

IDAHO ADMINISTRATIVE BULLETIN

October 5, 2016 -- Volume 16-10

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Table of Contents

October 5, 2016 - Vol. 16-10

PREFACE	12
IDAPA 02 - DEPARTMENT OF AGRICULTURE	
02.04.08 - Rules Governing Grade A Milk and Milk Products Docket No. 02-0408-1601 Notice of Rulemaking - Adoption of Pending Rule	22
02.04.14 - Rules Governing Dairy Waste Docket No. 02-0414-1601 Notice of Rulemaking - Proposed Rule	23
02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations Docket No. 02-0415-1601 Notice of Rulemaking - Proposed Rule	31
02.04.16 - Rules Governing Agriculture Odor Management Docket No. 02-0416-1601 Notice of Rulemaking - Proposed Rule	36
02.04.19 - Rules Governing Domestic Cervidae Docket No. 02-0419-1601 Notice of Rulemaking - Proposed Rule	40
02.04.21 - Rules Governing the Importation of Animals Docket No. 02-0421-1601 Notice of Rulemaking - Proposed Rule	46
02.04.32 - Rules Governing Poultry Operations Docket No. 02-0432-1601 Notice of Rulemaking - Proposed Rule	54
IDAPA 07 - DIVISION OF BUILDING SAFETY	
07.01.06 - Rules Governing the Use of National Electrical Code Docket No. 07-0106-1601 Notice of Rulemaking - Proposed Rule	59
07.02.02 - Rules Governing Plumbing Permits Docket No. 07-0202-1601 (Fee Rule) Notice of Rulemaking - Proposed Rule	62
07.02.06 - Rules Concerning Idaho State Plumbing Code Docket No. 07-0206-1601 Notice of Rulemaking - Proposed Rule	65
07.03.01 - Rules of Building Safety Docket No. 07-0301-1601 Notice of Rulemaking - Proposed Rule	81

07.05.01 - Rules of the Public Works Contractors License Board
Docket No. 07-0501-1601
 Notice of Rulemaking - Proposed Rule..... 90

*07.07.01 - Rules Governing Installation of Heating, Ventilation,
 and Air Conditioning Systems, Division of Building Safety*
Docket No. 07-0701-1601
 Notice of Rulemaking - Proposed Rule..... 102

Docket No. 07-0701-1602 (Fee Rule)
 Notice of Rulemaking - Proposed Rule..... 105

07.08.01 - Idaho Minimum Safety Standards and Practices for Logging - General Provisions
Docket No. 07-0801-1601
 Notice of Rulemaking - Proposed Rule..... 108

07.08.02 - Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation
Docket No. 07-0802-1601
 Notice of Rulemaking - Proposed Rule..... 115

07.08.03 - Idaho Minimum Safety Standards and Practices for Logging - Explosives and Blasting
Docket No. 07-0803-1601 (Chapter Repeal)
 Notice Of Rulemaking - Proposed Rule..... 124

*07.08.04 - Minimum Safety Standards and Practices for Logging -
 Garages, Machine Shops, and Related Work Areas*
Docket No. 07-0804-1601
 Notice of Rulemaking - Proposed Rule..... 125

07.08.05 - Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems
Docket No. 07-0805-1601
 Notice of Rulemaking - Proposed Rule..... 128

07.08.06 - Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards
Docket No. 07-0806-1601
 Notice of Rulemaking - Proposed Rule..... 133

*07.08.07 - Idaho Minimum Safety Standards and Practices for Logging -
 Transportation of Employees*
Docket No. 07-0807-1601
 Notice of Rulemaking - Proposed Rule..... 136

07.08.08 - Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking
Docket No. 07-0808-1601
 Notice of Rulemaking - Proposed Rule..... 139

*07.08.09 - Idaho Minimum Safety Standards and Practices for Logging -
 Rigging, Lines, Blocks, and Shackles*
Docket No. 07-0809-1601
 Notice of Rulemaking - Proposed Rule..... 146

*07.08.10 - Idaho Minimum Safety Standards and Practices for Logging -
 Canopy and Canopy Construction for Logging Equipment*
Docket No. 07-0810-1601
 Notice of Rulemaking - Proposed Rule..... 155

07.08.11 - *Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding*
Docket No. 07-0811-1601
 Notice of Rulemaking - Proposed Rule..... 159

07.08.12 - *Idaho Minimum Safety Standards and Practices for Logging - Road Transportation*
Docket No. 07-0812-1601
 Notice of Rulemaking - Proposed Rule..... 183

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*
Docket No. 07-0813-1601
 Notice of Rulemaking - Proposed Rule..... 193

07.08.14 - *Minimum Safety Standards and Practices for Logging - Helicopter Logging*
Docket No. 07-0814-1601
 Notice of Rulemaking - Proposed Rule..... 200

07.08.15 - *Idaho Minimum Safety Standards and Practices for Logging - Commonly Used Logging Terms*
Docket No. 07-0815-1601
 Notice of Rulemaking - Proposed Rule..... 204

07.08.16 - *Idaho Minimum Safety Standards and Practices for Logging - Recommended Safety Program*
Docket No. 07-0816-1601
 Notice of Rulemaking - Proposed Rule..... 210

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.02 - *Rules Governing the Postsecondary Credit Scholarship Program*
Docket No. 08-0102-1601 (New Chapter)
 Notice of Rulemaking - Temporary and Proposed Rule 219

08.01.04 - *Residency*
Docket No. 08-0104-1601
 Notice of Rulemaking - Temporary and Proposed Rule 223

08.01.09 - *Rules Governing the GEAR UP Idaho Scholarship Program*
Docket No. 08-0109-1601 (Chapter Repeal)
 Notice of Rulemaking - Proposed Rule..... 230

08.02.01 - *Rules Governing Administration*
Docket No. 08-0201-1602
 Notice of Rulemaking - Temporary and Proposed Rule 231

Docket No. 08-0201-1603
 Notice of Rulemaking - Temporary and Proposed Rule 236

Docket No. 08-0201-1604
 Notice of Rulemaking - Temporary and Proposed Rule 238

08.02.02 - *Rules Governing Uniformity*
Docket No. 08-0202-1607
 Notice of Rulemaking - Proposed Rule..... 240

08.02.03 - Rules Governing Thoroughness	
Docket No. 08-0203-1601	
Notice of Rulemaking - Proposed Rule.....	276
Docket No. 08-0203-1603	
Notice of Rulemaking - Temporary and Proposed Rule	286
Docket No. 08-0203-1504	
Notice of Rulemaking - Vacation of Proposed Rulemaking	292
Docket No. 08-0203-1608	
Notice of Rulemaking - Proposed Rule.....	293
Docket No. 08-0203-1609	
Notice of Rulemaking - Proposed Rule.....	309
Docket No. 08-0203-1610	
Notice of Rulemaking - Proposed Rule.....	314
Docket No. 08-0203-1611	
Notice of Rulemaking - Temporary and Proposed Rule	317
08.02.05 - Rules Governing Pay for Success Contracting	
Docket No. 08-0205-1601 (New Chapter)	
Notice of Rulemaking - Proposed Rule.....	323
08.05.01 - Rules Governing Seed and Plant Certification	
Docket No. 08-0501-1601	
Notice of Rulemaking - Proposed Rule.....	328
IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS	
10.01.01 - Rules of Procedure	
Docket No. 10-0101-1601	
Notice of Rulemaking - Adoption of Pending Rule.....	331
Docket No. 10-0101-1602	
Notice of Rulemaking - Adoption of Pending Rule	332
10.01.02 - Rules of Professional Responsibility	
Docket No. 10-0102-1601	
Notice of Rulemaking - Adoption of Pending Rule	333
IDAPA 11 - IDAHO STATE POLICE	
11.04.02 - Rules Governing Simulcasting	
Docket No. 11-0402-1601	
Notice of Rulemaking - Proposed Rule.....	334
11.04.03 - Rules Governing Licensing and Fees	
Docket No. 11-0403-1601 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	340
11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council	
Docket No. 11-1101-1601	
Notice of Rulemaking - Proposed Rule.....	342
Docket No. 11-1101-1602	

Notice of Rulemaking - Temporary and Proposed Rule	350
<i>11.11.02 - Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers</i>	
Docket No. 11-1102-1601	
Notice of Rulemaking - Proposed Rule.....	353
<i>11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers</i>	
Docket No. 11-1104-1601	
Notice of Rulemaking - Proposed Rule.....	356
<i>11.13.01 - The Motor Carrier Rules</i>	
Docket No. 11-1301-1601	
Notice of Rulemaking - Temporary and Proposed Rule	361
Docket No. 11-1301-1602	
Notice of Rulemaking - Proposed Rule.....	364
Docket No. 11-1301-1603	
Notice of Rulemaking - Proposed Rule.....	368
IDAPA 12 - DEPARTMENT OF FINANCE	
<i>12.01.08 - Rules Pursuant to the Uniform Securities Act (2004)</i>	
Docket No. 12-0108-1601	
Notice of Rulemaking - Adoption of Pending Rule	371
<i>12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act</i>	
Docket No. 12-0110-1601	
Notice of Rulemaking - Proposed Rule.....	373
IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME	
<i>13.01.02 - Rules Governing Hunter Education and Mentored Hunting</i>	
Docket No. 13-0102-1601 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	375
<i>13.01.07 - Rules Governing the Taking of Upland Game Animals</i>	
Docket No. 13-0107-1601	
Notice of Proposed Proclamation.....	378
<i>13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho</i>	
Docket No. 13-0108-1601	
Notice of Rulemaking - Proposed Rule.....	379
Docket No. 13-0108-1603	
Notice of Rulemaking - Proposed Rule.....	391
<i>13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho</i>	
Docket No. 13-0109-1601	
Notice of Rulemaking - Temporary and Proposed Rule	398
Docket No. 13-0109-1602	
Notice of Rulemaking - Proposed Rule.....	402
Docket No. 13-0109-1603	
Notice of Proposed Proclamation.....	407

13.01.11 - Rules Governing Fish
Docket No. 13-0111-1601
 Notice of Rulemaking - Temporary and Proposed Rule408
Docket No. 13-0111-1602
 Notice of Proposed Proclamation410

13.01.13 - Rules Governing the Taking of American Crow in the State of Idaho
Docket No. 13-0113-1601
 Notice of Proposed Proclamation411

13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals
Docket No. 13-0116-1601
 Notice of Proposed Proclamation412

13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals
Docket No. 13-0117-1601
 Notice of Rulemaking - Proposed Rule413

IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission
Docket No. 15-0401-1601
 Notice of Rulemaking - Proposed Rule416

15.06.01 - Rules Governing the Idaho Public Safety Communications Commission
Docket No. 15-0601-1601
 Notice of Rulemaking - Adoption of Pending Rule427

15.06.02 - Rules Governing the Idaho Public Safety Communications Commission Grants
Docket No. 15-0602-1601
 Notice of Rulemaking - Adoption of Pending Rule428
Docket No. 15-0602-1602
 Notice of Rulemaking - Adoption of Pending Rule429

OFFICE OF THE GOVERNOR - MILITARY DIVISION - OFFICE OF EMERGENCY MANAGEMENT

15.06.06 - Rules Governing Use of Disaster Emergency Account Funds
Docket No. 15-0606-1601 (New Chapter)
 Notice of Rulemaking - Proposed Rule430

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.01 - Rules of the Idaho Time Sensitive Emergency System Council
Docket No. 16-0201-1601
 Notice of Rulemaking - Proposed Rule433

16.02.02 - Rules of the Idaho Emergency Medical Services
 (EMS) Physician Commission
Docket No. 16-0202-1601
 Notice of Rulemaking - Proposed Rule435

16.03.03 - Rules Governing Child Support Services
Docket No. 16-0303-1601
 Notice of Rulemaking - Proposed Rule437

16.03.04 - Rules Governing the Food Stamp Program in Idaho Docket No. 16-0304-1601	
Notice of Rulemaking - Proposed Rule.....	439
16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled Docket No. 16-0305-1601	
Notice of Rulemaking - Proposed Rule.....	441
16.03.08 - Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program Docket No. 16-0308-1601	
Notice of Rulemaking - Proposed Rule.....	446
16.03.09 - Medicaid Basic Plan Benefits Docket No. 16-0309-1601	
Notice of Rulemaking - Proposed Rule.....	450
Docket No. 16-0309-1602	
Notice of Rulemaking - Proposed Rule.....	474
16.07.19 - Behavioral Health Certification of Peer Support Specialists and Family Support Partners Docket No. 16-0719-1601 (New Chapter)	
Notice of Rulemaking - Proposed Rule.....	479
16.07.37 - Children's Mental Health Services Docket No. 16-0737-1601	
Notice of Rulemaking - Proposed Rule.....	492
IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE	
18.01.48 - Rule to Implement the Privacy of Consumer Financial Information Docket No. 18-0148-1601	
Notice of Rulemaking - Temporary and Proposed Rule	513
18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules Docket No. 18-0156-1601	
Notice of Rulemaking - Proposed Rule.....	516
IDAPA 20.03.16 - IDAHO DEPARTMENT OF LANDS	
20.03.16 - Rules Governing Oil and Gas Leasing on Idaho State Lands Docket No. 20-0316-1601 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	521
20.07.02 - Rules Governing Conservation of Oil and Natural Gas in the State of Idaho Docket No. 20-0702-1601	
Notice of Rulemaking - Proposed Rule.....	536
IDAPA 22 - BOARD OF MEDICINE	
22.01.03 - Rules for the Licensure of Physician Assistants Docket No. 22-0103-1601	
Notice of Rulemaking - Proposed Rule.....	585
IDAPA 23 - BOARD OF NURSING	
23.01.01 - Rules of the Idaho Board of Nursing Docket No. 23-0101-1601 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	595

Docket No. 23-0101-1602
 Notice of Rulemaking - Temporary and Proposed Rule604

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.01.01 - Rules of the Board of Architectural Examiners
Docket No. 24-0101-1601
 Notice of Rulemaking - Proposed Rule.....610

24.03.01 - Rules of the State Board of Chiropractic Physicians
Docket No. 24-0301-1601 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....618

24.10.01 - Rules of the State Board of Optometry
Docket No. 24-1001-1601 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....622

24.12.01 - Rules of the Idaho State Board of Psychologist Examiners
Docket No. 24-1201-1601
 Notice of Rulemaking - Proposed Rule.....625

24.16.01 - Rules of the State Board of Dentistry
Docket No. 24-1601-1601
 Notice of Rulemaking - Proposed Rule.....632

24.17.01 - Rules of the State Board of Acupuncture
Docket No. 24-1701-1601
 Notice of Rulemaking - Proposed Rule.....639

24.18.01 - Rules of the Real Estate Appraiser Board
Docket No. 24-1801-1602 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....640

24.19.01 - Rules of the Board of Examiners of Residential Care Facility Administrators
Docket No. 24-1901-1601 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....654

24.22.01 - Rules of the Idaho State Liquefied Petroleum Gas Safety Board
Docket No. 24-2201-1601
 Notice of Rulemaking - Proposed Rule.....657

24.23.01 - Rules of the Speech and Hearing Services Licensure Board
Docket No. 24-2301-1601 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....659

24.25.01 - Rules of the Idaho Driving Businesses Licensure Board
Docket No. 24-2501-1601
 Notice of Rulemaking - Proposed Rule.....668

24.27.01 - Rules of the Idaho State Board of Massage Therapy
Docket No. 24-2701-1601 (Fee Rule)
 Notice of Rulemaking - Proposed Rule.....674

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - Rules of the Idaho State Board of Pharmacy
Docket No. 27-0101-1606
 Notice of Rulemaking - Proposed Rule.....678

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.07 - Rules Governing the Administration of the IGEM Grant Program
Docket No. 28-0207-1601
 Notice of Rulemaking - Proposed Rule.....681

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - Income Tax Administrative Rules
Docket No. 35-0101-1602
 Notice of Rulemaking - Proposed Rules684

35.01.02 - Idaho Sales and Use Tax Administrative Rules
Docket No. 35-0102-1601
 Notice of Rulemaking - Proposed Rules694

Docket No. 35-0102-1602
 Notice of Rulemaking - Proposed Rules713

Docket No. 35-0102-1603
 Notice of Rulemaking - Proposed Rules717

35.01.10 -- Idaho Cigarette and Tobacco Products Tax Administrative Rules
Docket No. 35-0110-1601
 Notice of Rulemaking -- Proposed Rules721

35.02.01 - Tax Commission Administration and Enforcement Rules
Docket No. 35-0201-1601
 Notice of Rulemaking - Proposed Rules725

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - Rules of the Division of Purchasing
Docket No. 38-0501-1601
 Notice of Rulemaking - Proposed Rule.....728

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.15 - Rules Governing Excess Weight Permits for Reducible Loads
Docket No. 39-0315-1601
 Notice of Rulemaking - Proposed Rule.....748

IDAPA 42 -- IDAHO WHEAT COMMISSION

42.01.01 -- Rules of the Idaho Wheat Commission
Docket No. 42-0101-1601
 (Second) Notice of Intent to Promulgate Rules -- Negotiated Rulemaking.....750

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - Rules of the Idaho Division of Vocational Rehabilitation
Docket No. 47-0101-1601
 Notice of Rulemaking - Proposed Rule.....752

47.01.02 -- Rules and Minimum Standards Governing Extended Employment Services
Docket No. 47-0102-1601
 Notice of Rulemaking -- Proposed Rule756

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - Rules of the Commission of Pardons and Parole

Docket No. 50-0101-1602

Notice of Rulemaking - Adoption of Temporary Rule765

IDAPA 55 - DIVISION OF CAREER-TECHNICAL EDUCATION

55.01.03 - Rules of Career-Technical Schools

Docket No. 55-0103-1601

Notice of Rulemaking - Proposed Rule.....771

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - Rules of the Sexual Offender Management Board

Docket No. 57-0101-1601 (Fee Rule)

Notice of Rulemaking - Proposed Rule.....775

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System

Docket No. 61-0107-1601 (New Chapter)

Notice of Rulemaking - Proposed Rule.....787

SECTIONS AFFECTED INDEX 793

LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS 819

**CUMULATIVE RULEMAKING INDEX
OF IDAHO ADMINISTRATIVE RULES** 828

SUBJECT INDEX 845

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 December 2015 Bulletin is cited as Volume **15-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

SUBSCRIPTIONS AND DISTRIBUTION

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

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

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

Internet Access - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: adminrules.idaho.gov

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.200.02.c.ii.

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

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

“**05.**” refers to Title **05**, which is the Department of Administration’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 2016

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
16-1	January 2016	*November 27, 2015	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	**September 2, 2016	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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2017

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
17-1	January 2017	*November 25, 2016	January 4, 2017	January 25, 2017
17-2	February 2017	January 6, 2017	February 1, 2017	February 22, 2017
17-3	March 2017	February 3, 2017	March 1, 2017	March 22, 2017
17-4	April 2017	March 3, 2017	April 5, 2017	April 26, 2017
17-5	May 2017	April 7, 2017	May 3, 2017	May 24, 2017
17-6	June 2017	May 5, 2017	June 7, 2017	June 28, 2017
17-7	July 2017	June 9, 2017	July 5, 2017	July 26, 2017
17-8	August 2017	July 7, 2017	August 2, 2017	August 23, 2017
17-9	September 2017	August 4, 2017	September 6, 2017	September 27, 2017
17-10	October 2017	**September 1, 2017	October 4, 2017	October 25, 2017
17-11	November 2017	October 6, 2017	November 1, 2017	November 22, 2017
17-12	December 2017	November 3, 2017	December 6, 2017	December 27, 2017

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

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

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

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

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 24	Occupational Licenses, Board of (24.20) Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians, Board of (24.03) Contractors Board, Idaho (24.21) Cosmetology, Board of (24.04) Counselors and Marriage and Family Therapists, Licensing Board of Professional (24.15) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Driving Businesses Licensure Board, State (24.25) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board (24.22) Massage Therapy, Board of (24.27) Midwifery, State Board of (24.26) Morticians, Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board, State (24.06) Optometry, Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, Board of (24.11) Psychologist Examiners, Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of Examiners of (24.19) Social Work Examiners, Board of (24.14) Speech and Hearing Services Board (24.23)
IDAPA 25	Outfitters and Guides Licensing Board
IDAPA 50	Pardons and Parole, Commission for
IDAPA 26	Parks and Recreation, Department of
IDAPA 27	Pharmacy, Board of
IDAPA 11	Police, Idaho State
IDAPA 29	Potato Commission, Idaho
IDAPA 55	Professional-Technical Education, Division of
IDAPA 59	Public Employee Retirement System of Idaho (PERSI)
IDAPA 31	Public Utilities Commission
IDAPA 56	Rangeland Resources Commission, Idaho
IDAPA 33	Real Estate Commission, Idaho
IDAPA 34	Secretary of State, Office of the
IDAPA 57	Sexual Offender Management Board
IDAPA 49	Shorthand Reporters Board, Idaho Certified
IDAPA 60	Soil and Water Conservation Commission, Idaho State

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.08 - RULES GOVERNING GRADE A MILK AND MILK PRODUCTS
DOCKET NO. 02-0408-1601
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 37-303, Idaho Code.

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

To incorporate by reference the 2015 edition of the Grade A Pasteurized Milk Ordinance; 2015 edition of the Evaluation of Milk Laboratories reference document; 2015 Methods of Making Sanitation Ratings of Milk Shippers reference document and 2015 edition of Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration reference document.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 18-19](#).

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

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

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

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

DATED this 29th day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.14 - RULES GOVERNING DAIRY WASTE

DOCKET NO. 02-0414-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 37, Chapters 3, 4, and 6, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 a result of a petition received from the Idaho Dairyman's Association to change the requirements related to pasture access for dairy cattle. The change will also make the rule consistent with the statutory revisions implemented by the 2016 Idaho Legislature.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 20](#). Negotiated rulemaking meetings were held at the Idaho State Department of Agriculture on August 2, 2016 and August 16, 2016. There were extensive comments received from the meeting attendees, as well as multiple written comments submitted and entered into the record that were taken into consideration when drafting this proposed rule.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 29th day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0414-1601
(Only Those Sections With Amendments Are Shown.)

