal regulations for Idaho's Home and Community Based Services (HCBS) to ensure that participants receiving HCBS live in and receive services in settings that comply with required qualities of settings, service delivery methods, and person-centered planning processes.

**\*16-0313-1501, Consumer-Directed Services. (\*PH)** Aligns rules to federal regulations for Idaho's Home and Community Based Services (HCBS) to enhance participants' opportunities to receive services in the most appropriate integrated settings, and to increase their opportunities for choice and access to the benefits of community living.

**16-0402-1501, Idaho Telecommunication Service Assistance Program Rules.** Aligns rules with state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Telecommunication Service Assistance Program in Idaho by removing outdated information and updating definitions to reflect current practices.

**16-0413-1501, Rules Governing the Emergency Food Assistance Program.** Aligns rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Emergency Food Assistance Program by removing outdated information and updating definitions and references to reflect current practices.

**16-0414-1501, Rules Governing the Low Income Home Energy Assistance Program.** Aligns rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Low Income Home Energy Assistance Program by removing outdated information and updating definitions and references to reflect current practices.

**16-0416-1501, Weatherization Assistance Program in Idaho.** Align rules with the state policies and the Department's current business practices for contracting with qualified entities to provide services as needed for the Weatherization Assistance Program in Idaho by removing outdated information and updating definitions and references to reflect current practices.

**IDAPA 17 - IDAHO INDUSTRIAL COMMISSION  
PO Box 83720, Boise, ID 83720-0041**

**17-0206-1501, Employer's Reports.** Allows all relative worker's compensation claims information to be reported electronically to the Commission through a new secure EDI Claims Release 3.0 interchange system.

**17-0207-1501, Procedures to Obtain Compensation.** Incorporates by reference current International Association of Industrial Accident Boards and Commission ("IAIABC") EDI Claims Release 3.0 which sets forth the requirements that sureties provide information in accordance with EDI reporting standards.

**17-0208-1501, Miscellaneous Provisions.** Allows all relative worker's compensation claims information to be reported electronically to the Commission through a new secure EDI Claims Release 3.0 interchange system.

**17-0209-1502, Medical Fees.** Clarifies how outpatient hospital procedures are to be paid in the presence or absence of Comprehensive Ambulatory Payment Classification codes to include status indicator J1; the standard for reimbursement of rehabilitation hospitals will be changed to the same as other non-Critical Access Hospitals (CAH).

**17-0210-1501, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers.** Allows all relative worker's compensation claims information to be reported electronically to the Commission through a new secure EDI Claims Release 3.0 interchange system.

**17-0211-1501, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers.** Allows all relative worker's compensation claims information to be reported electronically to the Commission through a new secure EDI Claims Release 3.0 interchange system.

**IDAPA 23 - IDAHO BOARD OF NURSING  
PO Box 83720, Boise, ID 83720-0061****23.01.01 - Rules of the Idaho Board of Nursing**

**23-0101-1501,** Establishes the standards and criteria to evaluate the continued competency of licensed nurses and provides several methods for nurses to comply with this obligation.

**23-0101-1503,** Updates and clarifies provisions regarding registered nurses functioning in a specialty area of nursing.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES  
PO Box 83720, Boise, ID 83720-0063**

**24-0001-1500, Omnibus Rulemaking Notice Affecting Certain Licensing Boards Served by the Bureau of Occupational Licenses.** Conforms 8 different board rules to HB 117 by simplifying and standardizing the license renewal process for licensing boards served by the Bureau and aligns the rules with the Bureau's statute; standardizes the license reinstatement fee which increases the fee for 5 boards, decreases the fee for 2 boards and leaves one unchanged.

**24-0301-1501, Rules of the State Board of Chiropractic Physicians.** Clarifies that clinical nutritional methods cannot exceed the scope of practice set forth in 54-704(2), Idaho Code.

**24-0501-1501, Rules of the Board of Drinking Water and Wastewater Professionals.** Clarifies the experience required for Class III and Class IV operator licenses; establishes a Code of Ethics and Standards of Conduct for Back Flow Assembly Testers.

**24-0601-1501, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.** Deletes references to Professional Development Units; clarifies when continuing education is required for licensure renewal; decreases the number of supervised clinical hours for deep thermal and electrotherapeutic modalities and wound care from 160 to 40 hours.

**24-0801-1501, Rules of the State Board of Morticians.** Allows an application to be terminated upon written notice when there has been no activity for 12 months; requires a walk-through inspection to be arranged and completed within 6 months of the Board's application review.

**24-1201-1501, Rules of the Idaho State Board of Psychologist Examiners.** Updates the incorporation by reference of the Ethical Principle of Psychologists and Code of Conduct; decreases several application and licensure renewal

fees; changes the endorsement qualification to allow 5 years of experience to be within the last 7 years; clarifies the continuing education required for reinstatement of an expired license.

**24-1501-1501, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.** Updates the incorporation by reference of the AAMFT Code of Ethics; limits approvals of counselor supervisor registration requirements to 5 years and creates a renewal process; clarifies requirements for licensure of clinical professional counselors; clarifies registration requirements for marriage and family therapists supervisors and creates a registration renewal process.