IDAPA 02
TITLE 04
CHAPTER 14

02.04.14 - RULES GOVERNING DAIRY ~~WASTE~~ **BYPRODUCT**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. ~~(4-11-15)~~()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, “Rules Governing Dairy ~~Waste~~ **Byproduct**.” ~~(3-29-10)~~()

02. **Scope.** This chapter has the following scope: These rules shall govern ~~the design, function and management practices of dairy waste systems. The official citation of this chapter is IDAPA 02.04.14.000 et seq. For example, this section's citation is IDAPA 02.04.14.001~~ the Department's review, approval, and enforcement of dairy environmental management plans to ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state. This section's citation is 37-602(2), Idaho Code. Nothing in this rule affects the authority of the department of environmental quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program. ~~(3-20-97)~~()

(BREAK IN CONTINUITY OF SECTIONS)

~~007. FINDINGS.~~

~~The Department finds that pursuant to Section 67-5226(1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, enhance Idaho water quality and preserve the integrity of the Idaho dairy industry. These rules establish design, construction, operation, location, and inspection criteria for dairy farms and dairy waste systems on Idaho dairy farms and enable the Department to implement the 1999 NRCS Nutrient Management Standard (NMS) on dairy farms to appropriately manage dairy waste. These rules also provide penalty provisions.~~ ~~(4-11-15)~~

~~008~~. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (3-20-97)

01. **Agricultural Stormwater Discharge.** A precipitation-related discharge of dairy byproducts from land areas under the control of a dairy farm where the dairy byproducts have been mechanically land applied in accordance with an approved nutrient management plan. ()

~~012~~. **Best Management Practice.** A practice, technique, or measure that is determined to be a reasonable precaution, a cost-effective and practicable means of preventing or reducing the discharge of pollutants

from a point source or a nonpoint source to a level compatible with environmental goals, including water quality goals and standards. (4-11-15)

~~023.~~ **Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-29-10)

~~034.~~ **Certified Soil Sampler.** An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (3-29-10)

~~05.~~ **Dairy Animal.** Milking cows, sheep or goats. ()

~~06.~~ **Dairy Byproduct.** Solids and liquids associated with dairy animal rearing and milk production including, but not limited to; manure, manure compost, process water, bedding, spilled feed, and feed leachate. ()

~~07.~~ **Dairy Environmental Management Plan.** A plan for managing a dairy environmental management system. The dairy environmental management plan shall consist of dairy storage and containment facilities criteria and a dairy nutrient management plan that are approved by the director. ()

~~08.~~ **Dairy Environmental Management System.** The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated, or applied to land. These areas and structures may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules. ()

~~049.~~ **Dairy Farm.** ~~The land owned or operated by a dairy farm and is a place or premises~~ person as an integral component of a Department-permitted grade A or manufacture grade facility where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. ~~A dairy farm does not include those lands that contain non-dairy animals provided a physical separation exists from lands owned or operated by the dairy, byproducts remain separate, and dairy animals are not comingled with non-dairy animals.~~ (4-11-15)()

~~05.~~ **Dairy Waste.** ~~Manure and process wastewater that may also contain bedding, spilled feed, compost, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~ (4-11-15)

~~06.~~ **Dairy Waste System or Waste System.** ~~The portion of a dairy farm where dairy waste is stored, collected, or treated. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons, and evaporative ponds.~~ (4-11-15)

~~10.~~ **Dairy Nutrient Management Plan (DNMP).** A plan prepared in conformance with the NMS for managing the land application of dairy byproducts that is prepared by a certified planner and approved by the Department. ()

~~11.~~ **Dairy Storage and Containment Facilities.** The areas and structures within a dairy farm where dairy byproducts are collected, stored, or treated in conformance with engineering standards and specifications published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the Director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds, and compost areas, but do not include pastures as defined in these Rules. ()

~~0712.~~ **Department.** The Idaho State Department of Agriculture. (3-29-10)

~~0813.~~ **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)

~~09.~~ **Farm Certification.** ~~A permit issued by the Department allowing the sale of manufacture grade milk.~~ (3-20-97)

- ~~14.~~ Export. The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. ()
- ~~105.~~ **Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)
- ~~16.~~ Idaho Pollutant Discharge Elimination System (IPDES). Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ()
- ~~17.~~ **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)
- ~~12.~~ Livestock. For the purposes of these rules the term livestock shall include bovidae, suidae, equidae and other animals that are kept on or contiguous to a dairy farm and are owned or controlled by a dairy farm. (3-19-99)
- ~~13.~~ Manufacture Grade Milk. Milk produced for processing into dairy products for human consumption but not subject to Grade A requirements. (3-20-97)
- ~~18.~~ Land Application. Mechanical spreading on, or incorporating into the soil mantle, dairy byproduct as a soil amendment for agricultural use of nutrients and for other beneficial purposes. Land application does not include pasturing animals as defined in these rules. ()
- ~~149.~~ **Modification or Modified.** Structural changes and alterations to the dairy ~~waste system~~ storage and containment facility that would require increased storage or containment capacity or ~~such changes that would alter~~ the function of the ~~waste system~~ facility. (4-11-15)()
- ~~15.~~ National Pollutant Discharge Elimination System (NPDES). The point source permitting program established pursuant to section 402 of the federal clean water act. (4-11-15)
- ~~1620.~~ **Non-Compliance.** A practice or condition that ~~causes an unauthorized discharge; or, if left uncorrected, will cause an unauthorized discharge, or~~ does not meet ~~nutrient management standards and comply with a NMP~~ the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition. (4-11-15)()
- ~~17.~~ Nutrient Management Plan (NMP). A plan prepared in conformance with the Nutrient Management Standard (NMS) or other equally protective standard for managing the amount, placement, form, and timing of the land application of nutrients and soil amendments. (4-11-15)
- ~~21.~~ Nutrient Management Standard (NMS). Criteria for managing the land application of nutrients and soil amendments published in the USDA NRCS conservation practice standard nutrient management code 590 or other equally protective criteria approved by the Director. ()
- ~~22.~~ Pasture, Pasturing, and Pastured. For purposes of these rules, a pasture is an irrigated or dryland field with forage plant growth covering a minimum of fifty percent (50%) of the field. Pasturing and pastured is dairy animals and other animals owned, leased, or otherwise under the control of the producer, grazing in the same dairy farm pasture. ()
- ~~1823.~~ **Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk. (3-20-97)()
- ~~1924.~~ **Person.** Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality; or any legal entity that is recognized by law as the subject of rights and duties. (4-11-15)
- ~~205.~~ **Process Wastewater.** ~~Liquid containing dairy manure.~~ Water directly or indirectly used or

produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: excess milk; spillage or overflow from watering, washing, spraying or cooling dairy animals; water containing dairy manure; water used in washing, cleaning, or flushing barns, manure pits and other areas involved in the milk production and environmental management processes; water used for dust control; and water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (4-11-15)()

~~246.~~ **Producer.** The person who ~~exercises control over the production of milk delivered to a plant, and who receives payment for this product~~ owns or operates a permitted dairy farm. (3-20-97)()

~~227.~~ **Unauthorized Discharge.** A discharge of ~~dairy waste to state surface waters or ground waters, or beyond a dairy farm's property boundaries, that does not meet the requirements of these rules or ground water or surface water quality standards~~ pollutants from a dairy farm to waters of the United States as defined in the federal clean water act that is required to be but is not authorized by an IPDES permit. Unauthorized discharge does not include an upset condition or agricultural stormwater discharge. (4-11-15)()

~~28.~~ **Unauthorized Release.** A release of dairy byproducts to ground water or surface waters of the state that are not waters of the United States or beyond land owned or operated by the dairy farm that results from a dairy farm's failure to comply with its environmental management plan. Unauthorized release shall not include an upset condition, an agricultural stormwater discharge or infiltration from storage and containment facilities that is within engineering standards and specifications published by the USDA, NRCS or by the ASABE, or other equally protective criteria approved by the Director. ()

~~29.~~ **Upset Condition.** Precipitation, earthquake, vandalism, or other occurrence beyond the control of the dairy farm owner or operator that exceeds criteria for storage and containments facilities and nutrient management in an approved environmental management plan. ()

011. ABBREVIATIONS.

~~There are no abbreviations in this chapter.~~ (3-29-10)

~~01.~~ **ASABE.** American Society of Agricultural and Biological Engineers. ()

~~02.~~ **IPDES.** Idaho Pollutant Distribution Elimination System. ()

~~03.~~ **NMS.** Nutrient Management Standard ()

~~04.~~ **NRCS.** Natural Resources Conservation Service. ()

~~05.~~ **USDA.** United States Department of Agriculture. ()

~~012. -- 019.~~ **(RESERVED)**

~~020.~~ **PERMITS AND CERTIFICATION.**

~~No Producer shall offer for sale or sell milk unless the producing dairy farm has been issued a Grade A permit or a farm certification from the Department.~~ (3-20-97)

~~01.~~ **Grade A Permit.** A permit issued by the Department if the dairy farm complies with the requirements of the "Grade A Pasteurized Milk Ordinance", as incorporated by reference in IDAPA 02-04-08, "Rules Governing Grade A Milk and Milk Products", and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)

~~02.~~ **Farm Certification.** A certification issued by the Department if the dairy farm complies with the requirements of IDAPA 02-04-05, "Rules Governing Manufacture Grade Milk," and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)

~~021. -- 029.~~ **(RESERVED)**

030. ~~WASTE SYSTEM~~ **DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.**

The Department is authorized to approve ~~the design, construction, operation, and location of dairy waste systems. These systems must conform to the NMP, NMS, and Appendix 10D environmental management plans, as provided in Section 37-606A, Idaho Code.~~ (3-29-10)()

01. ~~Waste Containment and~~ **Dairy Storage and Containment Facility Criteria.** (3-29-10)()

a. ~~Waste~~ **Dairy storage and** containment ~~structures~~ **facilities** shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. ~~Wastewater~~ **Process water** containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. (3-29-10)()

b. Earthen ~~waste~~ **dairy storage and** containment ~~structures~~ **facilities** less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall be required to have a top embankment width of at least eight (8) feet and a minimum of one (1) vertical foot of freeboard shall be maintained. The combined inside and outside embankment slopes must be at least five (5) horizontal to one (1) vertical, and neither slope shall be steeper than two (2) horizontal to one (1) vertical. Earthen ~~waste~~ **dairy storage and** containment ~~structures~~ **facilities** with outside embankments higher than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements as incorporated by reference in Subsection 004.03 of these rules. (3-29-10)()

c. The inside bottom of the ~~waste~~ **dairy storage and** containment ~~structure~~ **facility** shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen ~~waste~~ **dairy storage and** containment ~~structures~~ **facility**, a soil liner shall be installed such that the specific discharge rate of the containment structure meet $1 \times 10^{-6} \text{ cm}^3/\text{cm}^2/\text{sec}$ or less as described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASABE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. (3-29-10)()

d. Storage areas for dairy ~~waste~~ **byproduct**, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on and run off. (4-11-15)()

e. ~~Waste storage~~ **Dairy environmental management** systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. (3-29-10)()

02. **Dairy Nutrient Management Plan (DNMP).** ~~All dairy farms shall implement a Nutrient Management Plan (NMP) approved by the Department that accurately reflects the operation of the facility. The NMP shall include an accurate description of the one hundred eighty (180) days of holding capacity of the waste containment system. It shall be the dairy farm's responsibility to update the NMP. Except as provided below, each dairy farm shall have a dairy nutrient management plan that is approved by the Department and included in the dairy farm's environmental management plan. The DNMP shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator to which dairy byproducts are land applied. A new dairy farm governed by the IPDES program is not required to submit a DNMP to the Department. An existing dairy farm with an approved DNMP that has a discharge to waters of the U.S. that requires an IPDES permit must comply with the nutrient management plan requirements under the IPDES rules and IPDES permit, notwithstanding the Department approved DNMP. Requirements to comply with the provisions of a DNMP include the following:~~ (4-11-15)()

a. Producer annual soil tests shall be conducted as set forth in ~~the NMS~~ **IDAPA 02.04.30, "Rules Governing Nutrient Management."** (3-29-10)()

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with ~~the NMS~~ **IDAPA 02.04.30, "Rules Governing Nutrient Management."** (3-29-10)()

i. If the regulatory or Producer soil tests reveal that phosphorus thresholds have exceeded the levels established in the NMS, the Producer shall only apply nutrients at the appropriate phosphorus crop uptake rate. (3-29-10)

ii. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. ~~(3-29-10)~~()

c. Accurate DNMP records shall be maintained. These records shall include at a minimum: ~~(3-29-10)~~()

i. Regulatory soil samples shall be taken by a Certified Soil Sampler and tested by a laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America outlined in the NMS, as incorporated by reference in Subsection 004.02, as part of NMS 590 or other methods as approved by the Department; (3-29-10)

ii. Annual soil analysis; (3-29-10)

iii. Date and amount of dairy waste byproduct and commercial fertilizer applied to individual dairy owned or operated fields; ~~(4-11-15)~~()

iv. Date(s) of exported dairy waste byproduct, number of acres applied, amount of dairy waste byproduct exported, and to whom dairy waste byproduct was exported; and ~~(4-11-15)~~()

v. Actual crop yields on dairy owned or operated fields. (3-29-10)

d. Pasturing. Pastures utilized for grazing of dairy animals, and other animals owned, leased or otherwise under the control of a producer within the same pasture, shall be incorporated in and subject to the DNMP. These pastures are also subject to the following requirements: ()

i. Soil Testing. Soil tests shall be conducted pursuant to the NMS on all lands utilized as pasture. If pasture soil tests exceed the phosphorus threshold, the Producer must take action to demonstrate a downward trend in the phosphorus index in subsequent soil tests. If two (2) out of three (3) subsequent soil tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. ()

ii. Surface Water Access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one or more NRCS conservation practice standards to minimize adverse impact on surface water quality. ()

iii. Land Application. If land application occurs within a pasture, soil tests shall be conducted annually on that pasture. ()

iv. Confinement Areas. Confinement areas shall not be considered part of a pasture. ()

031. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected by an Inspector or Fieldman at least annually or at intervals sufficient to determine that dairy waste has byproducts and process water have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. An official inspection report form as described in Section 041 will be completed at the time of inspection. ~~(4-11-15)~~()

041. INSPECTION REPORT FORMS.

An inspection report form shall be established by the Department based on parameters established in the NMP, NMS, and Appendix 10D. Each inspection item on the form shall indicate compliance and non-compliance. (3-29-10)

042. -- 049. (RESERVED)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized ~~Discharge~~ Release Violations Identified. When the Director identifies items of non-compliance or unauthorized ~~discharge~~ release violations, the deficiencies will be noted and discussed with the Producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: ~~(4-11-15)~~()

- a. When corrective actions cannot be completed within thirty (30) days; (4-5-00)
- b. When corrective actions require significant capital investment; (4-5-00)
- c. When informal schedules have not been ~~complied with~~ followed. ~~(4-5-00)~~()

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized ~~discharge~~ release violation shall be corrected immediately, when at all possible. ~~(4-11-15)~~()

060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.

01. Unauthorized Discharge. No dairy farm shall cause an unauthorized discharge. (4-11-15)

02. Unauthorized Release. No dairy farm shall cause an unauthorized release. ()

03. Non-Compliance. Non-compliance with requirements for dairy ~~waste~~ environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ~~(4-11-15)~~()

03. Penalties. For unauthorized ~~discharges~~ releases and non-compliance conditions, the Director shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund. ~~(4-11-15)~~()

04. Suspend Planners or Soil Samplers Certification. The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop DNMPs or collect soil samples as required by these rules. ~~(3-29-10)~~()

061. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.
The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a Dairy Farm to waters of the United States is required to be authorized by an IPDES permit. The provisions of this rule do not define when a Dairy Farm is required to obtain a permit for a discharge, do not exempt a Dairy Farm from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. ()

062. -- 999. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.15 - RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 22, Chapters 1 and 49, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 change will make the rule consistent with the statutory revisions implemented by the 2016 Idaho Legislature.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 21](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 3, 2016. There were twelve (12) people in attendance and multiple comments were entered into the record and taken into consideration when drafting this proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: A more recent version of the American Society of Agricultural and Biological Engineers Specification Manual has been published. However there are no changes to the standards referenced in this rule.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 6th day of September, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0415-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Beef Cattle Animal Feeding Operations.” (4-6-05)

02. **Scope.** These rules shall govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. The official citation of this chapter is IDAPA 02.04.15.000 et seq. For example this section’s citation is IDAPA 02.04.15.001. Nothing in this rule affects the authority of the department of environmental quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program. (3-16-01)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.04.15 incorporates by reference: (3-16-01)

~~01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b)(1), (b)(2), (b)(4), (b)(6), or (b)(9). This document can be viewed online at http://www.access.gpo.gov/nara/efr/waisidx/40/40efr20_04.html.~~ (4-6-05)

021. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. This document can be viewed online at <http://directives.sc.gov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. (3-16-01)

032. The 2000 American Society of Agricultural and Biological Engineers Standard Specification ASAE EP393.3 Manure Storages February 2004. This document ~~can be viewed online at http://www.agri.idaho.gov/Categories/Animals/Documents/ASAE_EP393point3_2000.pdf~~ is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-16-01)()

043. The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. This can be viewed online at http://www.agri.idaho.gov/AGRI/Categories/Animals/Documents/nutrient_Management_code_590.PDF. (3-16-01)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-01)

01. **Administrator.** The administrator of the Idaho State Department of Agriculture, Division of Animal Industries or his designee. (4-6-05)

02. **Animal.** Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratitidae. (3-16-01)

03. **Animal Feeding Operation.** A lot or facility where slaughter and feeder cattle or dairy heifers are confined and fed for a total of forty-five (45) days or more during any twelve (12) month period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (4-6-05)

04. **Beef Cattle Animal Feeding Operation.** An animal feeding operation, ~~as defined in 40 CFR Sections 122.23 (b)(1), (b)(2), (b)(4), (b)(6) or (b)(9),~~ which confines slaughter and feeder cattle or dairy heifers. (4-6-05)()

05. **Best Management Practices.** ~~Practices as~~ As defined in Title 22, Chapter 49, Idaho Code, ~~or other~~ practices, techniques, or measures ~~that~~ which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources to a level compatible with state environmental goals, including water quality goals and standards for water of the state. Best management practices for water quality shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or Title 22, Chapter 49, Idaho Code. (3-16-01)()

06. **Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-16-01)

07. **Concentrated Animal Feeding Operation.** An AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this section and designated by the Director. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ()

~~07.~~ **Director.** The Director of the Idaho State Department of Agriculture or his designee. (4-6-05)

~~08.~~ **Discharge.** Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (3-16-01)

10. **Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ()

~~09.~~ **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)

12. **Large Concentrated Animal Feeding Operation.** An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of cattle specified in any of the following categories: ()

a. Seven hundred (700) mature dairy cows, whether milked or dry; ()

b. One thousand (1,000) veal calves; ()

c. One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; ()

~~10.~~ **Manure.** Animal excrement generated on a beef cattle animal feeding operation that may also contain bedding, spilled feed, water, or soil. (3-15-02)

14. **Medium Concentrated Animal Feeding Operation.** A medium CAFO includes any AFO that has been defined or designated as CAFO and stables or confines the number of cattle that fall within any of the following ranges: ()

a. Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry;

- ()
- b.** Three hundred (300) to nine hundred ninety-nine (999) veal calves; ()
- c.** Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; ()
- 145.** **Modified.** Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-16-01)
- 146.** **Non-Compliance.** A practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge. (3-16-01)
- 147.** **Nutrient Management Plan (NMP).** A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, ~~source,~~ placement, form, and timing of the land application of nutrients ~~or~~ and soil amendments. (4-6-05)()
- 148.** **Nutrient Management Standard.** The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-16-01)
- 149.** **Operate.** Confining and feeding slaughter and feeder cattle in the state of Idaho. (4-6-05)
- 1620.** **Operator.** The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (3-16-01)
- 217.** **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-16-01)
- 18.22** **Process Wastewater.** Liquid containing beef cattle manure, process-generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or by-products. (4-6-05)
- 1923.** **Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (3-15-02)
- 204.** **Slaughter and Feeder Cattle.** All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste." (4-6-05)
- 25.** Small Concentrated Animal Feeding Operation. An AFO that is designated as a CAFO and is not a medium or large CAFO. ()
- 246.** **Unauthorized Discharge.** A discharge of process wastewater or manure from a beef cattle animal feeding operation to state surface waters ~~of the state that is not authorized by a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency, or the release of process wastewater or manure from a beef cattle animal feeding operation, to waters of the state,~~ that does not meet the requirements of these ~~se~~ act rules or water quality standards. (3-16-01)()
- 227.** **Wastewater Storage and Containment Facility.** That portion of a beef cattle animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-16-01)
- 238.** **Waters of the State.** All accumulations of water, surface and underground, ~~water located within~~

~~the boundaries of natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code.~~ (3-16-01)()

011. ABBREVIATIONS.

- 01. AFO. Animal Feeding Operation. ()
- 02. CAFO. Concentrated Animal Feeding Operation. ()
- 03. IPDES. Idaho Pollutant Discharge Elimination System. ()
- ~~04.~~ NMP. Nutrient Management Plan. (4-6-05)
- ~~02.~~ NPDES. National Pollutant Discharge Elimination System. (4-6-05)
- ~~03.~~ NRCS. United States Department of Agriculture, Natural Resources Conservation Service. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

050. AUTHORITY TO INSPECT.

The Director is authorized to inspect any animal feeding operation that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director shall comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: (4-6-05)

- 01. **Entry.** Enter and inspect at reasonable times the premises or land application site(s) of a beef cattle animal feeding operation. (4-6-05)
- 02. **Access to Records.** Review or copy any records that must be kept in accordance with these rules. (4-6-05)
- 03. **Sample or Monitor.** Sample or monitor at reasonable times, substances or parameters directly related to compliance with these rules or an IPDES permit. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

052. ADMINISTRATION OF IPDES PROGRAM.

The Director of the department of agriculture and the director of the department of environmental quality shall, as appropriate, establish an agreement relating to the administration of an IPDES program that recognizes the expertise of the department of agriculture. ()

053. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.