**24-1701-1501, Rules of the State Board of Acupuncture.** Clarifies the continuing education required to reinstate an expired license; provides continuing education credit for licensee, with limitations, for teaching Board-approved courses.

**24-1801-1501, Rules of the Real Estate Appraiser Board.** Excludes from the Uniform Standards of Professional Appraisal Practice, incorporated by reference, those standards that do not apply to real estate appraisals; deletes definition of "Specialized Appraisal Services."

**24-2101-1501, Rules of the Idaho State Contractors Board.** Increases application and licensure fees to meet funding requirements.

**24-2401-1501, Rules of the Genetic Counselors Licensing Board.** New rules regulate the profession of genetic counseling and establish an application process and requirements for licensure, fees for licensure, continuing education requirements, and a code of ethics.

**24-2501-1501, Rules of the Idaho Driving Businesses Licensure Board.** Extends to 2 years preceding the application the time allowed for an applicant for an instructor's license who has a medical condition to obtain the required medical certificate before providing in-vehicle instruction.

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

1365 N. Orchard Street, Suite 172, Boise, ID 83706

**25-0101-1501, Rules of the Idaho Outfitters and Guides Licensing Board.** Clarifies individual use areas and conforms state licensed outfitter boating limits on four river sections in Eastern Idaho with federal requirements.

#### **IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION**

PO Box 83720, Boise, ID 83720-0065

**26-0106-1501, Rules Governing Cooperator Recognition and Sale of Advertising.** New chapter establishes and documents appropriate recognition for cooperators that provide financial assistance to the Department; and sets appropriate criteria for the sale of advertising.

#### **IDAPA 27 - IDAHO STATE BOARD OF PHARMACY**

PO Box 83720, Boise, ID 83720-0067

##### **27.01.01 - Rules of the Idaho State Board of Pharmacy**

**27-0101-1501,** Changes retail storage registration or annual renewal fee to a flat fee of \$35 regardless of the number of drug items in stock; amends licensure requirements for foreign pharmacy graduates to increase experiential hours; amends registration requirements for certified pharmacy technicians and sets forth penalties for failure to maintain necessary certification; clarifies the amount of experiential hours required by a certified pharmacy technician to work in a remote dispensing site; and amends storage requirements for controlled substances for prevention of theft or diversion.

**27-0101-1502,** Clarifies to whom an institutional facility may dispense drugs and devices.

**27-0101-1503,** Adds definition for "hazardous drug," "USP 795" and "USP 797"; clarifies the components of a prescription drug order to include the prescriber phone number; allows certain product preparations to not be considered compounded if combined according to the manufacturer's labeling.

**27-0101-1504,** Allows a pharmacist to perform drug therapy management and other patient care services per established statewide protocols in the event of a federal or state declared emergency; waves requirements for those engaged in the scope of practice for which they are licensed in another state; allows for temporary pharmacies and mobile pharmacies; allows a pharmacist to refill prescriptions essential to a patient's health or continuation of therapy.

**27-0101-1505,** Amends definition of "Pharmaceutical Care Services" to include the ability to order and interpret

laboratory tests; defines “reconstitution” to provide clarity between compounding a drug and reconstitution of a drug.

**IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE**

**PO Box 83720, Boise, ID 83720-0093**

**28-0201-1501, Idaho Community Development Block Grant Program (ICDBG).** Align program with its Consolidated Plan and federal regulations; better defines program eligible activities; expands the Senior and Community Center set-aside to include public parks; updates terminology.

**28-0207-1501, Rules Governing the Administration of the IGEM Grant Program.** Provides for industry to apply for an IGEM grant in partnership with one of the three eligible Universities; clarifies application and commercialization of revenue processes.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**

**PO Box 83720, Boise, ID 83720-0074**

**31-1101-1501, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission.** Updates the incorporation by reference the Federal Gas Safety Regulations, the International Gas Code, and the International Mechanical Code.

**31-7103-1501, Railroad Safety and Accident Reporting Rules.** Adopts the 2014 version of the federal regulations incorporated by reference.

**IDAPA 34 - OFFICE OF THE SECRETARY OF STATE**

**PO Box 83720, Boise, ID 83720-0080**

**34-0201-1501, Presidential Primary.** Because write-in candidates are not allowed during a presidential primary, this rule is unnecessary and is being repealed.

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**PO Box 36, Boise, ID 83722-0410**

**35.01.02 - Idaho Sales and Use Tax Administrative Rules**

**35-0102-1501,** Conforms rule to statute by redefining digital products (music, books, videos, games) as tangible personal property only if the purchaser has a permanent right to use them; removes digital photographs from the definition of tangible personal property eligible for the production exemption unless the photographs are delivered on disc; adds utility-type vehicles (UTVs) and specialty off-highway vehicles to the exemption available to nonresidents purchasing certain vehicles and boats in Idaho.

**35-0102-1502,** Defines prepared food and prepared beverages; clarifies that hand tools with a unit cost of less than \$100 now qualify for the production exemption; updates several descriptions of exemption certificates to reflect the current version of the form.

**35-0102-1504,** Clarifies that hand tools with a unit cost of less than \$100 now qualify for the production exemption; changes references to an exemption certificate to reflect the current version of the form.

**35-0201-1501, Idaho Sales and Use Tax Administrative Rules.** Adds the interest rate for calendar year 2016 and the Revenue Ruling where the federal rate for the calculation can be found; clarifies the penalty computation for substantial understatement; conforms to HB 236 to allow the Tax Commission to exchange information with the Departments of Correction and Health and Welfare regarding incarcerated persons and food stamp recipients claiming the food tax credit.

**IDAHO TRANSPORTATION DEPARTMENT**

**PO Box 7129, Boise ID 83707-1129**

**39-0222-1501, Rules Governing Registration and Permit Fee Administration.** Clarifies the quarterly reporting of road use fees; provides flexibility to refund money for trip permits if eligible; eliminates delinquent billing processes to match payment requirements; eliminates fee account billing processes; clarifies that unpaid amounts owed to the Department may be sent to a collection agency.

**39-0313-1501, Rules Governing Overweight Permits.** Clarifies the criteria used to determine when a bridge analysis is required for use by overweight vehicles or loads and whether the analysis is done by ITD or a third party that performs and pays for the analysis.



**39-0317-1501, Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers.** (Temp & Prop) Allows for the use of an annual permit for loads up to 16 feet wide rather than the single trip permit that is currently required.

**39-0321-1501, Rules Governing Overlegal Permit Fees.** Eliminates the fee account process for permit payment; allows a carrier the option of establishing an escrow account using the new cash drawer system for permit payments.

**IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD  
PO Box 83720, Boise, ID 83720-0063**

**49-0101-1501, Rules of Procedure of the Idaho Certified Shorthand Reporters Board.** Removes the reinstatement fee from rule.

**IDAPA 50 - IDAHO COMMISSION OF PARDONS AND PAROLE  
3506 Elder St., Boise, Id 83705**

**50-0101-1501, Rules of the Commission of Pardons and Parole.** Implements violation hearing officers' authority to impose sanctions; provides guidelines and application process for firearm restoration; makes additions to confidential evaluations of substance abuse; clarifies executive director's authority to recall a decision; clarifies conditions of parole contract; removes ambiguous terms; authorizes Violation Hearing Officers to implement 90/180 day sanctions without appearing before the commission; clarifies that hearing officer reports and interviews are confidential and exempt from public records requests; provides for transfer of foreign nationals; removes institutional and instructional parole.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY  
PO Box 83720, Boise, ID 83720-0078**

**\*58-0102-1201, Water Quality Standards.** (\*PH) Updates and revises Idaho's human health criteria for water quality for 104 toxic substances, 9 of them new; there are 207 revised or new criteria consisting of 93 revised and 11 new criteria based on exposure to toxic substances from the consumption of fish and ingestion of water, plus 93 revised and 10 new criteria based on exposure to toxic substances from the consumption of fish alone.

**NOTICE OF PROCLAMATION OF RULEMAKING  
IDAPA 06 - BOARD OF CORRECTION**

**06-0102-1502, Rules of Correctional Industries.** Revises definitions of "agricultural employer" and replaces language related to obligations to act. (Eff. 11-6-15)

**NOTICE OF ADOPTION OF TEMPORARY RULE  
IDAPA 07 - DIVISION OF BUILDING SAFETY**

**07-0501-1501, Rules of the Public Works Contractors License Board** (Eff. 9-1-15)T

**IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION  
08-0203-1512, Rules Governing Thoroughness** (Eff. 9-3-15)T

**IDAPA 50 - IDAHO COMMISSION OF PARDONS AND PAROLE  
50-0101-1502, Rules of the Commission of Pardons and Parole** (Eff. 10-1-15)T

**NOTICE OF PUBLIC HEARING**

**IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION  
08-0203-1506, Rules Governing Thoroughness** (Multiple dates and locations)

**NOTICE OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING**

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY  
58-0102-1502, Water Quality Standards** (Multiple meeting dates and locations)  
**58-0103-1501, Individual/Subsurface Sewage Disposal Rules** (Meeting 10-22-15 / multiple locations)

Please refer to the Idaho Administrative Bulletin, [October 7, 2015, Volume 15-10](#), 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**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*July 1, 1993 -- Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.*

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## **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES (Index of Current Rulemakings)**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*April 11, 2015 -- October 7, 2015*

*(eff. PLR) - Final Effective Date Is 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 11, 2015 that are still in process and all current rulemakings promulgated after April 11, 2015 - Sine Die, 2015 Legislative Session.)*

***IDAPA 02 -- IDAHO DEPARTMENT OF AGRICULTURE***

***02.02.14, Rules for Weights and Measures***

- 02-0214-1501 Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0214-1501 Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

***02.04.21, Rules Governing the Importation of Animals***

- 02-0421-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0421-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***02.04.29, Rules Governing Trichomoniasis***

- 02-0429-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0429-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***

- 02-0602-1501 Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0602-1501 Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