The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a Beef Cattle Feeding Operation is required to be authorized by an IPDES permit. The provisions of this rule do not define when a Beef Cattle Feeding Operations is required to obtain a permit for a discharge, do not exempt a Beef Cattle Feeding Operation from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. ()

054. -- 079. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.16 - RULES GOVERNING AGRICULTURE ODOR MANAGEMENT

DOCKET NO. 02-0416-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-3802, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 a result of a petition received from the Idaho Dairyman's Association. The changes will make the rule consistent with the statutory revisions implemented by the 2016 Idaho Legislature.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 22](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 2, 2016. There were seventeen (17) people in attendance at the meeting. No written comments were received.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 29th day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0416-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-15-02)

01. Accepted Agricultural Practices. Those management practices normally associated with agriculture in Idaho, including but not limited to those practices identified in Section 100 of these rules, and which include management practices intended to control odor generated by an agricultural operation. (5-3-03)

02. Agricultural Animals. Those animals, including but not limited to mink, domestic cervidae, horses, and ratites raised for agricultural purposes. (3-15-02)

03. Agricultural Operation. Those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within Section 25-3801(2), Idaho Code. (5-3-03)

04. Animal. Livestock and agricultural animals. (5-3-03)

05. BAT. The best application of science that is accessible and obtainable to achieve a desired objective. (5-3-03)

06. Best Management Practices. Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-15-02)

07. Compost. A biologically stable material derived from the biological decomposition of organic matter. (3-15-02)

08. Composting. The aerobic degradation of manure and other organic material to a biologically stable form. (3-15-02)

09. Beef Cattle. All cattle except those located on a dairy farm that ~~has~~ have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules ~~of the Department of Agriculture~~ Governing Dairy ~~Waste~~ Byproduct." (3-15-02)()

10. Beef Cattle Animal Feeding Operation. Those operations regulated pursuant to IDAPA 02.04.15, "Rules ~~of the Department of Agriculture Regulating~~ Governing Beef Cattle Animal Feeding Operations." (3-15-02)()

11. Department. The Idaho State Department of Agriculture. (3-15-02)

12. Director. The Director of the Idaho State Department of Agriculture. (3-15-02)

13. Land Application. The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. (3-15-02)

14. Large Swine And Poultry Operations. Those swine ~~and poultry~~ operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine ~~and Poultry~~ Facilities;" and those poultry operations regulated pursuant to IDAPA 02.04.32. "Rules Governing Poultry Operations." (3-15-02)()

15. Livestock. Cattle, sheep, swine and poultry. (3-15-02)

16. Liquid-Solid Separation. The removal of solid manure from water through mechanical or settling

means. (3-15-02)

17. Liquid Waste System. Wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system. (5-3-03)

18. Manure. Animal excrement that may also contain bedding, spilled feed, or soil. (5-3-03)

19. Modified. Structural changes and alterations to agricultural operations which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage and containment facilities. (5-3-03)

20. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard. (3-15-02)

21. Nutrient Management Standard. The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-15-02)

22. Odor. The property or quality of a substance that stimulates or is perceived by the sense of smell, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness, and health risks. (5-3-03)

23. Odor Management Plan. A site-specific plan approved by the Director to manage odor generated on an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices. (3-15-02)

24. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-15-02)

25. Waste Collection and Conveyance Systems. The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. (3-15-02)

26. Wastewater. Water containing manure, which is generated on a livestock operation. (3-15-02)

27. Wastewater Storage and Containment Facilities. Wastewater storage ponds, wastewater treatment lagoons, and evaporative ponds. (3-15-02)

28. Wastewater Treatment. A process by which wastewater is treated through aerobic or anaerobic degradation or other means. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

100. ACCEPTED AGRICULTURAL PRACTICES.

Management practices conducted in accordance with applicable laws, rules and best management practices, as referenced in Subsections 100.01 and 100.02, or in the absence of referenced best management practices, management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

01. Applicable Rules. The following are applicable rules for the purpose of Section 100: (3-15-02)

a. IDAPA 02.04.14, "Rules Governing Dairy ~~Waste~~ Byproduct." (3-15-02)()

- b. IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (3-15-02)
- c. IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." (3-15-02)
- d. IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-02)

02. Applicable Best Management Practices. The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors shall be considered accepted agricultural practices for purposes of this rule. (3-15-02)

- a. Idaho NRCS Nutrient Management Standard 590, June 1999. (3-15-02)
- b. Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-15-02)
- c. "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-15-02)
- d. "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-15-02)

03. Excess Odors. An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 500. (3-15-02)

101. -- 199. (RESERVED)

200. APPLICABILITY.

These rules apply to all agricultural operations, except: (3-15-02)

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "~~Rules of the Department of Agriculture~~ Governing Beef Cattle Animal Feeding Operations." ~~(3-15-02)~~()

02. Swine and Poultry. Large swine ~~and poultry~~ operations regulated pursuant to IDAPA 58.01.09, "~~Rules Regulating Swine and Poultry Facilities;~~" and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." ~~(3-15-02)~~()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-3704, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

The rule change will require Idaho domestic cervidae producers to report the cause of death of each cervid to the Department on the official death certificate form. The rule change will also clarify the minimum surveillance requirements for Chronic Wasting Disease on domestic cervidae facilities.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, **Vol. 16-7, page 24**. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 27, 2016. There were eleven (11) people in attendance at the meeting and multiple comments were entered into the record at the meeting and were taken into consideration when drafting this proposed rule. One written comment was also received and entered into the rulemaking record.

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:

#1 – Bovine TB UMR. A more recent version of the document has been published to include updated classifications for states affected by Tuberculosis and protocols for conducting Tuberculosis herd testing.

#2 – CFR Title 9, Part 161. This federal document has been updated to further define accreditation standards for veterinarians practicing either large or small animal medicine.

#3 – CFR Title 9, Part 55. This federal document has been updated to establish a Federal Herd Certification Program for Chronic Wasting Disease in Domestic Cervids and define official testing methods.

#4 – CFR Title 9, Subchapter A, Part 1 & 2. This federal document has been updated to clarify animal welfare definition and licensing requirements for individuals that deal in the commercial trade, handling and sale of certain animals.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 2nd day of September, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0419-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office. (4-7-11)

01. Bovine Tuberculosis Eradication, Uniform Methods and Rules, Effective January ~~221, 1999~~ 2005. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb-umr.pdf. (4-2-03)()

02. Code of Federal Regulations, Title 9, Part 161, January 1, 20~~04~~16. This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&node=pt9.1.161&rgn=div5>. (4-6-05)()

03. Code of Federal Regulations, Title 9, Part 55, January 1, 20~~04~~16. This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&node=pt9.1.55&rgn=div5>. (4-6-05)()

04. Code of Federal Regulations, Title 9, Subchapter A, Part 1 and 2, January 1, 20~~04~~16. This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&tpl=/ecfrbrowse/Title09/9CIschchapA.tpl>. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

201. ANNUAL INVENTORY REPORT.

01. Inventory Report. All owners of domestic cervidae ranches shall annually submit, to the Administrator, a complete and accurate inventory of all animals held no later than December 31st of each year, ~~on a form approved by the Administrator~~. The annual inventory report shall contain the following minimum information: (4-2-03)()

- a. Name and address of the domestic cervidae ranch. (4-2-03)
- b. Name and address of the owner of the domestic cervidae ranch. (4-2-03)
- c. Date the inventory was completed. (4-2-03)

02. Individual Domestic Cervidae. For each individual domestic cervidae that was located on the domestic cervidae ranch during the year for which the report is being made, the following information shall be provided: (4-2-03)

- a. All types of official and unofficial identification; (4-2-03)
- b. Species; (4-2-03)
- c. Sex; and ~~(4-2-03)~~()
- d. Age or year born; ~~(4-2-03)~~()
- ~~e. Disposition, including the date of sale, death, or purchase; and (4-2-03)~~
- ~~f. Name and address of the owner of the domestic cervidae. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

205. NOTICE OF DEATH OF DOMESTIC CERVIDAE.

~~The Notice of death of all domestic cervidae over one (1) year of age and all domestic cervidae that have been officially identified and inventoried twelve (12) months or older and all domestic cervidae officially identified and inventoried that died on a ranch or at an Approved Slaughter or Custom Exempt Slaughter Establishment must be reported submitted by the owner or operator to the division on a report approved by the Administrator: ~~(4-2-08)~~()~~

~~**01. Reports.** The initial report of a cervidae death may be made by telephone, facsimile, or electronic mail, and then followed by the submission of the death certificate. ~~(4-2-08)~~~~

021. Submission of Death Certificates. A complete and accurate copy of all CWD sample submission forms/death certificates shall be submitted to the division by regular mail, facsimile, electronic mail, or by other means as approved by the Administrator: within ten (10) business days of when the owner or operator knew or reasonably should have known of the death. The CWD sample submission form/death certificate shall contain the following minimum information: ~~(4-6-05)~~()

- a. Name and address of the domestic cervidae ranch; and ()
- b. Name and address of the owner of the domestic cervidae ranch. ()

02. Individual Domestic Cervidae. For each individual domestic cervidae death, the following minimum information shall be provided: ()

- a. All individual identification numbers; ()
- b. Sex; ()
- c. Age or year born; ()
- d. Date and Time of Death; ()
- e. Cause of death; ()
- f. Specify animals submitted for CWD testing; and ()
- g. Dated Signature. ()

~~**03. Reporting Deaths at Domestic Cervidae Ranches.** The owner or operator of a domestic cervidae ranch shall notify the division within five (5) business days of when the owner or operator knew or reasonably should have known of the death. ~~(4-2-08)~~~~

~~04. Reporting Deaths at Approved and Custom Exempt Slaughter Establishments. The owners of cervidae that are slaughtered shall report the death within five (5) business days of the date that the cervidae was slaughtered. (4-2-08)~~

206. ~~CWD SAMPLE SUBMISSION FORM/DEATH CERTIFICATE. (RESERVED)~~
~~The owner or operator of a domestic cervidae ranch shall submit, to the Administrator, a complete and accurate copy of all CWD sample submission forms/death certificates at the same time that CWD samples are submitted to an approved laboratory. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

208. INTRASTATE MOVEMENT CERTIFICATE.

All owners of domestic cervidae ranches who move cervidae, from one premises to another, including movement from one (1) premises to another premises owned, operated, leased, or controlled by the owner, within the state of Idaho shall submit, to the Administrator, a complete and accurate intrastate movement certificate signed by the owner, within ~~five (5)~~ ten (10) business days of the movement. The Administrator shall provide blank intrastate movement certificates to the owners of domestic cervidae ranches upon request. ~~(4-6-05)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

250. INTRASTATE MOVEMENT OF DOMESTIC CERVIDAE.

All live domestic cervidae moving from one premises to another premises within the state of Idaho shall be officially identified, except calves during the year of birth accompanying their dam, and accompanied by: (4-6-05)

01. TB Test. An official negative test for tuberculosis of all cervidae over twelve (12) months of age, conducted within the last ninety (90) days, or written permission from the Administrator, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules," effective January ~~22, 1999~~ 2005, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or ~~(4-2-03)~~ ()

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

c. Those domestic cervidae moving from one premises to another premises owned, operated, leased, or controlled by the same person. (4-6-05)

02. Intrastate Movement Certificate. All intrastate movements of live domestic cervidae, including movement from one premises to another premises owned, operated, leased, or controlled by the same person, shall be accompanied by a complete and accurate intrastate movement certificate, which has been signed by the owner or operator of the domestic cervidae ranch where the movement originates and includes a statement of the CWD and TB status of the cervidae. (4-6-05)

03. Movement of Cervidae Between Accredited AZA or USDA Licensed Facilities. Movement of cervidae between accredited AZA and USDA licensed facilities is exempt from the requirements of this chapter. All other movement from AZA accredited or USDA licensed facilities shall comply fully with all of the provisions of this chapter. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

450. TUBERCULOSIS.

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

a. Animals originating from an accredited, qualified or monitored herd, as described in “Bovine Tuberculosis Eradication, Uniform Methods and Rules,” effective January ~~22~~1, 19992005, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (4-2-03)()

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

c. The Administrator, following an evaluation, may grant exceptions to the provisions of this Section on a case-by-case basis. (4-4-13)

02. Rules and UM&R. Owners of domestic cervidae ranches shall comply with IDAPA 02.04.03, “Rules ~~of the Department of Agriculture~~ Governing Animal Industry,” that apply to domestic cervidae, and the Bovine Tuberculosis Eradication, UM&R, Effective January ~~22~~1, 19992005. (4-2-03)()

451. -- 499. (RESERVED)

500. SURVEILLANCE FOR CWD.

01. Slaughter Surveillance. Brain tissue from no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that are slaughtered at approved slaughter establishments or custom exempt slaughter establishments shall be submitted annually by the owner of the slaughtered cervidae to official laboratories to be tested or examined for CWD as provided for in these rules. If ten (10) or less cervids on a domestic cervidae ranch are slaughtered in a calendar year, at least one (1) testable brain sample must be submitted to meet the annual CWD surveillance requirement. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result shall not count towards the tissue submission requirement. (4-6-15)()

02. Domestic Cervidae Ranch Surveillance. ~~Unless a domestic cervidae ranch is operating with a ranch management plan approved by the Administrator:~~ **b** Brain tissue from no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that are harvested on domestic cervidae ranches shall be submitted for CWD testing annually. If ten (10) or less cervids on a domestic cervidae ranch are harvested in a calendar year, at least one (1) testable brain sample must be submitted to meet the annual CWD surveillance requirement. In addition to the tissue samples from the harvested domestic cervidae, brain tissue from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that die for any reason other than being harvested shall also be submitted for CWD testing annually. Reindeer and fallow deer shall be exempt from CWD testing unless the reindeer and fallow deer are part of a CWD positive, exposed, trace, source, or suspect herd or part of an elk herd. The owner or operator of the domestic cervidae ranch shall submit all tissue samples to an official laboratory to be tested for CWD, as provided for in these rules. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result shall not count towards the tissue submission requirement. In the event a domestic cervidae ranch cannot submit a testable brain sample, the domestic cervidae ranch shall submit, ~~on a form approved by the Administrator,~~ a CWD Sample Submission ~~Waiver~~ ~~Request~~ within ~~forty eight (48) hours~~ ten (10) business days of determining that a testable brain sample cannot be submitted. (4-6-15)()

501. COLLECTION OF SAMPLES FOR CWD TESTING.

Only accredited veterinarians, state and federal animal health officials, and other persons, approved by the Administrator, shall collect brain or other tissue samples for CWD testing. Samples shall be collected immediately upon discovery of the death of a domestic cervid. (4-2-03)

01. Brain Samples. Only persons trained by state or federal animal health officials, and approved by the Administrator, may remove the ~~brain stem containing the~~ obex portion of the brainstem for submission as the

sample for CWD testing.

~~(4-6-05)~~()

02. Submission of Head. Only persons trained by state or federal animal health officials, and approved by the Administrator, may submit a head with the official identification attached to the head as the sample for CWD testing. (4-6-05)

03. Handling of Samples. All CWD samples shall be handled in a manner that prevents degradation of the sample. (4-2-03)

04. Sample Submission Time. Fresh samples for CWD testing shall be submitted, to an approved laboratory, within seventy-two (72) hours of the date of collection. Formalin preserved samples shall be submitted, to an approved laboratory, within ~~five~~ **ten** (~~5~~**10**) business days of the date of collection. ~~(4-2-03)~~()

05. Non-Testable or Samples That Do not Contain Appropriate Tissues. The Administrator may conduct an investigation to determine if a domestic cervidae ranch is complying with the provisions of Section 500 if: (4-2-03)

a. The owner or operator of a domestic cervidae ranch submits samples for CWD testing which are non-testable; or (4-2-03)

b. The owner or operator of a domestic cervidae ranch submits samples for CWD testing that do not contain ~~the obex portion of the brainstem or other~~ appropriate tissues, if available, for CWD testing. ~~(4-2-03)~~()

c. The owner or operator of a domestic cervidae ranch submits samples for CWD testing which cannot be identified to the animal of origin. (4-6-05)

06. Failure to ~~Submit Samples for CWD Testing~~ Meet Annual CWD Tissue Submission Requirement. An owner or operator of a domestic cervidae ranch ~~that~~ who fails to submit samples for CWD testing ~~as required in~~ or fails meet the annual tissue submission requirements of this chapter, or both, is in violation of these rules, except the Administrator may approve, in writing, a variance from sample submission requirements on a case specific basis. ~~(4-2-03)~~()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 25, Chapters 2, 3, 4, 6 and 37, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

This rule change will make Idaho rules consistent with federal regulations pertaining to the official identification of imported dairy cattle. The rule change will also clarify requirements to participate in the equine approved feedlot program as well as specify tuberculosis testing requirements for imported domestic cervidae.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 25](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 27, 2016. There were eleven (11) people in attendance at the meeting and multiple comments were entered into the record at the meeting and were taken into consideration when drafting this proposed rule. One written comment was also received and entered into the rulemaking record.

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:

Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 147, and 161 have updated regulations pertaining to interstate transport of animals and animal products, including the prevention and testing of communicable disease in livestock, management of the national poultry improvement plan and further defining accreditation standards for veterinarians practicing either large or small animal medicine.

Equine Infectious Anemia Uniform Rules & Methods, 2007. This document is being incorporated by reference to govern the disease surveillance aspect of the rules changes that are being made regarding Approved Equine Feedlots. This document establishes quarantine and setback requirements for horses that have not been tested or are positive for Equine Infectious Anemia.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 2nd day of September, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0421-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. IDAPA 02.04.21 incorporates by reference: (4-11-06)

01. The October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf. (~~4-11-06~~)()

02. The September 30, 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/bcervumr.pdf. (~~4-11-06~~)()

03. The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_dis_spec/swine/downloads/sbruumr.pdf. (~~5-3-03~~)()

04. The Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 147, and 161, January 1, 2006. This document can be viewed online at http://www.ecfr.gov/cgi-bin/text-idx?SID=9e3e2eff1a42367841dc92eee8d5324d&mc=true&tpl=/ecfrbrowse/Title09/9cfrv1_02.tpl#0.3-30-07. (~~3-30-07~~)()

05. The January 1, 2005 Edition of the Bovine Tuberculosis Eradication Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb-umr.pdf. (4-11-06)

06. The November 1, 2003 Edition of the Pseudorabies Eradication, State-Federal-Industry Program Standards. This document can be viewed online at http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf. (4-11-06)

07. The April 19, 2004 Edition of the Equine Viral Arteritis Uniform Methods and Rules. This document can be viewed online at <http://www.aphis.usda.gov/vs/nahss/equine/eva/eva-umr.pdf>. (5-8-09)

08. The January 10, 2007 Edition of the Equine Infectious Anemia: Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/vs/nahss/equine/eia/eia_umr_jan_10_2007.pdf. ()

(BREAK IN CONTINUITY OF SECTIONS)

011. ABBREVIATIONS.

- | | | |
|------------------|--|-----------|
| 01. | APHIS. Animal and Plant Health Inspection Service. | (4-2-08) |
| 02. | AVIC. Area Veterinarian in Charge. | (5-3-03) |
| 03. | AZA. Association of Zoos and Aquariums. | (4-4-13) |
| 04. | <u>BAPA. Buffered Acidified Plate Assay.</u> | () |
| 05. | <u>BPAT. Buffered Antigen Plate-Aggutination Test.</u> | () |
| 046. | CF. Complement Fixation Test. | (3-30-07) |
| 057. | CFR. Code of Federal Regulations. | (5-3-03) |
| 068. | CWD. Chronic Wasting Disease. | (5-3-03) |
| 079. | EIA. Equine Infectious Anemia. | (5-3-03) |
| 0810. | EVA. Equine Viral Arteritis. | (5-8-09) |
| 11. | <u>FPA. Fluorescence Polarization Assay.</u> | () |
| 0912. | NAEBA. North American Elk Breeders Association. | (5-3-03) |
| 103. | NPIP. National Poultry Improvement Plan. | (5-3-03) |
| 114. | <i>P. tenuis. Paralephastrongylus tenuis</i> (meningeal worm of deer). | (4-11-15) |
| 125. | PCR. Polymerase Chain Reaction. | (4-2-08) |
| 136. | RDGF. Red Deer Genetic Factor. | (4-4-13) |
| 147. | TB. Tuberculosis. | (5-3-03) |
| 158. | UM&R. Uniform Methods and Rules. | (5-3-03) |
| 169. | USDA. United States Department of Agriculture. | (5-3-03) |
| 1720. | VHSV. Viral Hemorrhagic Septicemia Virus. | (4-2-08) |
| 1821. | VS. Veterinary Services. | (5-3-03) |

(BREAK IN CONTINUITY OF SECTIONS)

200. IMPORTATION OF CATTLE INTO IDAHO.

All cattle that enter the state of Idaho shall possess appropriate official individual identification, if required, and be accompanied by a certificate of veterinary inspection or other approved certificate attesting they are free from evidence of any infectious, contagious, or communicable disease, or exposure thereto, and by a permit if required, except: ~~(5-3-03)~~()

01. Approved Slaughter Establishments. Cattle consigned directly to approved slaughter establishments shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit,

if required; or (5-3-03)

02. Specifically Approved Livestock Market. Cattle consigned directly to specifically approved livestock markets shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit, if required; or (5-3-03)

03. Feedlots Approved by the Administrator. Cattle consigned directly to feedlots approved by the Administrator for conducting veterinary inspections upon the arrival of the cattle. (5-3-03)

04. Post-Entry Inspection. All cattle entering Idaho may be subject to a post-entry inspection by state or federal animal health officials. (5-3-03)

201. CATTLE AND BISON IMPORTED FROM CANADA.

All cattle and bison imported into Idaho from Canada, except those imported directly to slaughter, must: (5-8-09)

~~**01. CAN Brand.** Be permanently hot iron branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip. (5-8-09)~~

021. Idaho Requirements. Meet all Idaho import requirements. (5-8-09)

032. USDA Requirements. Meet all USDA import requirements. (5-8-09)

043. Individually Identified. Be individually identified on a certificate of veterinary inspection. (5-8-09)

054. Import Permit. Be accompanied by an import permit issued by the Division. (5-8-09)

202. WHEN PERMITS ARE REQUIRED FOR CATTLE.

01. Dairy. For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. ~~All Dairy cattle three hundred sixty five (365) days of age or older shall be officially identified as provided in IDAPA 02.04.20 Section 203 of this Chapter. The Administrator may require the identification of dairy cattle less than three hundred sixty five (365) days of age. (5-3-03) ()~~

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

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

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

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

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

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

05. Domestic Bison. All domestic bison imported into Idaho shall require an entry permit from the Division of Animal Industries prior to importation and be in compliance with the same requirements as cattle contained in this chapter and Title 9, Parts 71, 77, and 78, CFR. (4-4-13)

06. Canadian Cattle and Canadian Domestic Bison. All cattle and Canadian domestic bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to

importation. (4-4-13)

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

203. OFFICIAL IDENTIFICATION OF IMPORTED CATTLE.

01. Beef Cattle. All sexually intact beef breed cattle, eighteen (18) months of age or older, shall possess official individual identification. ()

02. Dairy Cattle. All dairy breed cattle, regardless of age, shall possess official individual identification. ()

~~2034.~~ -- 209. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

Cattle and domestic bison may enter the state of Idaho provided: (5-3-03)

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may be imported upon meeting the following requirements: (4-11-06)

a. Cattle of beef breeds may enter the state without a tuberculosis test. (4-11-06)

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho except intact male and female cattle of dairy breeds consigned directly to a feedlot approved for finish feeding of cattle for slaughter only relative to tuberculosis may enter by permit without a tuberculosis test provided the cattle have been individually identified on a certificate of veterinary inspection. (4-2-08)

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. (4-11-06)

02. Tuberculosis Accredited Free Herd. Cattle and bison that originate in an accredited tuberculosis free herd in either an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and for which both an accredited herd number and date of last tuberculosis test are shown on the certificate of veterinary inspection, may enter the state without a tuberculosis test. (5-3-03)

03. Tuberculosis Modified Accredited Advanced State or Zone. Cattle and bison that originate from a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, and are not known to be infected with or exposed to tuberculosis, may be imported upon meeting the following requirements: (5-3-03)

a. Steers, spayed heifers, and intact heifers of beef and dairy breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef and dairy breeds that are consigned directly to a feedlot approved for finish feeding of cattle or bison relative to tuberculosis, may enter without individual identification or testing for tuberculosis; and (4-11-15)

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned ~~for immediate~~ directly to slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho.