***02.06.12, Rules Pertaining to the Idaho Fertilizer Law***

- 02-0612-1501 Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0612-1501 Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

***02.06.22, Noxious Weed Rules***

- 02-0622-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0622-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***02.06.25, Rules Governing the Planting of Beans, other than Phaseolus Species, in Idaho***

- 02-0625-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0625-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001***

- 02-0641-1501 Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0641-1501 Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

***IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS***

***05.01.02, Rules and Standards for Secure Juvenile Detention Centers***

- 05-0102-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***05.02.01, Rules for Residential Treatment Providers***

- 05-0201-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***05.02.02, Rules for Staff Secure Providers***

- 05-0202-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***05.02.03, Rules for Reintegration Providers***

- 05-0203-1501 Proposed Rulemaking, Bulletin Vol. 15-9

***IDAPA 06 -- STATE BOARD OF CORRECTION***

***06.01.02, Rules of Correctional Industries***

**06-0102-1502** Notice of Proclamation of Rulemaking, Bulletin Vol. 15-10 (eff. 11-6-15)

***IDAPA 07 -- DIVISION OF BUILDING SAFETY***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001, Bulletin Vol. 15-7 (eff. 7-1-15)

**07-0901-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001, Bulletin Vol. 15-7 (eff. 7-1-15)

***07.02.03, Rules Governing Permit Fee Schedule***

**07-0203-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**07-0203-1501** Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-10

***07.02.05, Rules Governing Plumbing Safety Licensing***

**07-0205-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**07-0205-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

***07.02.06, Rules Concerning Uniform Plumbing Code***

**07-0206-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

***07.03.01, Rules of Building Safety***

**07-0301-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**07-0301-1501** Proposed Rulemaking, Bulletin Vol. 15-10

**07-0301-1502** Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-10

***07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks***

**07-0402-1501** Adoption of Temporary Fee Rule, Bulletin Vol. 15-6 (eff. 5-1-15)T

***07.05.01, Rules of the Public Works Contractors License Board***

**07-0501-1301** Adoption of Temporary Rule, Bulletin Vol. 15-10 (eff. 9-1-15)T

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)

***07.08.01, Idaho Minimum Safety Standards and Practices for Logging - General Provisions***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

***07.08.02, Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

***07.08.03, Idaho Minimum Safety Standards and Practices for Logging - Explosives and Blasting***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

***07.08.04, Idaho Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

***07.08.05, Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems***

**07-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

- 07.08.06, Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.07, Idaho Minimum Safety Standards and Practices for Logging - Transportation of Employees**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.08, Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.09, Idaho Minimum Safety Standards and Practices for Logging - Rigging, Lines, Blocks, and Shackles**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.10, Idaho Minimum Safety Standards and Practices for Logging - Canopy and Canopy Construction for Logging Equipment**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.11, Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.12, Idaho Minimum Safety Standards and Practices for Logging - Road Transportation**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.13, Idaho Minimum Safety Standards and Practices for Logging - Log Dumps, Landing, Log Handling Equipment, Loading and Unloading Booms, Log Ponds, Rafting, Towing, Stiff Booms, Boom Sticks and Foot Logs, Pond Boats and Tow Boats and Trailer Loading Hoists**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.14, Idaho Minimum Safety Standards and Practices for Logging - Helicopter Logging**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.15, Idaho Minimum Safety Standards and Practices for Logging - Commonly Used Logging Terms**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.08.16, Idaho Minimum Safety Standards and Practices for Logging - Recommended Safety Program**  
07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)
- 07-0901-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)
- 07.09.01, Safety and Health Rules for Places of Public Employment**  
07-0901-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to DBS, Bulletin Vol. 15-7 (eff. 7-1-15)

**IDAHA 08 -- IDAHO STATE BOARD OF EDUCATION**  
**AND STATE DEPARTMENT OF EDUCATION**

- 08.01.09, Rules Governing the GEAR UP Idaho Scholarship Program**  
08-0109-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6  
08-0109-1501 Proposed Rulemaking, Bulletin Vol. 15-10
- 08.01.13, Rules Governing the Idaho Opportunity Scholarship Program**  
08-0113-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0113-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**08.02.01, Rules Governing Administration**

08-0201-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0201-1502 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-9

08-0201-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**08.02.02, Rules Governing Uniformity**

08-0202-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0202-1502\* Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6 (\*Rulemaking Terminated)

08-0202-1503 Notice of Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 5-20-15)T

08-0202-1501 Proposed Rulemaking, Bulletin Vol. 15-10

08-0202-1504 Proposed Rulemaking, Bulletin Vol. 15-10

**08.02.03, Rules Governing Thoroughness**

08-0203-1501 Adoption of Temporary Rule, Bulletin Vol. 15-2 (eff. 1-22-15)T

08-0203-1502 Adoption of Temporary Rule, Bulletin Vol. 15-4 (eff. 2-19-15)T

08-0203-1503 Proposed Rulemaking, Bulletin Vol. 15-6

08-0203-1504 Temporary and Proposed Rulemaking, Bulletin Vol. 15-6 (4-16-15)T

08-0203-1505 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0203-1506 Proposed Rulemaking, Bulletin Vol. 15-8

08-0203-1507 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-9

08-0203-1505 Proposed Rulemaking, Bulletin Vol. 15-10

08-0203-1506 Notice of Public Hearing, Bulletin Vol. 15-10

08-0203-1508 Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (8-13-15)T

08-0203-1509 Proposed Rulemaking, Bulletin Vol. 15-10

08-0203-1510 Proposed Rulemaking, Bulletin Vol. 15-10

08-0203-1511 Proposed Rulemaking, Bulletin Vol. 15-10

08-0203-1512 Adoption of Temporary Rule, Bulletin Vol. 15-10 (eff. 9-3-15)T

**08.05.01, Rules Governing Seed and Plant Certification - Regents of the University of Idaho**

08-0501-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0501-1502 Notice of Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 5-20-15)T

08-0501-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**IDAPA 09 -- IDAHO DEPARTMENT OF LABOR**

**09.01.06, Rules of the Appeals Bureau**

09-0106-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

09-0106-1501 Proposed Rulemaking, Bulletin Vol. 15-9

**09.01.30, Unemployment Insurance Benefits Administration Rules**

09-0130-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-9

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

**10.01.01, Rules of Procedure**

10-0101-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

10-0101-1502 Adoption of Temporary Rule, Bulletin Vol. 15-6 (eff. 7-1-15)T

10-0101-1501 Proposed Rulemaking, Bulletin Vol. 15-9

**10.01.02, Rules of Professional Responsibility**

[10-0102-1501\\*](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6 (*\*Rulemaking Terminated*)

***10.01.04, Rules of Continuing Professional Development***

[10-0104-1501](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6  
[10-0104-1501](#) Proposed Rulemaking, Bulletin Vol. 15-9

***IDAPA 11 -- IDAHO STATE POLICE***

***Idaho State Racing Commission***

***11.04.02, Rules Governing Simulcasting***

[11-0402-1501](#) Temporary and Proposed Rulemaking, Bulletin Vol. 15-8 (eff. 7-29-15)T

***11.04.06, Rules Governing Racing Officials***

[11-0405-1501](#) Temporary and Proposed Rulemaking, Bulletin Vol. 15-8 (eff. 7-29-15)T

***11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances  
and Drug Testing of Horses***

[11-0411-1501](#) Temporary and Proposed Rulemaking, Bulletin Vol. 15-8 (eff. 7-29-15)T  
[11-0411-1502](#) Proposed Rulemaking, Bulletin Vol. 15-10

***Alcohol Beverage Control Bureau***

***11.05.01, Rules Governing Alcohol Beverage Control***

[11-0501-1401](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-10  
[11-0501-1401](#) Proposed Rulemaking, Bulletin Vol. 15-9  
[11-0501-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10

***Public Safety And Security Information Bureau***

***11.10.03, Rules Governing the Sex Offender Registry***

[11-1003-1501](#) Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (eff. 9-1-15)T

***Peace Officer Standards and Training (Post) Council***

***11.11.01, Rules of the Idaho Peace Officer Standards and Training Council***

[11-1101-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10

***11.11.04, Rules of the Idaho POST Council for Correctional Officers and Adult Probation and Parole Officers***

[11-1104-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10

***Idaho State Police Commercial Vehicle Safety***

***11.13.01, The Motor Carrier Rules***

[11-1301-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10

***IDAPA 12 -- DEPARTMENT OF FINANCE***

***12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act***

[12-0110-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10

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

***13.01.02, Rules Governing Hunter Education and Mentored Hunting***

[13-0102-1501](#) Proposed Rulemaking, Bulletin Vol. 15-10



***13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho***

**13-0108-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (eff. 7-29-15)T

**13-0108-1502** Proposed Rulemaking, Bulletin Vol. 15-10

***13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho***

**13-0109-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-2

**13-0109-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (eff. 8-28-15)T

**13-0109-1502** Proposed Rulemaking, Bulletin Vol. 15-10

***13.01.11, Rules Governing Fish***

**13-0111-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**13-0111-1501** Proposed Rulemaking, Bulletin Vol. 15-10

**13-0111-1502** Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (eff. 8-28-15)T

***13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals***

**13-0116-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**13-0116-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***13.01.17, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals***

**13-0117-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**13-0117-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***IDAPA 14 -- BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS***