~~(3-20-04)~~()

c. Tuberculosis testing requirements in Subsection 240.03 may be waived, with administrator-approval, for feeder animals of beef breeds and bison originating from a modified accredited advanced state or zone previously classified as accredited free if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous twelve (12) months and the herd of origin is not under hold order, quarantine, or epidemiological investigation for tuberculosis. (4-7-11)

04. Tuberculosis Modified Accredited State or Zone. Cattle and bison that originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that have been individually identified and classified negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison are consigned ~~for immediate~~ directly to slaughter at an approved slaughter establishment; or ~~(5-3-03)~~()

c. The cattle and bison have been subjected to two (2) official tuberculosis tests, the results of which are negative, the first test shall be a whole herd test, the second test shall be at least sixty (60) days, and no more than six (6) months, after the whole herd test and shall be not more than sixty (60) days prior to entry into Idaho. (5-3-03)

05. Tuberculosis Accredited Preparatory State or Zone. Cattle and bison that originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that are individually identified and have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days, but not more than six (6) months apart, with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison originate in a tuberculosis accredited free herd, are individually identified, and have been tested negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

c. The cattle and bison are individually identified, are from a herd that has been subjected to a complete tuberculosis herd test with negative results within the past twelve (12) months and the animals being imported have been subjected to two (2) additional official tuberculosis tests with negative results, conducted not less than sixty (60) days apart with the second test being conducted not more than sixty (60) days prior to the date of importation. (5-3-03)

06. Tuberculosis Non-Accredited State or Zone. Cattle and bison that originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, may not enter Idaho except by special permit issued by the administrator and under the conditions specified by the administrator at the time the permit is issued. (5-3-03)

07. Rodeo Stock. All cattle six (6) months of age or older imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

300. EQUIDAE.

All horses, mules, asses and other equidae that are to be transported or moved into the state of Idaho shall be

accompanied by an official certificate of veterinary inspection or extended validity equine certificate, from the state of origin, stating that the equidae are free from evidence of any communicable disease and have completed EIA test requirements, except as provided in this section. (4-4-13)

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

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

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

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

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

043. Approved Equine Feedlot. Equids being imported to be fed for slaughter in an equine feedlot approved by the Administrator may be exempt from EIA test requirements provided that all: ()

a. Horses qualified into the approved facility must be sent directly to slaughter within sixty (60) days; ~~(3-20-14)~~ ()

b. A distance of no less than two hundred (200) yards is maintained at all times between designated slaughter horses and all other equids; ()

c. Feedlot owners maintain complete and accurate records of the disposition of all equids qualified into the approved equine feedlot; ()

d. Feedlot owners annually apply for renewal of approved feedlot status prior to expiration on December 31st of each calendar year. ()

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

(BREAK IN CONTINUITY OF SECTIONS)

400. IMPORTATION OF SWINE.

Swine may enter the state of Idaho provided, they are individually identified by official ear tags or other approved techniques indicating the state and herd of origin, a permit has been issued for their entry by the Division of Animal Industries, and they are accompanied by a certificate of veterinary inspection attesting to the following: (3-30-07)

01. Animals Inspected. All swine have been inspected within thirty (30) days prior to the date of shipment, and that they are free from evidence of all infectious, contagious, or communicable diseases, or known exposure thereto during the preceding sixty (60) days; and (5-3-03)

02. Vaccination. The swine have not been vaccinated with any pseudorabies vaccine; and (5-3-03)

03. Garbage. The swine have not been fed raw garbage. (5-3-03)

04. **Slaughter Swine Exceptions.** Swine ~~for immediate~~ directly to slaughter which are apparently healthy may enter the state of Idaho without a certificate of veterinary inspection, provided the applicable permit requirements are met and the swine are consigned directly to an approved slaughter establishment, or to a specifically approved livestock market for sale to an approved slaughter establishment. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

600. **IMPORTATION OF DOMESTIC CERVIDAE.**

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

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

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

03. **National CWD Herd Certification Program Participation.** All cervidae must originate from a herd that is in good standing and actively participating in the National CWD Herd Certification Program. (3-20-14)

04. **Deworming Requirement.** All cervidae, except those consigned directly to slaughter at an approved slaughter establishment, are required to receive anthelmintic, approved for treatment of *P. tenuis*, within thirty (30) days prior to import into Idaho. Treatment must be documented on the certificate of veterinary inspection. (4-11-15)()

05. ***P. tenuis* Statement.** The certificate of veterinary inspection accompanying the cervidae shipment must contain the following written statement from the accredited veterinarian on the certificate: "No cervids identified on this certificate of veterinary inspection have displayed symptoms consistent with *P. tenuis* infection. These cervids have neither been exposed to *P. tenuis* or originated from a premises where *P. tenuis* has been identified." (4-11-15)

601. **TESTING REQUIREMENTS.**

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

01. **Brucellosis.** Animals six (6) months of age and older shall be negative to at least two (2) different official brucellosis tests from a single blood sample, one (1) of which shall be ~~either the rivanol or the CF~~ the BAPA/BPAT and the other shall be the FPA, within thirty (30) days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. (4-4-13)()

02. **Red Deer Genetic Factor.** Elk shall have either tested negative for red deer genetic factor (RDGF) by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or a state with an ISDA approved RDGF prevention program. (4-4-13)

03. **Tuberculosis.** Cervid imports shall comply with all provisions of the "Uniform Methods and Rules – Bovine Tuberculosis Eradication" and Title 9, Part 77 CFR. ()

04. **Exceptions.** Domestic cervids consigned directly to slaughter at an approved slaughter establishment. ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.32 - RULES GOVERNING POULTRY OPERATIONS
DOCKET NO. 02-0432-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-4012, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 a result of a petition received from the Idaho Dairyman's Association. The changes will make the rule consistent with the statutory revisions implemented by the 2016 Idaho Legislature.

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:

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 28](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 2, 2016. There were seventeen (17) people in attendance at the meeting. No written comments were received.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Comments can be delivered via email to scott.leibsle@isda.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 29th day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0432-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

The definitions set forth in Section 25-4002, Idaho Code, must apply in the interpretation and the enforcement of this chapter. (3-21-12)

01. Administrator. The administrator, or his designee, for the animal industries division of the Idaho Department of Agriculture. (3-21-12)

02. Animal Feeding Operation. A lot or facility where the following conditions are met: (3-21-12)

a. Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and (3-21-12)

b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (3-21-12)

03. Best Management Practices. Practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. (3-21-12)

04. Concentrated Animal Feeding Operation. An AFO that is defined as a large poultry CAFO under Subsection 010.10 or as a medium poultry CAFO under Subsection 010.12, or that is designated as a CAFO in accordance with Section 25-4011, Idaho Code. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-21-12)

05. Department. The Idaho State Department of Agriculture. (3-21-12)

06. Director. The Director of the Idaho State Department of Agriculture. (3-21-12)

07. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. (3-21-12)

08. Idaho Pollutant Discharge Elimination System (IPDES). Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ()

09. Land Application. The spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes. (3-21-12)

10. Land Application Area. Land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied. (3-21-12)

11. Large Poultry CAFO. A poultry AFO that confines as many or more than the number of poultry specified in the following categories: (3-21-12)

- a. Fifty-five thousand (55,000) turkeys; (3-21-12)
 - b. Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system; (3-21-12)
 - c. One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system; (3-21-12)
 - d. Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system; (3-21-12)
 - e. Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or (3-21-12)
 - f. Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system. (3-21-12)
- 1-72. Manure.** Animal excrement generated on a poultry animal feeding operation that may also contain bedding, spilled feed, water, or soil. (3-21-12)
- 1-23. Medium Poultry CAFO.** A poultry AFO that confines as many or more than the number of poultry specified in the following categories: (3-21-12)
- a. Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys; (3-21-12)
 - b. Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system; (3-21-12)
 - c. Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system. (3-21-12)
 - d. Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system; (3-21-12)
 - e. Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; (3-21-12)
 - f. One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system; (3-21-12)
- 1-34. Modification or Modified.** Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility. (3-21-12)
- 1-45. Noncompliance.** A practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected will cause an unauthorized discharge, or a condition on the poultry CAFO that does not meet the requirements of the nutrient management standard, nutrient management plan, and 2004 American Society of Agricultural and Biological Engineers (ASABE) construction standard for waste containment systems. (3-21-12)
- 1-56. Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments. (3-21-12)
- 1-67. Operator.** The person who has power or authority to manage, or direct, or has financial control of a poultry animal feeding operation. (3-21-12)

~~178~~. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-21-12)

~~189~~. **Poultry.** Chickens, turkeys, ducks, geese, and any other bird raised in captivity. (3-21-12)

~~1920~~. **Process Wastewater.** (3-21-12)

a. Water directly or indirectly used in the operation of the AFO for any or all of the following: (3-21-12)

i. Spillage or overflow from animal or poultry watering systems; (3-21-12)

ii. Washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; (3-21-12)

iii. Direct contact swimming, washing, or spray cooling of animals; or (3-21-12)

iv. Dust control. (3-21-12)

b. Process wastewater also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding. (3-21-12)

~~201~~. **Production Area.** The part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. (3-21-12)

a. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, barnyards and animal walkways. (3-21-12)

b. The manure storage area includes, but is not limited to, lagoons, runoff pond, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. (3-21-12)

c. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials. (3-21-12)

d. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. (3-21-12)

e. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities. (3-21-12)

~~212~~. **Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. (3-21-12)

~~223~~. **Unauthorized Discharge.** A discharge of process wastewater or manure to state surface waters that is not authorized by an AIPDES permit, or the release of process wastewater or manure to waters of the state that does not meet the requirements of the Title 25, Chapter 40, Idaho Code, or these rules. (~~3-21-12~~) ()

~~234~~. **Wastewater Storage and Containment Facility.** That portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-21-12)

~~245~~. **Waters of the State.** All 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. (3-21-12)

011. ABBREVIATIONS.

- | | | |
|------------------------|---|-----------------------------|
| 01. | AFO. Animal Feeding Operation. | (3-21-12) |
| 02. | ASABE. American Society of Agricultural and Biological Engineers. | (3-21-12) |
| 03. | CAFO. Concentrated Animal Feeding Operation. | (3-21-12) |
| 04. | DEQ. Department of Environmental Quality. | (3-21-12) |
| 05. | FEMA. Federal Emergency Management Agency. | (3-21-12) |
| 06. | <u>IPDES. Idaho Pollutant Discharge Elimination System.</u> | <u>()</u> |
| 067. | NMP. Nutrient Management Plan. | (3-21-12) |
| 078. | NMS. Nutrient Management Standard. | (3-21-12) |
| 08. | <i>NPDES. National Pollutant Discharge Elimination System.</i> | <i>(3-21-12)</i> |
| 09. | NRCS. United States Department of Agriculture, Natural Resources Conservation Service. | (3-21-12) |
| 10. | USGS. United States Geological Survey. | (3-21-12) |

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

DOCKET NO. 07-0106-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1001 and 54-1006, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2017 National Electrical Code (NEC) adds several new articles to the NEC that provide safety requirements for emerging technology. Articles have been added to address energy storage systems and direct current micro-grid installations. The 2017 NEC will also provide necessary guidance on the difference between small scale and large scale solar systems. There are numerous revisions and clarifications that will make it easier to understand and apply. The current rule amendment related to Arc-Fault Circuit-Interrupter (AFCI) Protection can be confusing to electricians because it also removes the requirements that prescribed how to install AFCI branch circuits. This rulemaking revises the amendment to that section of the NEC whereby it would maintain the provisions which indicate how the AFCI branch circuit is to be installed, while clarifying that in dwelling units it is only required to branch circuit and outlets supplying bedrooms.

The proposed rule would adopt the 2017 edition of the National Electrical Code (NEC). The proposed rule would retain all the existing amendments to the NEC; however, the exception related to Arc-Fault Circuit-Interrupter Protection is simplified to ensure more clarity. However, the effect of that exception remains the same.

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

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

The adoption of the 2017 National Electrical Code is expected to cost the Division of Building Safety approximately \$5,000. This cost includes the cost of new code books and training associated with the implementation of the new code. Local jurisdictions will encounter similar costs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, [Vol. 16-5, pages 38-39](#).

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:

The formerly adopted and incorporated by reference National Electrical Code (NEC), 2014 Edition, is being amended. The 2017 NEC adds several new articles to the NEC that provides safety requirements for emerging technology. Articles have been added to address energy storage systems and direct current micro-grid installations. The 2017 NEC will also provide necessary guidance on the difference between small scale and large scale solar systems. There are numerous revisions and clarifications that will make it easier to understand and apply. More detailed information about any change to the 2017 NEC may be available upon request to the Division of Building Safety.

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 26, 2016.

DATED this 23rd day of August, 2016.

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. 07-0106-1601
(Only Those Sections With Amendments Are Shown.)

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, ~~2014 EDITION.~~

01. Documents. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 201~~4~~ Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 201~~4~~, with the following amendments: ~~(3-20-14)~~()

a. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks - located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. (3-20-14)

b. Article 210.8(A)(10). Delete article 210.8(A)(10). (3-20-14)

c. Article 210.8(D). Delete article 210.8(D). (3-20-14)

d. Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. (3-20-14)

e. Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-20-14)

f. Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (3-20-14)

g. Article 550.32(B). Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

h. Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

i. Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. Article 210.12 shall apply in full. Exception: In dwelling units Arc-Fault Circuit-Interrupter Protection shall only apply to all branch circuits and outlets supplying bedrooms. All other locations in dwelling units are exempt from the requirements of Article 210.12. (4-2-08)()

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

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

02. Availability. A copy of the National Electrical Code is available at the offices of the Division of Building Safety at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201. (3-20-14)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.02 - RULES GOVERNING PLUMBING PERMITS

DOCKET NO. 07-0202-1601 (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, 54-2623, and 67-2601A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 is no mechanism for a plumbing contractor or homeowner to transfer a plumbing permit to a new contractor if, after the commencement of a plumbing installation, the property owner terminates its relationship with the original contractor and hires a new contractor. In such instances the new contractor or homeowner must purchase a new permit. There is also no mechanism for a permit holder to receive a refund of a permit fee that may have been obtained in error, or for which plumbing work was never commenced or only progressed minimally. In such instances the holder never recoups their fee for work, which may never have been completed and for which the Division has never provided an inspection.

This rulemaking allows a permit holder to transfer a plumbing permit to another eligible person such as a new contractor if both parties agree and the new holder accepts the responsibilities attached to the permit and pays to the Division an administrative fee. The rule also allows a permit holder to receive a refund of the permit fee where the plumbing work has never commenced or a portion thereof up to 50% of the permit price if the work has not progressed beyond 50% completion. The permit holder must apply to the Division for a refund.

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

A fee of forty-five dollars (\$45) will be imposed on those who desire to transfer a plumbing permit from one eligible party to another. The fee is authorized pursuant to Sections 54-2606(3)(a) and 67-2601A(5)(e), 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 rule does not affect the General Fund and will have only a negligible effect on the dedicated Plumbing Board fund due to a slight decrease in fees previously paid for new permits that will no longer be required.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. This rulemaking was discussed at several Plumbing Board meetings over the course of the last year, and no opposition to the proposed rule was expressed to the Board. The rulemaking is advantageous to contractors and property owners who would be able to transfer a plumbing permit to a new contractor at significantly less expense than securing a new permit. It also creates the ability to refund to purchasers of a permit the permit fee, or portion thereof for those plumbing projects on which work is never commenced or has not progressed beyond 50% completion.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys 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 26, 2016.

DATED this 25th day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 07-0202-1601
(Only Those Sections With Amendments Are Shown.)**

011. PERMITS.

01. Serial Number. Each permit shall bear a serial number. (6-4-76)

02. Plumbing Contractors. Permits shall be furnished by the Division to licensed plumbing contractors upon request. The serial numbers of such permits shall be registered in the name of the plumbing contractor to whom they are issued and ~~they shall not be~~ are transferable only as provided herein these rules.
(6-4-76)()

03. Home Owners, Commercial, Industrial, and Others. Home owners making plumbing installations on their own premises, coming under the provisions of Section 54-2602, Idaho Code, shall secure a plumbing permit by making application to the Division as provided by Section 54-2620, Idaho Code. Application forms for commercial and industrial plumbing installations shall be printed by the Division and made available at the office of the Division in Meridian. The application form shall be properly completed, signed by the contractor and mailed to the Division at 1090 E. Watertower Street, Suite 150, Meridian, Idaho, 83642, together with a verified copy of bid acceptance and the proper permit fee as hereinafter provided. Persons, companies, firms, associations, or corporations making plumbing installations, other than on their own property, must be licensed as a contractor by the state of Idaho as provided by Section 54-2610, Idaho Code. (11-14-85)

04. Expiration of Permit. Every permit issued by the administrative authority under the provisions of Idaho Code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred and twenty (120) days from the date of issuance of such permit, or if work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred and twenty (120) days. Before such work can be recommenced, a new permit shall first be obtained, and the fee shall be one-half (1/2) the amount required for a new permit for such work; provided, no changes have been made, or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one (1) year. All plumbing fixtures shall be listed on the application for permit. (11-14-84)

05. Transferring a Permit. A plumbing permit may be transferred to another eligible party if such party provides to the Division written authorization signed and notarized by the original permit holder consenting to the transfer itself, as well as assignment of all responsibilities and conditions incorporated into the original permit issuance. A permit may be transferred to the owner of the property on which the plumbing work is to be performed and for which the permit was issued, or such owner's designated legal agent in cases where the property owner has

terminated their legal relationship with the plumbing contractor who originally obtained the permit. An administrative fee in the amount of forty-five dollars (\$45) for the transfer of a permit shall be assessed by the Division. ()

06. Refunds of Permits. The administrator may authorize a refund for any permit fee paid on the following bases: ()

a. The administrator may authorize a refund of the entire permit fee paid when no work has been performed related to the installation of plumbing work covered by a permit issued by the Division. A lesser amount up to fifty percent (50%) of the permit fee amount may be refunded if work has commenced and the project is less than fifty percent (50%) complete as determined by the Division; and ()

b. The administrator shall not authorize a refund of any permit fee paid except upon written application for such filed by the original permit holder or the property owner's representative not less than one hundred eighty (180) days after the date the permit was issued. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.06 - RULES CONCERNING IDAHO STATE PLUMBING CODE

DOCKET NO. 07-0206-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2601 and 54-2605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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

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

In 2012, the Idaho Plumbing Board established the Idaho State Plumbing Code with the intention to only consider adoption of a new edition of the underlying Uniform Plumbing Code every six years, or two code cycles. In the past five years there have been many code changes that have positively affected the plumbing trade. Many of these changes are less restrictive and advantageous to contractors and property owners by providing them with more options. Examples of such changes include relaxing the requirements for the approval of plumbing fixtures and equipment, and provisions providing the ability for homeowners to more freely determine what kind of plumbing installations they may desire such as shower thresholds, or non-potable rainwater catchment systems. Additionally, the Division would like the ability to make interpretations of the rules in the event that it is advisable to do so in order to provide clarity or direction to those making plumbing installations.

The rulemaking adopts the 2015 Uniform Plumbing Code (UPC) to serve as the base plumbing code for the Idaho State Plumbing Code to be published in 2017, including certain appendices. It removes unnecessary provisions and tables from the rules which are already included in the 2015 UPC, and includes provision related to the use of certain fixtures, as well as alternate materials and methods used by plumbers. Additionally, it provides greater flexibility for inspection officials, or the Authority Having Jurisdiction (AHJ) to use its discretion in enforcing certain code requirements related to testing of plumbing systems and fire sprinkler installations. Finally, the proposed rule also includes a provision indicating that the Division may have written interpretations of the rules available for review.

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

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

The proposed amendments will not have a significant fiscal impact on plumbing contractors and general contractors, but have the potential to positively affect contractors and property owners as a result of having more options in determining what fixtures and equipment they choose to install. The proposed changes have no fiscal impact on the State General Fund, and minimal negative impact on the dedicated plumbing fund in order to update code books.

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 6, 2016 Idaho Administrative Bulletin, [Vol. 16-4, pages 14-15](#).

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:

In the past five years there have been many plumbing code changes that have positively affected the plumbing trade. Many of these changes are less restrictive and advantageous to contractors and property owners by providing

them with more options. The rulemaking adopts the 2015 Uniform Plumbing Code (UPC) to serve as the base plumbing code for the Idaho State Plumbing Code to be published in 2017, including certain appendices. Currently, the State of Idaho uses the 2009 Uniform Plumbing Code (UPC) as the base code. The new 2015 code removes unnecessary provisions and tables from the rules which are already included in the 2015 UPC, and includes provision related to the use of certain fixtures, as well as alternate materials and methods used by plumbers. A copy of an index identifying important changes to the 2012 and 2015 UPC is attached to this summary. More detailed information about any change to the 2015 UPC may be available upon request to the Division of Building Safety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys 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 26, 2016.

DATED this 23rd day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0206-1601
(Only Those Sections With Amendments Are Shown.)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency ~~has no~~ may have written statements that pertain to the interpretations of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Building Safety offices.
(~~2-26-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE IDAHO STATE PLUMBING CODE.