***14.01.01, Rules of Procedure of the Board of Registration for Professional Geologists***

**14-0101-1501** Proposed Rulemaking, Bulletin Vol. 15-10

**14-0101-1502** Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-10

***IDAPA 15 -- OFFICE OF THE GOVERNOR***

***EXECUTIVE ORDERS OF THE GOVERNOR***

Executive Order No. **2015-06** Bulletin Vol. 15-8

Executive Order No. **2015-05** Bulletin Vol. 15-8

Executive Order No. **2015-04** Bulletin Vol. 15-8

Executive Order No. **2015-03** Bulletin Vol. 15-5

Executive Order No. **2015-02** Bulletin Vol. 15-5

Executive Order No. **2015-01** Bulletin Vol. 15-5

***Idaho Commission for the Blind and Visually Impaired***

***15.02.02, Vocational Rehabilitation Services***

**15-0202-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***Idaho Military Division***

***15.06.03, Public Safety Communications Systems Installation and Maintenance Fee Rules***

**15-0603-1501** Proposed Rulemaking, Bulletin Vol. 15-9

***15.06.05, Hazardous Substance Response Rules***

**15-0605-1401** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

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

***16.01.01, Emergency Medical Services (EMS) -- Advisory Committee (EMSAC)***

**16-0101-1501** Proposed Rulemaking, Bulletin Vol. 15-8

***16.01.02, Emergency Medical Services (EMS) - Rule Definitions***

**16-0102-1501** Proposed Rulemaking, Bulletin Vol. 15-8

***16.01.03, Emergency Medical Services (EMS) -- Agency Licensing Requirements***

**16-0103-1501** Proposed Rulemaking, Bulletin Vol. 15-8

***16.01.05, Emergency Medical Services (EMS) -- Education, Instructor, & Examination Requirements***

**16-0105-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-3

**16-0105-1501** (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-4

**16-0105-1501** (Third) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-5

**16-0105-1501** Proposed Rulemaking (New Chapter), Bulletin Vol. 15-8

***16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements***

**16-0107-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-1 (eff. 1-1-15)T

**16-0107-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**16-0107-1501** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T

**16-0107-1502** (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**16-0107-1501** Vacation of Proposed Rulemaking, Bulletin Vol. 15-8

**16-0107-1502** Proposed Rulemaking, Bulletin Vol. 15-8

***16.01.12, Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions***

**16-0112-1501** Proposed Rulemaking, Bulletin Vol. 15-8

***16.02.01, Rules of the Idaho Time Sensitive Emergency System Council***

**16-0201-1401** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-9

**16-0201-1401** Notice of Adoption of Temporary Rule (New Chapter - Fee Rule), Bulletin Vol. 15-2 (eff. 1-1-15)T

**16-0201-1401** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T

**16-0201-1401** Proposed Rulemaking and Amendment to Temporary Rule (New Chapter - Fee Rule), Bulletin Vol. 15-7 (eff. 7-1-15)T

***16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission***

**16-0202-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***16.02.03, Emergency Medical Services***

**16-0203-1501** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-8

***16.02.19, Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)***

**16-0219-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

**16-0219-1501** (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**16-0219-1501** Proposed Rulemaking, Bulletin Vol. 15-9

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**16-0301-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***16.03.04, Rules Governing the Food Stamp Program in Idaho***

**16-0304-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)***

**16-0305-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-10 (eff 1-1-15)T

16-0305-1502 Proposed Rulemaking, Bulletin Vol. 15-10

**16.03.09, Medicaid Basic Plan Benefits**

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16-0309-1502 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6  
16-0309-1503 Proposed Rulemaking, Bulletin Vol. 15-7  
16-0309-1501 Proposed Rulemaking, Bulletin Vol. 15-10  
16-0309-1502 Proposed Rulemaking, Bulletin Vol. 15-10

**16.03.10, Medicaid Enhanced Plan Benefits**

16-0310-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6  
16-0310-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**16.03.13, Consumer-Directed Services**

16-0313-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6  
16-0313-1501 Proposed Rulemaking, Bulletin Vol. 15-10

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16-0316-1501 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-8

**16.03.18, Medicaid Cost-Sharing**

16-0318-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**16.03.19, Rules Governing Certified Family Homes**

16-0319-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5  
16-0319-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 15-6  
16-0319-1501 Proposed Rulemaking, Bulletin Vol. 15-9  
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**16.04.02, Idaho Telecommunication Service Assistance Program Rules**

16-0402-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**16.04.13, Rules Governing the Emergency Food Assistance Program**

16-0413-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**16.04.14, Rules Governing the Low Income Home Energy Assistance Program**

16-0414-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**16.04.16, Weatherization Assistance Program in Idaho**

16-0416-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**16.05.01, Use and Disclosure of Department Records**

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**16.06.01, Child and Family Services**

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**16.06.02, Rules Governing Standards for Child Care Licensing**

16-0602-1501 Proposed Rulemaking, Bulletin Vol. 15-9

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16-0612-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

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***16.07.10, Behavioral Health Development Grants***

**16-0710-1501** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-9

***16.07.15, Behavioral Health Programs***

**16-0715-1501** Proposed Rulemaking (New Chapter - Fee Rule), Bulletin Vol. 15-9

***16.07.17, Alcohol and Substance Use Disorders Services***

**16-0717-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**16-0717-1501** Proposed Rulemaking, Bulletin Vol. 15-9

***16.07.20, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs***

**16-0720-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**16-0720-1501** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-9

***IDAPA 17 -- INDUSTRIAL COMMISSION***

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001  
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**17-1001-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001  
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***17.02.06, Employers' Reports***

**17-0206-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0206-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***17.02.07, Procedures to Obtain Compensation***

**17-0207-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0207-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***17.02.08, Miscellaneous Provisions***

**17-0208-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0208-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***17.02.09, Medical Fees***

**17-0209-1501** Adoption of Temporary Rule, Bulletin Vol. 15-1 (eff. 1-1-15)T

**17-0209-1501** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T

**17-0209-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0209-1503** Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 7-1-15)T

**17-0209-1502** Proposed Rulemaking, Bulletin Vol. 15-10

***17.02.10, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers***

**17-0210-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0210-1501** Proposed Rulemaking, Bulletin Vol. 15-10

***17.02.11, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers***

**17-0211-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**17-0211-1501** Proposed Rulemaking, Bulletin Vol. 15-10

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.01)**

**17.08.01, Idaho Minimum Safety Standards and Practices for Logging - General Provisions**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.02)**

**17.08.02, Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.03)**

**17.08.03, Idaho Minimum Safety Standards and Practices for Logging - Explosives and Blasting**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.04)**

**17.08.04, Idaho Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.05)**

**17.08.05, Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.06)**

**17.08.06, Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.07)**

**17.08.07, Idaho Minimum Safety Standards and Practices for Logging - Transportation of Employees**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.08)**

**17.08.08, Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.09)**

**17.08.09, Idaho Minimum Safety Standards and Practices for Logging - Rigging, Lines, Blocks, and Shackles**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.10)**

**17.08.10, Idaho Minimum Safety Standards and Practices for Logging - Canopy and Canopy Construction for Logging Equipment**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.11)**

**17.08.11, Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding**

**17-0800-1500** Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.12)**

**17.08.12, Idaho Minimum Safety Standards and Practices for Logging - Road Transportation**

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.13)**

**17.08.13, Idaho Minimum Safety Standards and Practices for Logging - Log Dumps, Landing, Log Handling Equipment, Loading and Unloading Booms, Log Ponds, Rafting, Towing, Stiff Booms, Boom Sticks and Foot Logs, Pond Boats and Tow Boats and Trailer Loading Hoists**

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.14)**

**17.08.14, Idaho Minimum Safety Standards and Practices for Logging - Helicopter Logging**

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.15)**

**17.08.15, Idaho Minimum Safety Standards and Practices for Logging - Commonly Used Logging Terms**

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.08.16)**

**17.08.16, Idaho Minimum Safety Standards and Practices for Logging - Recommended Safety Program**

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

**17-1001-1500** Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)

**(Rule Transferred to IDAPA 07.09.01)**

**17.10.01, Safety and Health Rules for Places of Public Employment**

17-1001-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to DBS, Bulletin Vol. 15-7 (eff. 7-1-15)

**IDAPA 18 -- DEPARTMENT OF INSURANCE**

**18.01.27, Self-Funded Employee Health Care Plans Rule**

18-0127-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

18-0127-1501 Proposed Rulemaking, Bulletin Vol. 15-9

**18.01.44, Schedule of Fees, Licenses, and Miscellaneous Charges**

18-0144-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

18-0144-1501 Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-9

**18.01.60, Long-Term Care Insurance Minimum Standards**

18-0160-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

18-0160-1501 Proposed Rulemaking, Bulletin Vol. 15-9

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**20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands**

20-0316-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

**20.07.01, Rules of Practice and Procedure Before the Idaho Oil And Gas Conservation Commission**

20-0701-1501\* Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6 (\*Rulemaking Terminated)

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#### ***22.01.01, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho***

**22-0101-1501** Proposed Rulemaking, Bulletin Vol. 15-9

#### ***22.01.15, Rules Relating to Telehealth Services***

**22-0115-1501** Proposed Rulemaking (New Chapter), Bulletin Vol. 15-9

### ***IDAPA 23 -- BOARD OF NURSING***

#### ***23.01.01, Rules of the Idaho Board of Nursing***

**23-0101-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

**23-0101-1502\*** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6 (*\*Rulemaking Terminated*)

**23-0101-1503** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

**23-0101-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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#### ***24.03.01, Rules of the State Board of Chiropractic Physicians***

**24-0301-1503** Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals***

**24-0001-1500** Omnibus Proposed Rulemaking, Bulletin Vol. 15-10

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#### ***24.06.01, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants***

**24-0001-1500** Omnibus Proposed Rulemaking, Bulletin Vol. 15-10

**24-0601-1501** Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.07.01, Rules of the Idaho State Board of Landscape Architects***

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#### ***24.08.01, Rules of the State Board of Morticians***

**24-0801-1501** Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.12.01, Rules of the State Board of Psychologist Examiners***

**24-1201-1501** Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.13.01, Rules Governing the Physical Therapy Licensure Board***

**24-0001-1500** Omnibus Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.15.01, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists***

**24-1501-1501** Proposed Rulemaking, Bulletin Vol. 15-10

#### ***24.17.01, Rules of the State Board of Acupuncture***

- 24-0001-1500 Omnibus Proposed Rulemaking, Bulletin Vol. 15-10
- 24-1701-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**24.18.01, Rules of the Real Estate Appraiser Board**

- 24-0001-1500 Omnibus Proposed Rulemaking, Bulletin Vol. 15-10
- 24-1801-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**24.21.01, Rules of the Idaho State Contractors Board**