The Idaho State Plumbing Code published in 201~~2~~⁷, including Appendices “A, B, C, D, E, G, I, J, K and L,” (herein ISPC) is adopted and incorporated by reference with amendments as prescribed by the Idaho Plumbing Board and contained in this Section. The Idaho State Plumbing Code is modeled after the 20~~09~~¹⁵ Uniform Plumbing Code (UPC). The Idaho State Plumbing Code is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. It may also be accessed electronically online at <http://dbs.idaho.gov/>.
(~~3-25-13~~)()

01. Section 105.3 Testing of Systems. ()

a. Delete and replace the following: Plumbing systems shall be tested and approved in accordance

with this code or the Authority Having Jurisdiction. Tests may be conducted in the presence of the Authority Having Jurisdiction or the Authority Having Jurisdiction's duly appointed representative. ()

b. No test or inspection shall be required where a plumbing system, or part thereof, is set up for exhibition purposes and has no connection with a water or drainage system. In cases where it would be impractical to provide the required water or air tests, or the presences of the Authority Having Jurisdiction, or for minor installations and repairs, the Authority Having Jurisdiction, in accordance with procedures established thereby, shall be permitted to make such inspection as deemed advisable in accordance with the intent of this code. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required by the test. ()

042. **Section 218 Definitions.** Delete definition of "Plumbing System." Incorporate definition of "Plumbing System" as set forth in Section 54-2604, Idaho Code. (3-15-02)()

023. **Section 3154.4 Excavations.** Add: Where unsuitable or soft material is encountered, excavate to a depth not less than two (2) pipe diameters below the pipe and replace with select backfill. Such backfill shall be sand, fine gravel, or stone and shall provide lateral support for the pipe. Where rock is encountered, the trench shall be excavated to a minimum depth of six (6) inches (152 mm) below the bottom of the pipe. Sand shall be added to provide uniform bedding and support for the pipe. The pipe shall not rest on any rock at any point, including joints. (3-25-13)()

03. **Section 316.1.6 Solvent Cement Plastic Pipe Joints.** *PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1.* (3-25-13)

04. **Section 401.2 Qualities of Fixtures.** Replace with the following: Plumbing fixtures shall be constructed of dense, durable, non-absorbent materials and shall have smooth, impervious surfaces, free from unnecessary concealed fouling surfaces. ()

05. **Section 403.3 Exposed Pipes and Surfaces.** Delete. ()

046. **Section 4027.4 Metered Faucets Transient Public Lavatories.** Self-closing or self-closing metering faucets may be installed on lavatories intended to serve the transient public, such as those in, but not limited to, service stations, train stations, airports, restaurants, convention halls, and rest stops. Installed metered faucets shall deliver a maximum of zero point two six (0.26) gallons (one point zero (1.0) liter) of water per use. (3-25-13)()

07. **Section 408.5 Finished Curb or Threshold.** Delete the last sentences of the first paragraph and replace with the following: The finished floor of the receptor shall slope uniformly from the sides toward the drain not less than one-eighth (1/8) inch per foot (20.8 mm/m), nor more than one-half (1/2) inch per foot (41.8 mm/m). ()

058. **Section 411.8.1 408.7.5 Tests for Shower Receptors.** Delete. (4-11-15)()

06. **Section 412.0 Minimum Number of Required Fixtures.** *Delete Section 412.0 and all subsections contained thereunder and replace with the following:* (3-25-13)

a. *412.1 Fixture Count. Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table 412.1. The total occupant load and occupancy classification shall be determined in accordance with the building code. Occupancy classification not shown in Table 412.1 shall be considered separately by the Authority Having Jurisdiction. The minimum number of fixtures shall be calculated at fifty percent (50%) male and fifty percent (50%) female based on the total occupant load. Where information submitted indicates a difference in distribution of the sexes such information shall be used in order to determine the number of fixtures for each sex. Once the occupancy load and occupancy are determined, Table 412.1 shall be applied to determine the minimum number of plumbing fixtures required. Where applying the fixture ratios in Table 412.1 results in fractional numbers, such numbers shall be rounded to the next whole number. For multiple occupancies, fractional numbers shall be first summed and then rounded to the next whole number.* (3-25-13)

b. *412.1.1 Family or Assisted Use Toilet and Bathing Facilities. Where family or assisted use toilet and bathing rooms are required, in applicable building regulations, the facilities shall be installed in accordance with*

~~those regulations. (3-25-13)~~

~~e. 412.2 Separate Facilities. Separate toilet facilities shall be provided for each sex, with the following exceptions: (3-25-13)~~

~~i. Residential installations. (3-25-13)~~

~~ii. In occupancies with a total occupant load of ten (10) or less, including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. (3-25-13)~~

~~iii. In business and mercantile occupancies with a total occupant load of fifty (50) or less including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. (3-25-13)~~

~~d. 412.3 Fixture Requirements for Special Occupancies. Additional fixtures shall be permitted to be required where unusual environmental conditions or referenced activities are encountered. In food preparation areas, fixture requirements shall be permitted to be dictated by health codes. (3-25-13)~~

~~e. 412.4 Toilet Facilities Serving Employees and Customers. Each building or structure shall be provided with toilet facilities for employees and customers. Requirements for customers and employees shall be permitted to be met with a single set of restrooms accessible to both groups. Required toilet facilities for employees and customers located in shopping malls or centers shall be permitted to be met by providing a centrally located toilet facility accessible to several stores. The maximum travel distance from entry to any store to the toilet facility shall not exceed three hundred (300) feet (91.4 m). Required toilet facilities for employees and customers in other than shopping malls or centers shall have a maximum travel distance not to exceed five hundred (500) feet (152.4 m). (3-25-13)~~

~~f. 412.4.1 Access to Toilet Facilities. In multi story buildings, accessibility to the required toilet facilities shall not exceed one (1) vertical story. Access to the required toilet facilities for customers shall not pass through areas designated as for employee use only such as kitchens, food preparation areas, storage rooms, closets, or similar spaces. Toilet facilities accessible only to private offices shall not be counted to determine compliance with this section. (3-25-13)~~

~~g. 412.5 Toilet Facilities for Workers. Toilet facilities shall be provided and maintained in a sanitary condition for the use of workers during construction. (3-25-13)~~

~~07. **Table 4-1 Minimum Plumbing Facilities.** Delete Table 4-1 and replace with the following Table 412.1:~~

~~TABLE 412.1~~

~~MINIMUM PLUMBING FACILITIES~~

~~Each building shall be provided with sanitary facilities, including provisions for persons with disabilities as prescribed by the Department Having Jurisdiction. Table 412.1 applies to new buildings, additions to a building, and changes of occupancy or type in an existing building resulting in increased occupant load.~~

TYPE OF OCCUPANCY ²	WATER CLOSETS- (FIXTURES PER PERSON) ³		URINALS- (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
A-1 Assembly occupancy (fixed or permanent seating) – theatres, concert halls and auditoriums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-200 2: 201-300 3: 301-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-600 4: 601-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
A-2 Assembly occupancy – restaurants, pubs, lounges, night clubs and banquet halls	Male 1: 1-50 2: 51-150 3: 151-300 4: 301-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-200 2: 201-300 3: 301-400 4: 401-600	Male 1: 1-150 2: 151-200 3: 201-400	Female 1: 1-150 2: 151-200 4: 201-400		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400 add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		

TYPE OF OCCUPANCY ²	WATER CLOSETS (FIXTURES PER PERSON) ³		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
A-3 Assembly occupancy (typical without fixed or permanent seating)—arcades, places of worship, museums, libraries, lecture halls, gymnasiums (without spectator seating), indoor pools (without spectator seating)	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-600 4: 601-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
A-4 Assembly occupancy (indoor activities or sporting events with spectator seating)—swimming pools, skating rinks, arenas and gymnasiums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		

TYPE OF OCCUPANCY ²	WATER CLOSETS (FIXTURES PER PERSON) ³		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
A-5 Assembly occupancy (outdoor activities or sporting events) amusement parks, grandstands and stadiums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service-sink or laundry-tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
B Business occupancy (office, professional or service type transactions) banks, vet clinics, hospitals, car wash, banks, beauty salons, ambulatory health care facilities, laundries and dry-cleaning, educational institutions (above high school), or training facilities not located within school, post offices and printing shops	Male 1: 1-50 2: 51-100 3: 101-200 4: 201-400	Female 1: 1-15 2: 16-30 3: 31-50 4: 51-100 8: 101-200 11: 201-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-75 2: 76-150 3: 151-200 4: 201-300 5: 301-400	Female 1: 1-50 2: 51-100 3: 101-150 4: 151-200 5: 201-300 6: 301-400		1 per 150	1 service-sink or laundry-tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.				
E Educational occupancy private or public schools	Male- 1 per 50	Female- 1 per 30	Male- 1 per 100	Male- 1 per 40	Female- 1 per 40		1 per 150	1 service-sink or laundry-tray

TYPE OF OCCUPANCY ²	WATER CLOSETS- (FIXTURES PER PERSON) ³		URINALS- (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
F1, F2 Factory or Industrial occupancy-fabricating or assembly work	Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100		Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100	1 shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious or irritating material.	1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 100 add 1 fixture for each additional 40 persons.		Over 100 add 1 fixture for each additional 40 persons.		Over 750 add 1 fixture for each additional 500 persons.			
I-1 Institutional occupancy (houses more than 16 persons on a 24-hour basis)- substance abuse centers, assisted living, group homes, or residential facilities	Male- 1 per 15	Female- 1 per 15		Male- 1 per 15	Female- 1 per 15	1 per 8	1 per 150	1 service sink or laundry tray
I-2 Institutional occupancy- medical, psychiatric, surgical or nursing homes	Hospitals and nursing homes- individual rooms and ward room	1 per room		1 per room		1 per room	1 per 150	1 service sink or laundry tray
		1 per 8 patients		1 per 10 patients		1 per 20 patients		
	Hospital- Waiting or Visitor Rooms	1 per room		1 per room			1 per room	
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		
	Over 55, add 1 fixture for each additional 40 persons.							

TYPE OF OCCUPANCY ²		WATER CLOSETS- (FIXTURES PER PERSON) ³		URINALS- (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
I-3 Institutional occupancy (houses more than 5 people)	Prisons	1 per cell			1 per cell		1 per 20	1 per cell block/floor	
	Correctional facilities or juvenile center	1 per 8			1 per 10		1 per 8	1 per floor	1 service sink or laundry tray
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		1 per 150	
		Over 55, add 1 fixture for each additional 40 persons.							
I-4 Institutional occupancy (any age that receives care for less than 24 hours)		Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		1 per 150	1 service sink or laundry tray
		Over 55, add 1 fixture for each additional 40 persons.							
M Mercantile occupancy (the sale of merchandise and accessible to the public)		Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-100 2: 101-200 4: 201-300 6: 301-400	Male 0: 1-200 1: 201-400	Male 1: 1-200 2: 201-400	Female 1: 1-200 2: 201-300 3: 301-400		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
		Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 200 females.		Over 400 add 1 fixture for each additional 500 males.	Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 400 females.			Over 750 add 1 fixture for each additional 500 persons.	
R-1 Residential occupancy (minimal stay) hotels, motels, bed and breakfast homes		1 per sleeping room			1 per sleeping room		1 per sleeping room		1 service sink or laundry tray

TYPE OF OCCUPANCY ²		WATER CLOSETS- (FIXTURES PER PERSON) ³		URINALS- (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
		Male	Female		Male	Female			
R-2 Residential occupancy (long term or permanent)	Dormitories	Male 1 per 10	Female 1 per 8	1 per 25	Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
		Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.		Over 150, add 1 fixture for each additional 50 males.	Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.				
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40			
Over 55, add 1 fixture for each additional 40 persons									
Apartment house/unit	1 per apartment			1 per apartment		1 per apartment		1 kitchen sink per apartment 1 laundry tray or 1 automatic clothes washer connection per unit or 1 laundry tray or 1 automatic clothes washer connection for each 12 units	
R-3 Residential occupancy (long term or permanent in nature) for more than 5 but does not exceed 16 occupants)	Male 1 per 10	Female 1 per 8		Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray	
Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.		Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.							

TYPE OF OCCUPANCY ²	WATER CLOSETS- (FIXTURES PER PERSON) ³		URINALS- (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS- OR- SHOWERS- (FIXTURES PER PERSON)	DRINKING- FOUNTAINS/ FACILITIES- (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
R-3 Residential occupancy (one and two family dwellings)	1 per one and two family dwelling			1 per one and two family dwelling		1 per one and two family dwelling		1 kitchen sink and 1 automatic clothes washer connection per one and two family dwelling
R-4 Residential occupancy (residential care or assisted living)	Male 1 per 10	Female 1 per 8		Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
	Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.			Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.				
S-1, S-2 Storage occupancy storage of goods, warehouse, aircraft hanger, food products, appliances	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-100 2: 101-200 3: 201-400		Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-200 2: 201-400 3: 401-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.			Over 750, add 1 fixture for each additional 500 persons.			Over 750, add 1 fixture for each additional 500 persons.	
Notes:								
1 The figures shown are based upon one fixture being the minimum required for the number of persons indicated or any fraction thereof.								
2 A restaurant is defined as a business that sells food to be consumed on the premises. a. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls. b. Hand washing facilities shall be available in the kitchen for employees.								
3 The total number of required water closets for females shall be not less than the total number of required water closets and urinals for males.								

(3-25-13)

089. Section ~~414.5~~ **409.4** Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs. Delete. ~~(4-11-15)~~ ()

~~09.~~ Section ~~418.0~~. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. ~~(3-25-13)~~

10. **Section 504.3.1 Inspection of Chimneys or Vents.** Add the following to the end of section 504.3.1: Water heating appliances using Category 3 or 4 exhaust venting shall be tested in its entirety with five (5) pounds of air for fifteen (15) minutes. Plastic vents shall be constructed using manufacturer's instructions. ~~(3-25-13)~~()

11. **Section 508.7.2 Seismic Provisions.** Delete. ~~(4-11-15)~~()

12. **Section 508.14 507.13 Installation in Residential Garages.** Replace ~~508.14 (1)~~ 507.13 with the following: Any plumbing appliance or appurtenance in residential garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices or other sources of ignition are located not less than eighteen (18) inches (450 mm) above the floor unless listed as flammable vapor ignition resistant. ~~(3-25-13)~~()

~~13. Section 603.4.16.5 Residential Sprinkler System. Add the following to the end of section 603.4.16.5: and the requirements of the Authority Having Jurisdiction (AHJ). (3-25-13)~~

~~14. Table 6-4 Materials for Building Supply and Water Distribution Pipings and Fittings. Add the following to Table 6-4:~~

Material	Building Supply Pipe & Fittings	Water Distribution Pipe & Fittings	Referenced Standard(s) Pipe	Referenced Standard(s) Fittings
<i>PE-RT (Polyethylene of Raised Temperature)</i>	X	X	ASTM F2769	ASTM F1807, ASTM F2098, ASTM F2159, ASTM F2735, ASTM F2769
<i>PP (Polypropylene)</i>	X	X	ASTM F 2389	ASTM F2389, CSA B137.11

~~(4-11-15)~~

~~15. Section 606. Joints and Connections. Add the following at the end of Section 606: (4-11-15)~~

~~a. Section 606.3 Polyethylene of Raised Temperature (PE-RT). Polyethylene of Raised Temperature (PE-RT) tubing shall be marked with the appropriate standard designation(s) listed in Table 6-4 for which the tubing has been approved. PE-RT tubing shall be installed in accordance with the manufacturer's installation instructions. Fittings, metal insert fittings, metal compression fittings and plastic fittings shall be manufactured to and marked in accordance with the standards for fittings in Table 6-4. (4-11-15)~~

~~b. Section 606.4 Polypropylene (PP) Piping and Joints. Polypropylene pipe and fittings shall be installed in accordance with the manufacturer's installation instructions. (4-11-15)~~

~~c. Section 606.4.1 Heat Fusion Joints. Heat fusion joints for PP pipe and fitting joints shall be installed with socket heat fused polypropylene fittings, fusion outlets, butt fusion polypropylene fittings or pipe, or electro fusion polypropylene fittings. Joint surfaces shall be clean and free from moisture. The joint shall be undisturbed until cool. Joints shall be made in accordance with ASTM F 2389 or CSA B137.11. (4-11-15)~~

~~d. Section 606.4.2 Mechanical and Compression Sleeve Joints. Mechanical and compression sleeve joints shall be installed in accordance with the manufacturer's installation instructions. (4-11-15)~~

~~e. Section 606.4.3 Threaded Joints. PP pipe shall not be threaded. PP transition fittings for connection to other piping materials shall only be threaded by use of brass or stainless steel inserts molded in the fitting. (4-11-15)~~

~~(4-11-15)~~

- 13. Table 603.2 Backflow Prevention Devices, Assemblies and Methods. ()**
- a. Delete from the table the entire row related to freeze resistant sanitary yard hydrant devices. ()**
- b. Delete the backflow preventer for Carbonated Beverage Dispensers text from the first column of the table and replace with the following: Backflow preventer for Carbonated Beverage Dispensers (Reduced Pressure Principle Backflow Prevention Assembly). ()**
- 14. Section 603.5.12 Beverage Dispensers. Delete and replace with the following: Potable water supply to beverage dispensers, carbonated beverage dispensers, or coffee machines shall be protected by an air gap or a Reduced Pressure Principle Backflow Prevention Assembly in accordance with ASSE 1013. For carbonated beverage dispensers, piping material installed downstream of the backflow preventer shall not be affected by carbon dioxide gas. ()**
- 15. Section 603.5.17 Potable Water Outlets and Valves. Delete. ()**
- 16. Section 603.5.21 Chemical Dispensers. Add the following new section 603.5.21: The water supply to chemical dispensers shall be protected against backflow. The chemical dispenser shall comply with ASSE 1055 or the water supply shall be protected by one of the following methods: ()**
- a. Air gap; ()**
- b. Atmospheric vacuum breaker (AVB); ()**
- c. Pressure vacuum breaker backflow prevention assembly (PVB); ()**
- d. Spill-resistant pressure vacuum breaker (SVB); or ()**
- e. Reduced-pressure principle backflow prevention assembly (RP). ()**
- ~~f17.~~ Section ~~606.5 Listed Polyethylene (PE)~~ 605.6.2 Mechanical Joints. Add to the end of the section the following: Listed PE (polyethylene), one hundred sixty (160) psi minimum, water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. Polyethylene (PE) plastic pipe or tubing and fitting joining methods shall be installed in accordance with the manufacturer’s installation instructions. *Mechanical joints between PE pipe or tubing and fittings shall include inserts and mechanical compression fittings that provide a pressure seal resistance to pullout. Joints for insert fittings shall be made by cutting the pipe square, using a cutter designed for plastic piping, and removal of sharp edges. Two (2) stainless steel clamps shall be placed over the end of the pipe. Fittings shall be checked for proper size based on the diameter of the pipe. The end of pipe shall be placed over the barbed insert fitting, making contact with the fitting shoulder. Clamps shall be positioned equal to one hundred eighty (180) degrees (three point one four—3.14 rad) apart and shall be tightened to provide a leak tight joint. Compression type couplings and fittings shall be permitted for use in joining PE piping and tubing. Stiffeners that extend beyond the clamp or nut shall be prohibited. Bends shall be not less than thirty (30) pipe diameters, or the coil radius where bending with the coil. Bends shall not be permitted closer than ten (10) pipe diameters of a fitting or valve. Mechanical joints shall be designed for their intended use.* (4-11-15)()**
- 168. Section 609.1 Installation. Delete the following sentence: *Water service Building supply* yard piping shall be not less than twelve (12) inches (305 mm) below the average local frost depth; and replace it with the following: The cover shall be not less than forty-two (42) inches (1068mm) below grade. (3-25-13)()**
- ~~179.~~ Section 609.4 Testing. Testing. Deleting the phrase “Except for plastic piping,” at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer’s installation standards. (3-25-13)**
- ~~1820.~~ Section 609.10 Water Hammer. Does not apply to residential construction. (3-25-13)**
- 21. Section 609.11 Pipe Insulation. Delete. ()**

~~192.~~ **Table 6-5 610.3 and Appendix Table A-2 A 103.1.** Change fixture unit loading value for both public and private for bathtub or combination bath/shower, and clothes washers to two (2) fixture units. (3-25-13)()

203. Section 610.2 Pressure Loss. Add the following: All new one (1) and two (2) family residences built slab on grade or that will have a finished basement at the time of final inspection must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. (3-25-13)()

214. Table 6-8 611.4 Sizing of Residential Softeners. Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer’s standards. (3-25-13)()

~~22. Table 7-1 Materials for Drain, Waste, Vent Pipe and Fittings.~~ Add the following to Table 7-1:

Material	Underground Drain, Waste, Vent Pipe and Fittings	Above-ground Drain, Waste, Vent Pipe and Fittings	Building Sewer Pipe & Fittings	Referenced Standard(s) Pipe	Referenced Standard(s) Fittings
PE (Polyethylene)			X2	ASTM F714	ASTM D2683, ASTM D3261, ASTM F1055, ASTM F2206

~~2PE piping and fittings used for building sewers shall be installed per manufactures installation instructions and IS 26-2006 Idaho State Plumbing Code.~~ (4-11-15)

25. Section 612.0 Residential Sprinkler System. Add the following to the end of the first sentence in section 612.1: and the requirements of the Authority Having Jurisdiction (AHJ). ()

~~236.~~ **Table 7-3 702.1 Drainage Fixture Unit Valves (DFU).** Change fixture unit loading value for clothes washers, domestic for private to two (2) fixture units. (3-25-13)()

247. Section 703.1 Minimum Size. Add the following at the end of section 703.1: No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-25-13)()

~~25. Section 703.2 and 710.5. Add Exception.~~ In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

268. Section 704.2 Single Vertical Drainage Pipe. Two inch (2”) and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (4-6-05)()

279. Section 704.3 Commercial Sinks. Delete. (5-3-03)()

~~2830.~~ **Table 7-5 703.2 Maximum Unit Loading and Maximum Length of Drainage and Vent Piping.** Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)()

31. Section 705.5.2 Solvent Cement Joints. Add to the end of the section the following: PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. ()

~~2932.~~ **Section 707.04 Cleanouts Locations.** Add the following: A clean out shall be installed for double sanitary tees two (2) inches (50 mm) or less in diameter that receive the discharge from fixture connections. Exception in Section 707.4 shall not apply. A full-sized accessible cleanout shall be installed in the vertical

immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer. Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-25-13)()

~~30. Section 707.4 Cleanouts. A full sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)~~

~~31.3. Section 710.9 710.3(4) Sewage Ejectors and Pumps.~~ Add: Exception (4): One (1) pump shall be permitted for “public use” occupancies provided that such tank receives the discharge of not more than one (1) water closet and ten (10) fixture units (See Section 710.9 Alarms). (3-25-13)()

34. Section 710.5 Size Building Drains and Sewers. Add the following exception: In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. ()

~~32.5. Section 712.1 Media.~~ In the first sentence, delete the phrase “except that plastic pipe shall not be tested with air.” (3-25-13)

~~33.6. Section 717.0 Size of Building Sewers.~~ Add the following to the end of section 717.0: Exception: The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines. (3-25-13)()

~~37. Section 723.0 General.~~ Delete the following sentence: “Plastic DWV piping systems shall not be tested by the air test method.” ()

~~34.8. Section 801.23.3 Food Handling Fixtures.~~ Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five and four tenths (25.4) mm). (5-3-03)()

~~35.9. Section 801.45-Connections from Water Distribution System General.~~ Add to the end of the first paragraph the following: Provisions must be made for the discharge of the water softener to terminate in an approved location. The drain line for a water softener must be three-fourths (3/4) inch minimum. A washer box with a dual outlet is an approved location as long as it is on the same floor or one (1) floor below the softener unit and the water softener drain line is a minimum three-fourths (3/4) inch. (3-25-13)()

~~36.40. Section 807.43 Domestic Dishwashing Machines.~~ A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)()

~~37.41. Section 906.1 Roof Termination.~~ Delete the existing provision and replace with the following: (4-2-08)()

a. Roof venting. When conventional roof venting is utilized, each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six (6) inches (one hundred fifty-two (152) mm) above the roof nor less than one (1) foot (three hundred five (305) mm) from any vertical surface. (4-2-08)

b. Sidewall venting. When sidewall venting is utilized, the vent shall extend flush with the eaves/gable end, shall turn down using a ninety (90) degree ell, and shall terminate as close to the roof peak as possible. The vent end must be properly screened. Sidewall venting is acceptable on new or remodel construction on cabins, log homes, and residential or commercial buildings. (4-2-08)

c. Sidewall venting must meet the intent of Section 906.2 of the ISPC. (3-25-13)

~~3842.~~ **Section 908.1 ~~Exception~~ Vertical Wet Venting.** Add to the end of the section the following: A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 of the ISPC are met. ~~(3-25-13)~~()

~~3943.~~ **Section 909.0 Special Venting for Island Fixtures.** Add: Parameters for the limited use of Air Admittance Valves (A.A.V.). ~~(4-2-08)~~()

- a. An A.A.V. may be used only in residential buildings. (4-2-08)
- b. In remodels, an A.A.V. may be used with island fixtures or remotely located sinks such as in bar, kitchen, or laundry tray locations. An A.A.V. shall not be used in bathroom groups. (4-2-08)
- c. In new construction, an A.A.V. may be used on island fixture sinks. (4-2-08)
- d. Each A.A.V. may be used to vent only one (1) floor. (4-2-08)
- e. Each A.A.V. must be readily accessible. (4-2-08)
- f. The cross-sectional area of venting must remain the same and must meet the largest required building drain. (4-2-08)
- g. An A.A.V. shall only be installed in accordance with the manufacturer's installation standards as per ASSE 1051. (4-2-08)
- h. An A.A.V. may not be used in an attic, crawl space, outside installation, or in connection with chemical or acid waste systems. (4-2-08)

404. Section 1002.3 Change of Direction. Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. ~~(3-15-02)~~()

~~415.~~ **Section 1007.0 Trap Seal Protection.** Delete section 1007.01 and replace with the following: Floor drains or similar traps directly connected to the drainage system and subject to infrequent use shall be protected with a trap seal primer or other approved trap seal protection device, except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction. Trap seal primers shall be accessible for maintenance. ~~(3-25-13)~~()

426. Section 1016.1 ~~Where Required~~ Discharge. Add the following to the end of section 1016.1: Floor drains installed in residential garages shall be permitted to use the interceptor as the fixture trap. ~~(3-25-13)~~()

~~437.~~ ~~1601.0 Gray Water Systems~~ **Section 1502.1 General.** Add to this section the following paragraph: ~~(G)~~ Plumbing for a gray water system from any fixture up to, but not to include the exterior irrigation system tank shall be inspected by the Authority Having Jurisdiction. The Idaho Department of Environmental Quality (IDEQ) shall have jurisdiction to inspect and approve the installation of the exterior irrigation system tank and all piping therefrom to the point of disposal in accordance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." Gray water system location and design criteria requirements related to irrigation and leaching shall be determined in accordance with the requirements as established by the IDEQ. ~~(3-25-13)~~()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

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

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

Adoption of the 2015 editions of the International Building Code, the International Existing Building Code, and the commercial provisions of the International Energy Conservation Code was the result of negotiated rulemaking involving the building industry, building officials, design professionals, energy specialists, and other interested stakeholders. Significant changes to the commercial building codes have been made since the last edition was published relating to health and safety concerns and technological advancements. Many of the changes streamline or simplify the application of the code. Several changes reduce requirements or expand options. These codes correlate with the latest published product and installation industry standards. Notably, while the 2015 commercial building and energy codes have been adopted, the Board determined through the negotiated rulemaking process to maintain the standards of the residential building and energy codes at the existing 2012 code level.

This rulemaking would result in the incorporation by reference of the following codes for Idaho that are herein incorporated by reference: the 2015 International Building Code (IBC), 2015 International Existing Building Code (IEBC), and the commercial provisions of the 2015 International Energy Conservation Code which serves as the basis for the Idaho Energy Conservation Code. Further amendments to the 2015 IBC include adding lodging houses with five or fewer guest rooms to the R-3 residential occupancy, retaining existing amendments requiring drinking fountains in occupancies with an occupant load of more than 30 persons, and service sinks in business and mercantile occupancies with an occupancy load of more than 30 persons except for restaurants. Finally, it adds an exception to the commercial energy code for certain air filtration and treatment systems where requiring economizers to draw outside cool air would not be feasible.

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

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

This rulemaking is not expected to impact the General Fund, but is expected to increase short-term cost to code jurisdictions for code materials and training of inspectors. Amendments to the new commercial building and energy codes will result in some decreases in cost to building contractors and owners.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 2, 2016 Idaho Administrative Bulletin, [Vol. 16-3, pages 13-14](#).

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

This rulemaking adopts the 2015 International Building Code (IBC), 2015 International Existing Building Code (IEBC), and the commercial provisions of the 2015 International Energy Conservation Code which serve as the basis for the Idaho Energy Conservation Code. Further amendments to the 2015 IBC include adding lodging houses with

five or fewer guest rooms to the R-3 residential occupancy, retaining existing amendments requiring drinking fountains in occupancies with an occupant load of more than 30 persons, and service sinks in business and mercantile occupancies with an occupancy load of more than 30 persons except for restaurants. Finally, it adds an exception to the commercial energy code for certain air filtration and treatment systems where requiring economizers to draw outside cool air would not be feasible.

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 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0301-1601
(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. 201~~2~~⁵ 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 **Group R-3** 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)
- viii.** Lodging houses with five (5) or fewer guest rooms. ()
- 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:~~ (3-25-16)
 - ~~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. (3-25-16)~~
 - ~~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. (3-25-16)~~
 - ~~iii. Re-number exception No. 2 as exception No. 3 under IBC section 907.2.3—Group E. (3-25-16)~~
 - ~~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: (3-25-16)
 - ~~(1) 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1. (3-25-16)~~
 - ~~(2) 4.2 The emergency voice/alarm communication system will activate on sprinkler waterflow. (3-25-16)~~
 - ~~(3) 4.3 Manual activation is provided from a normally occupied location. (3-25-16)~~~~
- fe.** ~~Delete Add footnote (f) contained under in the header row of the table column labeled “Drinking Fountains” of Table 2902.1 Minimum Number of Required Plumbing Fixtures, and replace with add footnote (f) under Table 2902.1 to state the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (4-4-13)()~~
- gf.** Delete footnote (ge) 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: (3-25-16)
- 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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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 mm²) for each square foot (0.093 m²) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)

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. 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~~5~~ Edition. (4-1-13)()**
- 04. International Energy Conservation Code. 2012~~5~~ Edition with the following amendments: (3-20-14)()**
 - a.** Delete the Residential Provisions of the 2015 International Energy Conservation Code (IECC) set forth in chapters 1 [RE] through 6 [RE], including Appendix RA (pages R-1 through R-57), and replace with the Residential Provisions of the 2012 IECC set forth therein in chapters 1 [RE] through 5 [RE] (pages R-1 through R-47) and as such provisions may be further amended herein these rules. ()
 - b.** 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. (3-25-16)
 - c.** Add the following exception No. (10) under section C403.3 Economizers (Prescriptive): Unusual outdoor air contaminate conditions – Systems where special outside air filtration and treatment for the reduction and treatment of unusual outdoor contaminants, makes an air economizer infeasible. ()
 - d.** 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										
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+5 ^h	13/17	30 ^g	10/13	10, 2 ft	10/13
6	0.35	0.60	NR	49	20 or 13+5 ^h	15/19	30 ^g	15/19	10, 4 ft	10/13

(3-20-14)

ee. Add the following footnote to the title of Table R402.1.1 - Insulation and Fenestration Requirements by Component: ^k For residential log home building thermal envelope construction requirements see section R402.6. (3-25-16)

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

TABLE R402.1.3 EQUIVALENT U-FACTORS								
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)

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

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

TABLE R402.2.6	
STEEL-FRAME CEILING, WALL AND FLOOR INSULATION	
(R-VALUE)	
Wood Frame R-value Requirement	Cold-formed Steel Equivalent R-value^a
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value. b. Insulation exceeding the height of the framing shall cover the framing.	

(3-25-16)

f.l. 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. (3-25-16)

g.i. 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. (3-25-16)

h.j. 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)

i.k. 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: (3-25-16)

- 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)

j.l. 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. (3-25-16)

k.m. 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 i., ii., or iii. as follows: (3-25-16)

- i. Sections R402.2 through R402.3, R403.2.1, R404.1 and Table R402.6; (3-25-16)
- ii. Section R405 Simulated Performance Alternative (Performance); or (3-25-16)
- iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

4. Add Table R402.6 (Table N1102.6) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with 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 ^a	Skylight U-factor	Glazed Fenestration Shgc	Ceiling R-value	Min. Average Log Size In Inches	Floor R-value	Basement Wall R-value ^d	Slab R-value & Depth ^b	Crawl Space Wall R-value ^d
5, 6 - High efficiency equipment path ^c	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

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

(3-25-16)

5. 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

07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-1904 and 54-1907, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 installation, alteration, or repair of instrumentation and controls for various mechanical systems typically involves the installation of electrical wires, equipment, and apparatus to convey electrical current. Accordingly, an electrical license, or specialty electrical license, as well as a public works contractor's specialty construction electrical license are required to lawfully perform such installations on public works projects.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature. This rulemaking was brought forward by an affected public works specialty contractor licensed in this category, and discussed at several Public Works Contractors License Board meetings in the past year. The rule simply clarifies the scope of permissible work allowed by the instrumentation and controls specialty license by indicating that any electrical installation work must be done by licensees who possess the appropriate underlying electrical license and a public works electrical specialty license.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys 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 26, 2016.

DATED this 23rd day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0501-1601
(Only Those Sections With Amendments Are Shown.)

200. TYPE 4-SPECIALTY CONSTRUCTION CATEGORIES.

A license for Type 4-Specialty Construction shall list one (1) or more specialty construction categories to which the license is restricted. Categories and their definitions are: (4-6-05)

01. 01107 Engineering. A specialty contractor whose primary business includes providing engineering and design services such as civil, electrical, mechanical, and structural. (4-6-05)

02. 01541 Scaffolding and Shoring. A specialty contractor whose primary business is the installation of any temporary elevated platform and its supporting structure used for supporting workmen or materials or both, and props or posts of timber or other material in compression used for the temporary support of excavations, formwork or unsafe structures; the process of erecting shoring. (4-6-05)

03. 01542 Craning and Erection. A specialty contractor whose primary business includes the art, ability and skill to safely control the workings of a crane in such a manner that building materials, supplies, equipment and structural work can be raised and set in a final position. (4-6-05)

04. 01550 Construction Zone Traffic Control. A specialty contractor whose primary business is the installation or removal of temporary lane closures, flagging or traffic diversions, utilizing pilot cars, portable devices such as cones, delineators, barricades, sign stands, flashing beacons, flashing arrow trailers, and changeable message signs on roadways, public streets and highways or public conveyances. (4-6-05)

05. 01570 Temporary Erosion and Sediment Controls. A specialty contractor whose primary business includes the ability and expertise to install silt fencing or other similar devices to prevent erosion and contain silt. (4-6-05)

06. 02110 Excavation, Removal and Handling of Hazardous Material. A specialty contractor whose primary business includes the excavation and removal of toxic and hazardous site materials. Contractors must be properly licensed and certified if required. (4-6-05)

07. 02115 Removal of Underground Storage Tanks. A specialty contractor whose primary business includes, but is not limited to, the excavation, removal, cleanup, and disposal of underground storage tanks that have contained petrochemical type fuels. This work should include the sampling and testing of surrounding materials and filing of closure documents. (4-6-05)

08. 02195 Environmental Remediation, Restoration and Soil Stabilization. A specialty contractor whose primary business is the remediation and restoration of contaminated environmental sites. (4-6-05)

09. 02210 Drilling. A specialty contractor whose primary business includes practical elementary knowledge of geology and hydrology; the art, ability, knowledge, science and expertise to bore, drill, excavate, case, pack or cement by use of standard practices, including the use of diamond bits, cable tools, percussion, air percussion, rotary, air rotary, reverse circulation rotary methods or jetting. (4-6-05)

10. 02220 Demolition. A specialty contractor whose primary business includes the ability and expertise to demolish all types of buildings or structures and to remove all of such buildings or structures from the premises, and maintain the premises surrounding demolition site safely for passing public. (4-6-05)

11. 02230 Site Clearing. A specialty contractor whose primary business includes the ability and expertise to remove and dispose of all trees, brush, shrubs, logs, windfalls, stumps, roots, debris and other obstacles in preparation for excavation of a construction site or other uses. (4-6-05)

12. **02231 Logging.** A specialty contractor whose primary business and expertise includes the clearing, cutting, removal and transportation of logs and trees and the construction of temporary roads and structures for such operations along with any reclamation work associated with such operations. (4-6-05)
13. **02232 Tree Removal and Trimming.** A specialty contractor whose primary business includes pruning, removal, or guying of trees, limbs, stumps, and bushes including grinding and removal of such items. (4-6-05)
14. **02240 Dewatering and Subsurface Drainage.** A specialty contractor whose primary business is to control the level and flow of subsurface water. (4-6-05)
15. **02260 Earth Retention Systems, Mechanical Stabilized Earth Walls and Retaining Walls.** A specialty contractor whose primary business includes the building of earth retention systems, mechanical stabilized earth walls and retaining walls. (4-6-05)
16. **02265 Slurry Walls.** A specialty contractor whose primary business is the construction of below ground structural diaphragm walls or containment walls through the combined use of trench excavation, mud slurry and tremie concrete. (4-6-05)
17. **02270 Rockfall Mitigation and High Scaling.** A specialty contractor whose primary business is rockfall mitigation and high scaling. (4-6-05)
18. **02310 Excavation and Grading.** A specialty contractor whose primary business includes such work as digging, moving and placing material forming the surface of the earth in such manner that a cut, fill, excavation and any similar excavating operation can be done with the use of hand and power tools and machines that are used to dig, move and place that material forming the earth's surface. (4-6-05)
19. **02312 Dust Control, Dust Abatement and Dust Oiling.** A specialty contractor whose primary business is dust control, dust abatement and dust oiling. (4-6-05)
20. **02317 Rock Trenching.** A specialty contractor whose primary business is rock trenching. (4-6-05)
21. **02318 Hauling.** A specialty contractor whose primary business includes the ability and expertise to obtain or move specified materials by transportation in a vehicle. (4-6-05)
22. **02319 Blasting.** A specialty contractor whose primary business includes the use of conventional and high explosives for pre-splitting, surface, underground and underwater blasting, drill, trench, or excavate for use of explosives; priming and loading drilled, trenched or excavated areas by pipe tamping, pneumatic loading, injector loading, mud capping, slurry loading, combination of pneumatic and injector loading or hand loading; use of volt, ohms and milliamper meter (VOM) in testing blasting machine output voltage, power line voltage, measuring electric blasting cap or blasting circuit resistance, testing for current leakage, testing for AC-DC stray current and voltage, leading wires for open or short circuits, rack bar blasting machine for running short or galvanometer output voltage; use of blasting caps, electric blasting caps, delay electric blasting caps, primacord and all other detonating devices. (4-6-05)
23. **02325 Dredging.** A specialty contractor whose primary business includes the excavation or removal of earth, rock, silt, or sediment from bodies of water including but not limited to streams, lakes, rivers or bays by means of specialized equipment. (4-6-05)
24. **02404 Horizontal and Directional Earth Boring, Trenching and Tunneling.** A specialty contractor whose primary business and expertise includes boring, trenching or tunneling. (4-6-05)
25. **02450 Drilled Piers, Pile Driving, Caisson Drilling, Geopier and Helical Piers.** A specialty contractor whose primary business includes drilling piers, pile driving, caisson drilling, Geopier and helical piers. (4-6-05)

26. 02500 Utilities. A specialty contractor whose primary business includes the construction and installation of pipe lines for the transmission of sewage, gas and water, including minor facilities incidental thereto; installation of electrical poles, towers, arms, transformers, fixtures, conduits, conductors, switch gear, grounding devices, panels, appliances and apparatus installed outside of buildings; including excavating, trenching, grading, back fill, asphalt patching as well as all necessary work and installation of appurtenances in connection therewith. (4-6-05)

27. 02520 Well Drilling. A specialty contractor whose primary business includes the practical elementary knowledge of geology, hydrology, the occurrence of water in the ground, water levels in wells, the prevention of surface and sub-surface contamination and pollution of the ground water supply; and the art, ability, experience, knowledge, science, and expertise to bore, drill, excavate, case, screen, cement, clean and repair water wells; or to do any or any combination of any or all such boring, drilling, excavating, casing, cementing, cleaning and repairing with hand or power tools or rigs, including the installation and repair of pumps. (4-6-05)

28. 02580 Installation of Communication Towers. A specialty contractor whose primary business and expertise is the installation of communication towers. (4-6-05)

29. 02660 Membrane Liners for Ponds and Reservoirs. A specialty contractor whose primary business includes the installation of liners for the purpose of containment of liquids. (4-6-05)

30. 02720 Crushing. A specialty contractor whose primary business includes the ability and expertise to reduce rocks and aggregates to a smaller and uniform size and gradation to meet an agreed specification. (4-6-05)

31. 02740 Asphalt Paving. A specialty contractor whose primary business includes the installation of aggregate base course, cement treated base, bitumen treated base, asphalt concrete and the application of asphalt surfacing and surface repairs of streets, intersections, driveways, parking lots, tennis courts, running tracks, play areas; including the application or installation of primer coat, asphalt binder course, tack coating, seal coating and chips, slurry seal and chips, flush or flog coats, asphalt curbs, concrete bumper curbs, redwood headers, asphalt surface binder emulsion, asbestos and sand and acrylic color systems. (Synthetic and athletic surfacing are category 02790 Athletic and Recreational Surfaces.) Also includes crack sealing, asphalt maintenance repair and soil pulverization. (4-6-05)

32. 02761 Traffic Marking and Striping. A specialty contractor whose primary business includes the art, ability and expertise to apply markings to streets, roadways, or parking surfaces pre-designed for the use of parking or passage of vehicles by the application of directional lines, buttons, markers, and signs made of but not limited to plastic, paint, epoxies and rubber, in such manner as to provide for the channeling and controlling of the traffic flow. Also includes temporary striping. (4-6-05)

33. 02785 Asphalt Maintenance and Repair, Seal Coating, Crack Sealing and Chip Sealing. A specialty contractor whose primary business is asphalt maintenance and repair, seal coating, crack sealing and chip sealing. (4-6-05)

34. 02790 Athletic and Recreational Surfaces. A specialty contractor whose primary business is the installation of specialty surfaces including but not limited to non-wood athletic floors, tennis courts, running tracks and artificial turf. This would include any subsurface preparation such as leveling, excavation, fill and compaction or grading. The application of surfacing, mixing, spreading or placing of emulsions, binders, sand and acrylic color systems is also included along with the installation of modular, plastic athletic floors such as "Sport Court" type floors. This category does not include any type of structure required for the installation of these surfaces. (4-6-05)

35. 02810 Sprinkler and Irrigation Systems. A specialty contractor whose primary business includes the installation of types and kinds of water distribution systems for complete artificial water or irrigation of gardens, lawns, shrubs, vines, bushes, trees and other vegetation, including the trenching, excavating and backfilling in connection therewith. (Low voltage only.) (4-6-05)

36. 02820 Fencing. A specialty contractor whose primary business includes the installation and repair of any type of fencing. (4-6-05)

37. **02840 Guardrails and Safety Barriers.** A specialty contractor whose primary business includes the installation of guardrails and safety barriers (including cattle guards). (4-6-05)
38. **02850 Bridges and Structures.** A specialty contractor whose primary business includes the installation, alteration and repair of bridges and related structures, including culverts. (4-6-05)
39. **02855 Bridge Crossings and Box Culverts.** A specialty contractor whose primary business is the installation or construction, or both, of any bridge or crossing structure shorter than twenty (20) feet measured on the centerline of the roadway or trail. (4-6-05)
40. **02880 Installation of School Playground Equipment.** A specialty contractor whose primary business is the installation of school playground equipment. (4-6-05)
41. **02890 Traffic Signs and Signals.** A specialty contractor whose primary business includes the art, ability, knowledge, experience, science and expertise to fabricate, install and erect signs, including electrical signs and including the wiring of such signs. A licensed electrician must perform all the electrical work. (4-6-05)
42. **02900 Landscaping, Seeding and Mulching.** A specialty contractor whose primary business includes the preparation of plots of land for architectural, horticulture and provisions of decorative treatment and arrangement of gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation; construction of conservatories, hot and green houses, drainage and sprinkler systems, and ornamental pools, tanks, fountains, walls, fences and walks, arrange, fabricate and place garden furniture, statuary and monuments in connection therewith. (4-6-05)
43. **02910 Slope Stabilization, Hydroseeding, Hydromulching, Native Plant Revegetation for Erosion Control.** A specialty contractor whose primary business is slope stabilization, including necessary tillage and plant bed preparation using hydroseeding, hydromulching and native plant revegetation for erosion control. (4-6-05)
44. **02935 Landscape Maintenance.** A specialty contractor whose primary business and expertise includes the maintenance of existing lawns, gardens, and sprinkler systems. This would include mowing, weeding, fertilization, pest control and minor repair or relocation of sprinkler systems. (4-6-05)
45. **02937 Pest Control, Sterilization and Herbicide Applications.** A specialty contractor whose primary business includes the mixing, transportation and application of fertilizers, pesticides, herbicides, and sterilization chemicals for the control of insects, pests and weeds. (4-6-05)
46. **02955 Pipeline Cleaning, Sealing, Lining and Bursting.** A specialty contractor whose primary business and expertise includes cleaning, sealing, lining and bursting pipelines. (4-6-05)
47. **02965 Cold Milling, Rumble Strip Milling, Asphalt Reclaiming and Pavement Surface Grinding.** A specialty contractor whose primary business includes cold milling, rumble strip milling, asphalt reclaiming and pavement surface grinding. (4-6-05)
48. **02990 Structural Moving.** A specialty contractor whose primary business includes but is not limited to raising, lowering, cribbing, underpinning and moving of buildings or structures. This does not include the alterations, additions, repairs or rehabilitation of the retained portion of the structure. (4-6-05)
49. **03200 Concrete Reinforcing Rebar Installation.** A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel mesh or steel reinforcing bars or rods of any profile, perimeter or cross-section that are or may be used to reinforce concrete. (4-6-05)
50. **03300 Concrete.** A specialty contractor whose primary business includes the ability and expertise to process, proportion, batch and mix aggregates consisting of sand, gravel, crushed rock or other inert materials having clean uncoated grains of strong and durable minerals, cement and water or to do any part or any combination of any thereof, in such a manner that acceptable mass, pavement, flat and other cement and concrete work can be poured, placed, finished and installed, including the placing, forming and setting of screeds for pavement or flat

work. Also includes concrete sidewalks, driveways, curbs and gutters. (4-6-05)