- 24-2101-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**24.22.01, Rules of the Idaho State Liquefied Petroleum Gas Safety Board**

- 24-0001-1500 Omnibus Proposed Rulemaking, Bulletin Vol. 15-10

**24.24.01, Rules of the Genetic Counselors Licensing Board**

- 24-2401-1501 Proposed Rulemaking, Bulletin Vol. 15-10

**24.25.01, Rules of the Idaho Driving Businesses Licensure Board**

- 24-0001-1500 Omnibus Proposed Rulemaking, Bulletin Vol. 15-10
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**24.27.01, Rules of the Idaho State Board of Massage Therapy**

- 24-0001-1500 Omnibus Proposed Rulemaking, Bulletin Vol. 15-10

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

**25.01.01, Rules of the Outfitters and Guides Licensing Board**

- 25-0101-1501 Proposed Rulemaking, Bulletin Vol. 15-10

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**26.01.06, Rules Governing Cooperator Recognition and Sale of Advertising**

- 26-0106-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-8
- 26-0106-1501 Proposed Rulemaking (New Chapter), Bulletin Vol. 15-10

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**27.01.01, Rules of the Idaho State Board of Pharmacy**

- 27-0101-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 27-0101-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-8 (2nd Notice)
- 27-0101-1501 Proposed Rulemaking, Bulletin Vol. 15-10
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- 27-0101-1503 Proposed Rulemaking, Bulletin Vol. 15-10
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**28.02.01, Idaho Community Development Block Grant Program (ICDBG)**

- 28-0201-1501 Proposed Rulemaking, Bulletin Vol. 15-10



**28.02.07, Rules Governing the Administration of the IGEN Grant Program**

**28-0207-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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**31.11.01, Safety and Accident Reporting Rules for Utilities Regulated by Idaho Public Utilities Commission**

**31-1101-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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**31-7103-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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**34.02.01, Presidential Primary**

**34-0201-1501** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-10

**34.04.03, Rules Governing Benefit Corporations**

**34-0403-1501** Adoption of Temporary Rule (New Chapter), Bulletin Vol. 15-9 (eff. 8-6-15)T

**34.05.01, Rules Governing Farm Products Central Filing System**

**34-0501-1501** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-9 (eff. 8-6-15)T

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**35.01.01, Income Tax Administrative Rules**

**35-0101-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**35-0101-1501** Proposed Rulemaking, Bulletin Vol. 15-9

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**35-0102-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

**35-0102-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

**35-0102-1503** Adoption of Temporary Rule, Bulletin Vol. 15-8 (eff. 6-10-15)T

**35-0102-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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**35-0102-1504** Proposed Rulemaking, Bulletin Vol. 15-10

**35.01.03, Property Tax Administrative Rules**

**35-0103-1501** Adoption of Temporary Rule, Bulletin Vol. 15-1 (eff. 1-1-15)T

**35-0103-1501** OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T

**35-0103-1502** Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 7-1-15)T

**35-0103-1503** Temporary and Proposed Rulemaking, Bulletin Vol. 15-7 (eff. 7-1-15)T

**35-0103-1504** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**35-0103-1504** Proposed Rulemaking, Bulletin Vol. 15-9

**35-0103-1505** Proposed Rulemaking, Bulletin Vol. 15-9

**35.01.05, Motor Fuels Tax Administrative Rules**

**35-0105-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-7 (eff. 7-1-15)T

**35-0105-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**35-0105-1503** Proposed Rulemaking, Bulletin Vol. 15-8

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**35.01.12, Idaho Beer Tax Administrative Rules**

**35-0112-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7

**35.02.01, Tax Commission Administration and Enforcement Rules**

**35-0201-1501** Proposed Rulemaking, Bulletin Vol. 15-10

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**37.03.13, The Water Management Rules**

**37-0313-9701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 97-12

**37-0313-9701** Proposed Rulemaking, Bulletin Vol. 98-10

**37-0313-9701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 00-11

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**38.03.01, Rules Governing Group Insurance**

**38-0301-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-9 (eff. 7-1-15)T

**38.04.04, Rules Governing Capitol Mall Parking**

**38-0404-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-6 (eff. 7-1-15)T

**38.04.07, Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities**

**38-0407-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-6 (eff. 7-1-15)T

**38.05.01, Rules of the Division of Purchasing**

**38-0501-1501** Temporary and Proposed Rulemaking, Bulletin Vol. 15-8 (eff. 6-6-15)T

**38-0501-1501** Adoption of Pending Rule, Bulletin Vol. 15-10 (eff. PLR 2016)

***IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT***

**39.02.22, Rules Governing Registration and Permit Fee Administration**

**39-0222-1501** Proposed Rulemaking, Bulletin Vol. 15-10

**39.02.03, Rules Governing Vehicle Dealer's Principle Place of Business**

**39-0203-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

**39-0203-1501** Proposed Rulemaking, Bulletin Vol. 15-9

**39.02.26, Rules Governing Temporary Vehicle Clearance for Carriers**

**39-0226-1501** Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-9

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