51. 03370 Specially Placed Concrete, Concrete Pumping and Shotcreting. A specialty contractor whose primary business includes the ability and equipment necessary to deliver and install concrete, and similar materials to their final destination in buildings and structures. (4-6-05)

52. 03380 Post-Tensioned Concrete Structures or Structural Members. A specialty contractor whose primary business is the post-tensioning of structural elements using sleeved tendons of high-strength prestressing steel. (4-6-05)

53. 03500 Gypcrete. A specialty contractor whose primary business includes the ability and expertise to mix and apply gypsum concrete. (4-6-05)

54. 03600 Concrete Grouting. A specialty contractor whose primary business includes the ability and the equipment necessary to place concrete grouts. Concrete grouts are thin, fluid, shrink resistant, mortar-like materials used for filling joints and cavities and setting and anchoring items in masonry and concrete. (4-6-05)

55. 03650 Pressure Grouting and Slab Jacking. A specialty contractor whose primary business includes pressure foundation grouting and jacking and the injection of concrete or mortar into foundations for stabilization. (4-6-05)

56. 03900 Concrete Demolition, Concrete Sawing and Cutting, Core Drilling, Joint Sealing and Hydrocutting. A specialty contractor whose primary business includes concrete cutting, drilling, sawing, cracking, breaking, chipping or removal of concrete. This category also includes the caulking or sealing of joints or cracks caused by such operations. (4-6-05)

57. 04000 Masonry. A specialty contractor whose primary business includes the installation with or without the use of mortar or adhesives of brick, concrete block, adobe units, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry. (4-6-05)

58. 04900 Chemical Cleaning and Masonry Restoration. A specialty contractor whose primary business includes the cleaning or restoration of masonry through the use of chemicals, pressure washing, sand blasting or other methods. (4-6-05)

59. 05090 Welding. A specialty contractor whose primary business causes metal to become permanently attached, joined and fabricated by the use of gases or electrical energy, developing sufficient heat to create molten metal, fusing the elements together. (4-6-05)

60. 05100 Steel Fabrication, Erection and Installation. A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel reinforcing bars, erect structural steel shapes and plates, of any profile, perimeter or cross-section, that are or may be used to reinforce concrete or as structural members for buildings and structures, including riveting, welding and rigging only in connection therewith, in such a manner that steel reinforcing and structural work can be fabricated and erected. (4-6-05)

61. 05700 Ornamental Metals. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to assemble, case, cut, shape, stamp, forage, fabricate and install sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, monel metal, stainless steel, and any other metal or any combination thereof, as have been or are now used in the building and construction industry for the architectural treatment and ornamental decoration of buildings and structures, in such a manner that, under an agreed specification, acceptable ornamental metal work can be executed, fabricated and installed; but shall not include the work of a sheet metal contractor. (4-6-05)

62. 05830 Bridge Expansion Joints and Repair. A specialty contractor whose primary business and expertise is the repair of bridge expansion joints. (4-6-05)

63. 06100 Carpentry, Framing and Remodeling. A specialty contractor whose primary business includes the placing and erection of floor systems, walls, sheeting, siding, trusses, roof decking of either wood or

light gauge metal framing. This contractor also installs finish items such as running trim, sashes, doors, casing, cabinets, cases and other pre-manufactured finished items. (4-6-05)

64. 06130 Log and Heavy Timber Construction. A specialty contractor whose primary business includes the ability and expertise to build and erect log or heavy timber structures. (4-6-05)

65. 06139 Docks - Log and Wood Structures. A specialty contractor whose primary business includes the ability and expertise to construct log and wood structured docks. (4-6-05)

66. 06200 Finish Carpentry and Millwork. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to cut, surface, join, stick, glue and frame wood and wood products, in such a manner that, under an agreed specification, acceptable cabinet, case, sash, door, trim, nonbearing partition, and such other mill products as are by custom and usage accepted in the building and construction industry as millwork and fixtures, can be executed; including the placing, erecting, fabricating and finishing in buildings, structures and elsewhere of such millwork and fixtures or to do any part or any combination of any thereof. (4-6-05)

67. 07100 Waterproofing and Dampproofing. A specialty contractor whose primary business includes the ability and expertise to apply waterproofing membranes, coatings of rubber, latex, asphaltum, pitch, tar or other materials or any combination of these materials, to surfaces to prevent, hold, keep and stop water, air or steam from penetrating and passing such materials, thereby keeping moisture from gaining access to material or space beyond such waterproofing. (4-6-05)

68. 07200 Thermal Insulation. A specialty contractor whose primary business includes the installation of any insulating media in buildings and structures for the purpose of temperature control. (4-6-05)

69. 07240 Stucco and Exterior Insulation Finish Systems (EIFS). A specialty contractor whose primary business includes the ability and expertise to install Stucco and EIFS. (4-6-05)

70. 07400 Roofing and Siding. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and to bring such surfaces to a condition where asphaltum, pitch, tar, felt, flax, shakes, shingles, roof tile, slate and any other material or materials or any combination thereof, that use and custom has established as usable for, or which material or materials are now used as, such waterproof, weatherproof or watertight seal for such membranes, roof and surfaces; but shall not include a contractor whose sole contracting business is the installation of devices or stripping for the internal control of external weather conditions. (4-6-05)

71. 07450 Siding and Decking. A specialty contractor whose primary business includes the application or installation of exterior siding, decking or gutters including wood, wood products, vinyl, aluminum and metal to new or existing buildings and includes wooden decks and related handrails. (This category does not include the construction or installation of covers or enclosures of any kind.) (4-6-05)

72. 07700 Sheet Metal Flashings, Roof Specialties and Accessories. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to select, cut, shape, fabricate and install sheet metal such as cornices, flashings, gutters, leaders, rainwater down spouts, pans, etc., or to do any part or any combination thereof, in such a manner that sheet metal work can be executed, fabricated and installed. (4-6-05)

73. 07800 Sprayed on Fireproofing. A specialty contractor whose primary business includes the mixing, transportation, and installation of fire proofing materials for buildings and structures. (4-6-05)

74. 07920 Caulking and Joint Sealants. A specialty contractor whose primary business includes the ability and expertise for installation of elastomeric and rigid joint sealants, caulking compounds, and related accessories. (4-6-05)

75. 08100 Doors, Gates, Specialty Doors and Activating Devices. A specialty contractor whose primary business is the installation, modification or repair of residential, commercial or industrial doors and door hardware. This includes but is not necessarily limited to wood, metal clad or hollow metal, glass, automatic,

revolving, folding and sliding doors, power activated gates, or movable sun shades/shutters. Card activated equipment and other access control devices and any low voltage electronic or manually operated door hardware devices are also a part of this category. (4-6-05)

76. 08500 Windows, Glass and Glazing. A specialty contractor whose primary business includes the art, ability, experience, knowledge and expertise to select, cut, assemble and install all makes and kinds of glass and glass work, and execute the glazing of frames, panels, sash and doors, in such a manner that under an agreed specification, acceptable glass work and glazing can be executed, fabricated and installed, and may include the fabrication or installation in any building or structure of frames, glazed-in panels, sash or doors, upon or within which such frames, glazed-in panels, sash or doors, such glass work or glazing has been or can be executed or installed. (4-6-05)

77. 09110 Steel Stud Framing. A specialty contractor whose primary business includes the ability and expertise to build or assemble steel stud framing systems. (4-6-05)

78. 09200 Lath and Plaster. A specialty contractor whose primary business includes the ability and expertise to prepare mixtures of sand, gypsum, plaster, quick-lime or hydrated lime and water or sand and cement and water or a combination of such other materials as create a permanent surface coating; including coloring for same and to apply such mixtures by use of a plaster's trowel, brush or spray gun to any surface which offers a mechanical key for the support of such mixture or to which such mixture will adhere by suction; and to apply wood or metal lath or any other materials which provide a key or suction base for the support of plaster coatings; including the light gauge metal shapes for the support of metal or other fire proof lath. Includes metal stud framing. (4-6-05)

79. 09250 Drywall. A specialty contractor whose primary business includes the ability and expertise to install unfinished and prefinished gypsum board on wood and metal framing and on solid substrates; gypsum and cementitious backing board for other finishes; accessories and trim; and joint taping and finishing. (4-6-05)

80. 09300 Tile and Terrazzo. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and bring such surfaces to a condition where acceptable work can be executed and fabricated thereon by the setting of chips or marble, stone, tile or other material in a pattern with the use of cement, and to grind or polish the same. (4-6-05)

81. 09500 Acoustical Treatment. A specialty contractor whose primary business includes the installation, application, alteration and repair of all types of acoustical systems, to include acoustical ceilings, wall panels, sound control blocks and curtains, hangers, clips, inserts, nails, staples, related hardware and adhesive, lightweight framing systems and related accessories (electrical excluded), installation and repair of gypsum wall board, painting, accessories, taping and texturing. (4-6-05)

82. 09600 Flooring. A specialty contractor whose primary business includes the ability and expertise to examine surfaces, specify and execute the preliminary and preparatory work necessary for the installation of flooring, wherever installed, including wood floors and flooring (including the selection, cutting, laying, finishing, repairing, scraping, sanding, filling, staining, shellacking and waxing) and all flooring of any nature either developed as or established through custom and usage as flooring. (4-6-05)

83. 09680 Floor Covering and Carpeting. A specialty contractor whose primary business includes the installation, replacement and repair of floor covering materials, including laminates and including preparation of surface to be covered, using tools and accessories and industry accepted procedures of the craft. (4-6-05)

84. 09900 Painting and Decorating. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and execute the preliminary and preparatory work necessary to bring such surfaces to a condition where acceptable work can be executed thereon with the use of paints, varnishes, shellacs, stains, waxes, paper, oilcloth, fabrics, plastics and any other vehicles, mediums and materials that may be mixed, used and applied to the surface of buildings, and the appurtenances thereto, of every description in their natural condition or constructed of any material or materials whatsoever that can be painted or hung as are by custom and usage accepted in the building and construction industry as painting and decorating. (4-6-05)

85. 09950 Sand Blasting. A specialty contractor whose primary business includes the ability and

expertise to sand blast surfaces through the use of equipment designed to clean, grind, cut or decorate surfaces with a blast of sand or other abrasive applied to such surfaces with steam or compressed air. (4-6-05)

86. 09960 Specialty Coatings. A specialty contractor whose primary business includes the surface preparation and installation of specialty coatings. (4-6-05)

87. 10150 Institutional Equipment. A specialty contractor whose primary business includes the installation, maintenance and repair of booths, shelves, laboratory equipment, food service equipment, toilet partitions, and such other equipment and materials as are by custom and usage accepted in the construction industry as institutional equipment. (4-6-05)

88. 10270 Raised Access Flooring. A specialty contractor whose primary business includes the installation of wood or metal-framed elevated computer-flooring systems. This does not include the structural floor on which the computer floor is supported or mezzanines. (4-6-05)

89. 10445 Non-Electrical Signs. A specialty contractor whose primary business includes the installation of all types of non-electrical signs, including but not limited to traffic delineators, mile post markers, post or pole supported signs, signs attached to structures, painted wall signs, and modifications to existing signs. (4-6-05)

90. 11001 Specialty Machinery and Equipment Installation and Servicing. A specialty contractor whose primary business is the installation, removal, modification or repair of pumps, water and waste water equipment, conveyors, cranes, dock levelers, various hoisting and material handling equipment, trash compactors and weighing scales installation and servicing. This does not include the construction of buildings or roof structures for this equipment. (4-6-05)

91. 11140 Petroleum and Vehicle Service Equipment, Installation and Repair. A specialty contractor whose primary business includes the installation and repair of underground fuel storage tanks used for dispensing gasoline, diesel, oil or kerosene fuels. This includes installation of all incidental tank-related piping, leak line detectors, vapor recovery lines, vapor probes, low voltage electrical work, associated calibration, testing and adjustment of leak detection and vapor recovery equipment, and in-station diagnostics. This contractor may also install auto hoisting equipment, grease racks, compressors, air hoses and other equipment related to service stations. (4-6-05)

92. 11200 Water/Wastewater and Chemical Treatment. A specialty contractor whose primary business is the supply, installation and operational startup of equipment and chemicals for chemical treatment of water, wastewater or other liquid systems. (4-6-05)

93. 11485 Climbing Wall Structures and Products. A specialty contractor whose primary business includes the ability and expertise to design, fabricate and install climbing wall structures and equipment. This does not include concrete foundations or buildings in which the climbing walls may be supported or housed. (4-6-05)

94. 12011 Prefabricated Equipment and Furnishings. A specialty contractor whose primary business includes the installation of prefabricated products or equipment including but not limited to the following: theater stage equipment, school classroom equipment, bleachers or seats, store fixtures, display cases, toilet or shower room partitions or accessories, closet systems, dust collecting systems, appliances, bus stop shelters, telephone booths, sound or clean rooms, refrigerated boxes, office furniture, all types of pre-finished, pre-wired components, detention equipment and other such equipment and materials as are by custom and usage accepted in the construction industry as prefabricated equipment. (4-6-05)

95. 12490 Window, Wall Coverings, Drapes and Blinds. A specialty contractor whose primary business includes the installation of decorative, architectural or functional window glass treatments or covering products or treatments for temperature control or as a screening device. (4-6-05)

96. 13110 Cathodic Protection. A specialty contractor whose primary business is the prevention of corrosion by using special cathodes and anodes to circumvent corrosive damage by electric current. (4-6-05)

97. 13121 Pre-Manufactured Components and Modular Structures. A specialty contractor whose

primary business includes the moving, setup, alteration or repair of pre-manufactured components, houses or similar modular structures. (4-6-05)

98. 13125 Pre-Engineered Building Kits. A specialty contractor whose primary business includes the assembly of pre-engineered building kits or structures obtained from a single source. This category is limited to assembly only of pre-engineered metal buildings, pole buildings, sunrooms, geodesic structures, aluminum domes, air supported structures, manufactured built greenhouses or similar structures. This does not include any other categories such as concrete foundations, carpentry, plumbing, heating or cooling, or electrical work. (4-6-05)

99. 13150 Swimming Pools and Spas. A specialty contractor whose primary business includes the ability to construct swimming pools, spas or hot tubs including excavation and backfill of material, installation of concrete, Gunitite, tile, pavers or other special materials used in pool construction. This category shall also include the installation of heating and filtration equipment, using those trades or skills necessary for installing the equipment, which may require other licenses including electrical and plumbing. (4-6-05)

100. 13165 Aquatic Recreational Equipment. A specialty contractor whose primary business includes the ability and expertise to design, fabricate and erect water slides and water park equipment and structures. This does not include any other categories such as concrete foundations, carpentry, plumbing, heating, cooling or electrical work. (4-6-05)

101. 13201 Circular Prestressed Concrete Storage Tanks (Liquid and Bulk). A specialty contractor whose primary business is the construction of circular prestressed concrete structures post-tensioned with circumferential tendons or wrapped circular prestressing. (4-6-05)

102. 13280 Hazardous Material Remediation. A specialty contractor whose primary business includes the ability and expertise to safely encapsulate, remove, handle or dispose of hazardous materials within buildings, including but not limited to asbestos, lead and chemicals. Contractors must be properly licensed and certified. (4-6-05)

103. 13290 Radon Mitigation. A specialty contractor whose primary business and expertise includes the detection and mitigation of Radon gas. (4-6-05)

104. 13800 Instrumentation and Controls. A specialty contractor whose primary business includes the installation, alteration or repair of instrumentation and control systems used to integrate equipment, sensors, monitors, controls and mechanical operators for industrial processes, building equipment, mechanical devices and related equipment. The installation of any wires or equipment to carry electrical current or the installation of electrical apparatus operated by such current requires licensure as an electrical contractor or electrical specialty contractor pursuant to Title 54, Chapter 10, Idaho Code, in addition to the public works contractor's specialty construction license for the electrical category under Subsection 200.116 of these rules or the electrical specialty contractor category under Subsection 200.118 of these rules, as appropriate for the work being performed. (4-6-05)()

105. 13850 Alarm Systems. A specialty contractor whose primary business includes the installation, alteration and repair of communication and alarm systems, including the mechanical apparatus, devices, piping and equipment appurtenant thereto (except electrical). (4-6-05)

106. 13930 Fire Suppression Systems (Wet and Dry-Pipe Sprinklers). A specialty contractor whose primary business includes the ability and expertise to lay out, fabricate and install approved types of Wet-Pipe and Dry-Pipe fire suppression systems, charged with water, including all mechanical apparatus, devices, piping and equipment appurtenant thereto. Licensure with State Fire Marshal is required. (4-6-05)

107. 13970 Fire Extinguisher and Fire Suppression Systems. A specialty contractor whose primary business is the installation of pre-engineered or pre-manufactured fixed chemical extinguishing systems primarily used for protecting kitchen-cooking equipment and electrical devices. Contractor also furnishes, installs and maintains portable fire extinguishers. (4-6-05)

108. 14200 Elevators, Lifts and Hoists. A specialty contractor whose primary business includes the

ability to safely and efficiently install, service and repair all elevators, lifts, hoists, including the fabrication, erection and installation of sheave beams, sheave motors, cable and wire rope, guides, cabs, counterweights, doors, sidewalk elevators, automatic and manual controls, signal systems and other devices, apparatus and equipment appurtenant to the installation. (4-6-05)

109. 15100 Pipe Fitter and Process Piping. A specialty contractor whose primary business is the installation of piping for fluids and gases or materials. This category does not include domestic water, sewage, fire protection and utilities as they are covered under other categories. (4-6-05)

110. 15400 Plumbing. A specialty contractor whose primary business includes the ability to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe, pure and wholesome water, ample in volume and of suitable temperatures for drinking, cooking, bathing, washing, cleaning, and to cleanse all waste receptacles and like means for the reception, speedy and complete removal from the premises of all fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, including a safe and adequate supply of gases for lighting, heating, and industrial purposes. (Licensure with State Plumbing Bureau is required). (4-6-05)

111. 15510 Boiler and Steam Fitting. A specialty contractor who installs, services and repairs boilers and associated steam distribution systems. This category is limited to work not requiring a heating, ventilating, and air conditioning (HVAC) license issued by the Division of Building Safety. (4-2-08)

112. 15550 Chimney Repair. A specialty contractor whose primary business includes the cleaning or repair of multi-type chimneys, flues or emission control devices used to conduct smoke and gases of combustion from above a fire to the outside area. (4-6-05)

113. 15600 Refrigeration. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to construct, erect, install, maintain, service and repair devices, machinery and units for the control of air temperatures below fifty (50) degrees Fahrenheit in refrigerators, refrigerator rooms, and insulated refrigerated spaces and the construction, erection, fabrication and installation of such refrigerators, refrigerator rooms, and insulated refrigerator spaces, temperature insulation, air conditioning units, ducts, blowers, registers, humidity and thermostatic controls of any part or any combination thereof, in such a manner that, under an agreed specification acceptable refrigeration plants and units can be executed, fabricated, installed, maintained, serviced and repaired, but shall not include those contractors who install gas fuel or electric power services for such refrigerator plants or other units. (4-6-05)

114. 15700 Heating, Ventilation, and Air Conditioning (HVAC). A specialty contractor whose primary business includes the installation, alteration and repair of heating, ventilating, and air conditioning (HVAC) systems. Licensure by the Division of Building Safety as an HVAC contractor is required. (4-2-08)

115. 15950 Testing and Balancing of Systems. A specialty contractor whose primary business includes the installation of devices and performs any work related to providing for a specified flow of air or water in all types of heating, cooling or piping systems. (4-6-05)

116. 16000 Electrical. A contractor engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing electrical apparatus to be operated by such current. A contractor licensed in this category may perform all work covered in categories defined in Subsection 200.118 of these rules. A contractor in this category must be an electrical contractor, licensed pursuant to Section 54-1007(1), Idaho Code. (3-30-07)

117. 16700 Communication. A specialty contractor whose primary business includes the installation, alteration or repair of communication systems (voice, data, television, microwave, and other communication systems). (4-6-05)

118. 16800 Electrical Specialty Contractor. A contractor engaging in, conducting, or carrying on the business of installing, altering, or repairing special classes of electrical wiring, apparatus, or equipment. A contractor in this category must be an electrical specialty contractor, licensed pursuant to Section 54-1007(1), Idaho Code, and may perform only that work included within the specialty license. Electrical specialty categories include, but are not

- limited to: (3-30-07)
- a. Elevator, Dumbwaiter, Escalator or Moving-walk Electrical; (3-30-07)
 - b. Sign Electrical; (3-30-07)
 - c. Manufacturing or Assembling Equipment; (3-30-07)
 - d. Limited Energy Electrical License (low voltage); (3-30-07)
 - e. Irrigation Sprinkler Electrical; (3-30-07)
 - f. Well Driller and Water Pump Installer Electrical; and (3-30-07)
 - g. Refrigeration, Heating and Air Conditioning Electrical Installer. (3-30-07)

119. 18100 Golf Course Construction. A specialty contractor whose primary business includes the construction, modification, and maintenance of golf courses. This includes clearing, excavation, grading, landscaping, sprinkler systems and associated work. This does not include the construction of buildings or structures such as clubhouses, maintenance or storage sheds. (4-6-05)

120. 18200 Underwater Installation and Diving. A specialty contractor whose primary business is marine construction under and above water. (4-6-05)

121. 18300 Develop Gas and Oil Wells. A specialty contractor whose primary business includes the ability and expertise to perform oil well drilling and other oil field related specialty work. This does not include water well drilling. (4-6-05)

122. 18400 Nonstructural Restoration After Fire or Flood. A specialty contractor whose primary business includes cleaning and nonstructural restoration after fire, flood or natural disasters. (4-6-05)

123. 18600 Building Cleaning and Maintenance. A specialty contractor whose primary business includes the cleaning and maintenance of a structure designed for the shelter, enclosure and support of persons, chattels, personal and movable property of any kind. (4-6-05)

124. 18700 Snow Removal. A specialty contractor whose primary business includes the plowing, removal or disposal of snow from roads, streets, parking lots and other areas of the public rights-of-way. (4-6-05)

125. 18800 Roadway Cleaning, Sweeping and Mowing. A specialty contractor whose primary business includes the clearing of trash and debris by manual or automated means from public thoroughfares. This category also includes cutting or mowing of grasses, plants, or weeds from public rights-of-way. (4-6-05)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0701-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-5004 and 54-5005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, electric and gas conveyor pizza ovens are defined as a "Medium-Duty Cooking Appliance" which requires the installation of a Type I hood. These pizza ovens do not produce enough smoke and grease to justify a Type I hood. Accordingly, by removing pizza ovens from the definition of "Medium-Duty Cooking Appliance" and redefining them as a "Light-Duty Cooking Appliance," only a Type II hood would be required to be installed. This is less expensive than a Type I hood and the installation requirements are less restrictive. Additionally, some manufacturers are already selling the ovens with Type II hoods as a single unit. These would not be allowed under the current code. Finally, the Division would like the ability to produce written interpretations of the rules in the event that it is advisable to do so in order to provide clarity or direction to those making HVAC installations. Such written interpretations would be available for public inspection and copying.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 18-19](#).

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:

The formerly adopted and incorporated by reference International Mechanical Code, 2012 Edition, is being amended. Currently, electric and gas conveyor pizza ovens are defined as a "Medium-Duty Cooking Appliance" which requires the installation of a Type I hood. These pizza ovens do not produce enough smoke and grease to justify a Type I hood. Accordingly, by moving pizza ovens out of the definition of "Medium-Duty Cooking Appliance" into the definition of "Light-Duty Cooking Appliance" they would only require a Type II hood to be installed, which is less expensive and less restrictive than a Type I hood. Additionally, some manufacturers are already selling the ovens with Type II hoods as a single unit, which would not be allowed under the current code.

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 26, 2016.

DATED this 23rd day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1601
(Only Those Sections With Amendments Are Shown.)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201, Idaho Code, this agency ~~has no~~ may have written statements that pertain to the interpretations of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the Idaho Division of Building Safety offices. (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

004. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL MECHANICAL CODE, 2012 EDITION.

01. International Mechanical Code. The 2012 Edition, including appendix “A,” (herein IMC) is adopted and incorporated by reference with the following amendments: (3-20-14)

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

b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Idaho State Plumbing Code (ISPC) as adopted and amended by the Idaho State Plumbing Board. (3-20-14)

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

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

e. Section 202 Definitions. Delete the definitions provided in the code for the terms identified herein this paragraph and replace with the following: ()

i. Light-Duty Cooking Appliance. Light-duty cooking appliances include gas and electric ovens (including standard, bake, roasting, revolving, retherm, convection, combination convection/steamer, countertop conveyerized baking/finishing, deck, pastry, and electric and gas conveyor pizza ovens), electric and gas steam jacketed kettles, electric and gas pasta cookers, electric and gas compartment steamers (both pressure and atmospheric) and electric and gas cheesemelters. ()

ii. Medium-Duty Cooking Appliance. Medium-duty cooking appliances include electric discrete element ranges (with or without oven), electric and gas hot-top ranges, electric and gas griddles, electric and gas double sided griddles, electric and gas fryers (including open deep fat fryers, donut fryers, kettle fryers and pressure

fryers), electric and gas tilting skillets (braising pans) and electric and gas rotisseries. ()

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

fg. Section 504.6.1 Material and size. Add the following exception: Dryer duct may be constructed of 0.013 (30 gauge) or equivalent if prefabricated 0.016 (28 gauge) ducts and fittings are not available. (3-20-14)

gh. Table 603.4 Duct Construction Minimum Sheet Metal Thickness for Single Dwelling Units. Add the following exception to the Table: Round duct, enclosed rectangular ducts and fittings less than fourteen (14) inches may be constructed of 0.013 (30 gauge) or equivalent if prefabricated 0.016 (28 gauge) ducts and fittings are not available. (3-20-14)

02. Availability of the International Mechanical Code. The 2012 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (3-20-14)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0701-1602 (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 54-5004 and 54-5005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 construction industry in Idaho is facing a critical shortage of skilled workers, including HVAC workers. As it currently stands, many HVAC workers come to Idaho from states that do not require schooling. This leaves them unable to qualify for testing as a journeymen in Idaho. This rulemaking would allow such a person to qualify to take the journeyman's exam by demonstrating they have eight (8) years of HVAC experience, in lieu of the current requirement of four (4) years' experience and four (4) years of schooling.

Currently, there is no mechanism for a HVAC contractor or homeowner to transfer a HVAC permit to a new contractor, if after the commencement of a HVAC installation the property owner terminates its relationship with the original contractor and hires a new contractor. In such instances, the new contractor or homeowner must purchase a new permit. There is also no mechanism for a permit holder to receive a refund of a permit fee that may have been obtained in error, or for which HVAC work was never commenced or only progressed minimally. In such instances, the holder never recoups their fee for work that may never have been completed, and for which the Division has never provided an inspection.

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

A fee of forty-five dollars (\$45) will be imposed on those who desire to transfer a HVAC permit from one eligible party to another. The fee is authorized pursuant to Sections 54-5005(1) and 67-2601A(5)(e), Idaho Code.

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

The fee itself is expected to be neutral to the Division and the HVAC dedicated fund inasmuch as the fee imposed by the Division for administering the transfer of a HVAC permit to a new permit holder is expected to cover the administrative costs to the Division in processing the request. The effect of the fee would only have a negligible adverse effect on the dedicated HVAC Board fund due to a slight decrease in fees previously paid for new permits that will no longer be required. The impact to the permit holder desiring to transfer a permit would be a one-time fee of forty-five dollars (\$45); however, the fee is expected to be significantly less expensive than securing an entirely new HVAC permit.

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

HVAC contractors in Idaho as well as qualified and experienced HVAC workers from other states seeking employment in Idaho have communicated with the Division and HVAC Board the need to modify the journeyman rules relating to the licensure of out-of-state individuals. The issue was brought to the HVAC Board by interested parties numerous times over the past several years and no opposition to the proposed rule was expressed to the Board.

The rulemaking is also advantageous to contractors and property owners who would be able to transfer a HVAC permit to a new contractor at significantly less expense than securing a new permit. It also creates the ability to refund to purchasers of a permit the permit fee, or portion thereof for those HVAC projects on which work is never commenced or has not progressed beyond fifty percent (50%) completion. This rulemaking was discussed at several HVAC Board meetings over the course of the last year without opposition.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 23rd day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 07-0701-1602
(Only Those Sections With Amendments Are Shown.)

023. HVAC JOURNEYMAN CERTIFICATES OF COMPETENCY: REQUIREMENTS.

01. Experience. Demonstrate, to the satisfaction of the board, a minimum of four (4) years' experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman. (4-11-06)

02. Education. Successfully complete any required apprenticeship training courses. (3-16-04)

03. Examination. Applicants for certification as HVAC journeymen must successfully complete the examination designated by the board. (3-16-04)

04. Out of State Journeyman Applications. ()

a. Exhibition of a license issued by another recognized jurisdiction may be accepted as proof of meeting the experience and schooling requirements listed in Subsections 023.01 and 023.02 of these rules. An application for a journeyman certificate of competency from an individual previously licensed as a journeyman in another jurisdiction recognized by the Idaho HVAC Board shall include satisfactory proof of licensure in such jurisdiction. The applicant shall pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. ()

b. An application for a journeyman certificate of competency from an individual who has never been previously licensed as a journeyman in a jurisdiction recognized by the Idaho HVAC Board shall include evidence that demonstrates that the applicant has four (4) years, defined as eight thousand (8,000) hours of HVAC work experience or a nature at least equivalent to that which a HVAC apprentice must perform in Idaho, as well as four (4) years of schooling equivalent to that which a HVAC apprentice must complete in Idaho. Alternatively, such an applicant may submit sufficient proof verifying eight (8) years, defined as a minimum of sixteen thousand (16,000) hours of HVAC work experience of a nature at least equivalent to that which a HVAC apprentice must perform in Idaho. Upon submission of sufficient proof of having completed such experience and schooling requirements, such applicant shall also pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. HVAC PERMITS.

01. Serial Number. Each permit shall bear a serial number. (3-16-04)

02. HVAC Contractors and HVAC Specialty Contractors. The Division shall furnish permits to certified HVAC contractors and HVAC specialty contractors upon request. The serial numbers of such permits shall be registered in the name of the HVAC contractor or HVAC specialty contractor to whom they are issued. Permits shall not be transferable. (3-16-04)

03. Home Owners. Home owners or a contract purchaser of residential property, making HVAC installations on their own residences, coming under the provisions of Section 54-5002, Idaho Code, shall secure an HVAC permit by making application to the Division as provided in Section 54-5016, Idaho Code. (3-16-04)

04. HVAC Contractors and HVAC Specialty Contractors. HVAC contractors and HVAC specialty contractors shall secure an HVAC permit by making application to the Division as provided in Section 54-5016, Idaho Code. (3-16-04)

05. Transferring a Permit. A HVAC permit may be transferred to another eligible party if such party provides to the Division written authorization signed and notarized by the original permit holder consenting to the transfer itself as well as assignment of all the responsibilities and conditions incorporated into the original permit issuance. A permit may be transferred to the owner of the property on which the HVAC work is to be performed and for which the permit was issued for such owners' designated legal agent, in cases where the property owner has terminated their legal relationship with the HVAC contractor who originally obtained the permit. An administrative fee in the amount of forty-five dollars (\$45) for the transfer of a permit shall be assessed by the Division. ()

06. Refunds of Permits. The administrator may authorize a refund for any permit fee paid on the following bases: ()

a. The administrator may authorize a refund of the entire permit fee paid when no work has been performed related to the installations or HVAC work covered by a permit issued by the Division. A lesser amount up to fifty percent (50%) of the permit fee amount may be refunded if work has commenced and the project is less than fifty percent (50%) complete as determined by the Division; and ()

b. The administrator shall not authorize a refund of any permit fee paid except upon written application for such filed by the original permit holder or the property owner's representative not less than one hundred eighty (180) days after the date the permit was issued. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.01 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - GENERAL PROVISIONS

DOCKET NO. 07-0801-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations to applicable standards or regulations, or replace outdated or unclear illustrations related to common logging practices. Through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters, as well as update key definitions related to logging safety practices. The rulemaking also identifies the Division's role in administering the logging rules, as well as clarifying the scope of the Division's authority in interpreting and applying the logging rules. Finally, the rulemaking clarifies and updates the general requirements of both the employer's and employee's responsibility to ensure safe logging operations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0801-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein.
(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code.
(7-1-97)()

004. ~~(RESERVED)~~ INCORPORATION BY REFERENCE.

~~There are no documents that have been incorporated by reference into these rules.~~ ()

005. ~~INCLUSIVE GENDER.~~

~~For all sections and subsections of these rules, the terms and references used in the masculine include the feminine and vice versa, as appropriate.~~ (7-1-97)

006. ~~SEVERABILITY.~~

~~The sections and subsections of these rules are severable. If any rule, or part thereof, or the application of such rule, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion.~~ (7-1-97)

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

007. DEFINITIONS.

Terms used in these standards shall be interpreted in the most commonly accepted sense, excepting only those specifically defined. In addition to the terms defined in this section, refer to IDAPA 07.08.18, "Commonly Used Logging Terms" for additional definitions of logging terms. (7-1-97)()

01. **Administrator.** The Administrator of the Division of Building Safety. (7-1-97)()
 02. **Approved.** The term approved shall mean approved by the Division of Building Safety. (7-1-97)
 03. **Division.** The Division of Building Safety. (7-1-97)
 05. **Equipment.** The term as used shall mean and include all machines, machinery, tools, devices, safeguard, and protective facilities used in connection with the logging operations ~~and maintenance of an establishment~~ regardless of ownership. (7-1-97)()
 05. **Exposed to Contact.** Shall mean the location of a hazardous object is so accessible that a workman may, in the course of his employment, come into contact with the object. (7-1-97)
 06. **Guarded.** Guarded shall mean, covered, shielded or railed so as to remove the ~~liability possibility~~ of dangerous contact or approach by employees or objects. It shall further mean construction of guards to ensure protection from flying objects where applicable. (7-1-97)()
 07. **Hazard.** Hazard as used in these standards shall mean any condition or circumstance which may cause injury to an employee. (7-1-97)
 08. **It is Recommended, or Should.** When these terms are used they shall indicate provisions which are not mandatory. (7-1-97)
 09. **Log or Logs.** When the word log or logs is used, it includes poles, piling, pulpwood, skids, etc. (7-1-97)
 10. **Safety Factor or Factor of Safety.** This term as used is the ratio of the ultimate breaking strength of a member or piece of material to the actual working stress or to the maximum permissible (safe load) stress. For Example: When a safety factor of six (6) is required, the structure, lines, hoists, or other equipment referred to shall be such as to provide a strength sufficient to support a load equal to six (6) times the total weight or stress to be imposed on it. (7-1-97)()
 11. **Shall, ~~Must~~, Will.** Is compulsory or mandatory. (7-1-97)()
 12. **Standard Safeguard.** Shall mean a device designed and constructed with the object of removing the hazard of an accident incidental to the machine, appliance, tool, building or equipment to which it is attached. (7-1-97)()
 13. **Substantial.** Shall mean constructed of such strength, of such material, and of such workmanship, that the object referred to will withstand normal wear, shock and usage. (7-1-97)
- 008. INTERPRETATION AND APPLICATION OF ~~THIS~~ THESE RULES.**
01. **Scope.** ~~This rule is a~~ These rules are part of the state of Idaho industrial accident prevention program and ~~has~~ ve the full force and effect of law. (7-1-97)()
 02. **Jurisdiction.** In accordance with the laws of the state of Idaho, every employer and every employee working in the state of Idaho shall ~~conform~~ comply with the rules ~~and regulations of this rule contained herein.~~ (7-1-97)()
 03. **Enforcement.** The enforcement of all rules ~~and regulations~~ of this ~~rule~~ chapter and the right of inspection and examination, at any time, shall rest with the Division. (7-1-97)()

04. Issues Not Covered. Where specific standards in ~~this~~ these rules fail to provide a rule or standard applicable to the operation in question, and other state of Idaho codes or standards are applicable, those codes or standards shall apply. (7-1-97)()

05. Interpretations. Should any controversy develop as to the intent or application of any standard or rule as set forth in ~~this~~ these rules, or the interpretation of any standard or rule set forth in ~~this~~ these rules, such controversy shall be called to the direct attention of the ~~Administrator~~ Division, ~~who will~~ which shall render a decision as the applicability of such rule or standard. Any appeal from this decision shall be directed to the ~~Division~~ Administrator. (7-1-97)()

06. Additional Standards. It is recognized that a definite, positive safety standard cannot anticipate all contingencies. The Division, after due notice and opportunity to be heard, may require additional standards and practices to insure adequate safety at any place of any employment, and, on its own motion or upon application of any employer, employee, group, or organization, may modify any provision of this rule. (7-1-97)

07. Exceptions. In exceptional cases where the rigid application or compliance with a requirement can only be accomplished to the detriment and serious disadvantage of an operation, method, or process, exception to the requirement will be considered upon written application to the Division. After thorough investigation, the Division may grant an exception ~~or may apply or devise another applicable rule~~, if human life and physical well being will not be endangered by such exception. (7-1-97)()

08. Existing Buildings, Structures, and Equipment. Nothing contained in this rule for ~~l~~ogging ~~safety~~ shall prevent the use of existing buildings, structures, and equipment during their lifetime when maintained in good safe condition, and properly safeguarded, ~~and~~ or require conformance ~~to~~ with the applicable safety standards required by Idaho Safety Codes effective prior to the effective date of this rule, ~~and~~ provided that replacements and alterations shall conform with all provisions of ~~this Code~~ these rules. (7-1-97)()

009. EMPLOYER'S RESPONSIBILITY.

01. General Requirements. (7-1-97)

a. Every employer subject to these rules shall furnish employment and maintain places of employment ~~which~~ that are safe according to the standards as set forth herein. (7-1-97)()

b. Every employer shall adopt and use practices, means, methods, operations and processes ~~which~~ that are adequate to render such employment and place of employment safe. (7-1-97)()

i. Employers shall place highly visible "LOGGING AHEAD" or similar-type warning signs at the entrances of active logging jobs. Employers shall also place "TRUCKS AHEAD," "TRUCKS ENTERING," "TREE FALLING," and "CABLES OVERHEAD" whenever applicable (3-29-10)()

ii. Every employer shall furnish to its crew a Company Emergency Rescue Plan. (3-29-10)()

c. Every employer should insure that ~~Material~~ Safety Data Sheets (MSDS) are reasonably accessible for every hazardous material. (3-29-10)()

d. Every employer shall post and maintain in a conspicuous place or places in and about his place or places of business a written notice stating the fact that he has complied with the worker's compensation law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of Idaho law. Such notice shall contain the name and address of the surety, as applicable, with which the employer has secured payment of compensation. Such notice shall also be readily available on the site where logging operations are occurring, and available for inspection by Division officials upon request. ()

e. Every employer shall do ~~every~~ all other things ~~necessary within the framework of this Rule~~ as required by these rules to protect the life and safety of employees. (7-1-97)()

f. No employer shall require any employee to go or be in any place of employment ~~which~~ that does

not meet the minimum safety requirement of ~~this Rule~~ these rules, except for the purpose of meeting such requirements. (7-1-97)()

fg. No employer shall fail or neglect: (7-1-97)()

- i. To make available and use safety devices and safeguards as are indicated. (7-1-97)
- ii. To adopt and use methods and processes adequate to render the employment and place of employment safe. (7-1-97)

iii. To do ~~every~~ all other things ~~necessary within the framework of this Rule~~ as required by these rules to protect the life and safety of employees. (7-1-97)()

gh. No employer, owner or lessee of any real property shall construct or cause to be constructed any place of employment ~~which that~~ does not meet the minimum safety requirements of ~~this Rule~~ these rules. (7-1-97)()

hi. No person, employer, employee, other than an authorized person, shall do any of the following: (7-1-97)()

i. Remove, displace, damage, destroy or carry off any safeguard, first aid material, notice or warning, furnished for use in any employment or place of employment, or interfere in any way with the use thereof by any other person. (7-1-97)

ii. Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment or place of employment. (7-1-97)

iii. No person shall fail or neglect to do ~~everything necessary within the requirements of this Rule~~ all other things as required by these rules to protect the life and safety of employees. (7-1-97)()

iv. The use of intoxicants or drugs while on duty is prohibited. Persons reporting for duty while under the influence of or affected impaired by liquor or other legal or illegal drugs or substances shall not work until completely recovered. (7-1-97)()

ji. A definite procedure for checking the welfare of all workers during working hours shall be instituted and all workmen so advised. The employer shall assume responsibility of work assignments so that no worker shall be required to work in a position or location so isolated or hazardous that he is not within visual or audible signal contact with another person who can render assistance in case of emergency. In any operation where cutting, yarding, loading, or a combination of these ~~duties~~ activities are carried on there shall be a minimum crew of two (2) persons who shall work as a team, and shall be in visual or audible signal contact with one another. This does not apply to operators ~~or~~ of motorized equipment, watchmen, or certain other jobs which, by their nature are singular workmen assignments. There shall be some method of checking ~~in the men~~ at the end of the shift. Each immediate supervisor shall be responsible for his crew being accounted for. This standard also includes operators of movable equipment. (7-1-97)()

jk. Every employer shall keep a record of all cases of injuries his employees receive at their work. This record shall be kept in such manner as to enable representatives of the Division to determine by examining the record, the injury rate of the employee force for the period covered by the report. (7-1-97)

kl. Every employer shall investigate ~~or cause to be investigated~~ every accident resulting in a disabling injury that his employees suffer in connection with their employment. ~~He~~ Employers shall promptly take any required action ~~thus found~~ to ~~be advisable~~ correct the situation. Employees shall assist in the investigation by giving any information and facts they have concerning the accident. (7-1-97)()

02. Management Responsibility. (7-1-97)

a. ~~Top m~~ Management ~~must~~ shall take an active and interested part in the development and guidance of

the operation's safety program, including fire safety. (7-1-97)()

b. Management ~~must~~ shall apply a basic workable safety plan on the same priority as it does to any other work facet of the operation where elimination of all injuries is to be achieved in all phases of the operation. It is the duty of ~~top~~ management to assume full and definite responsibility. To attain these safety objectives, management ~~must~~ shall have the full cooperation of employers and the Division. (7-1-97)()

c. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish such devices and safeguards and shall adopt and use such practices, means, methods, operation and processes as are adequate to render such employment and places of employment safe to protect the life and safety of employees. The employer shall make available necessary personal protective safety equipment. (7-1-97)

d. Regular safety inspection of all rigging, logging, machinery, rolling stock, bridges, and other equipment shall be made as often as the character of the equipment requires. Defective equipment or unsafe conditions found shall be replaced, repaired or remedied. (7-1-97)

e. All places of employment shall be inspected by a qualified person or persons as often as the type of operation or the character of the equipment requires. Defective equipment or unsafe conditions found by these inspections shall be replaced or repaired or remedied promptly. (7-1-97)

010. EMPLOYEE'S RESPONSIBILITY.

01. General Requirements. (7-1-97)

a. Employees shall not indulge in horseplay, scuffling, practical jokes or any activity ~~which~~ that creates or constitutes a hazard while on the employer's property or at any time when being transported from or to work in facilities furnished by the employer. (7-1-97)()

b. Employees who are assigned to, or engaged in the operation of any machinery or equipment, shall ~~see~~ ensure that all guards, hoods, safety devices, etc., that are provided by the employer are in proper place and properly adjusted. (7-1-97)()

02. Employee Accidents. Each employee shall make it his individual responsibility to keep himself, his coworkers, and his machine or equipment free from accidents to the best of his ability. (7-1-97)

03. Study Requirements. So that each worker may be better qualified to cooperate with his fellow workmen in preventing accidents, he shall study and observe these and any other safety standards governing his work. (7-1-97)

04. Employee Responsibilities. ~~The~~ Additional responsibilities of an employee insofar as industrial safety is concerned shall be as follows: (7-1-97)()

a. The employee shall report immediately, preferably in writing, to his foreman or safety committee member in his department of the plant, all known unsafe conditions and practices. (7-1-97)

b. The employee shall ascertain from the foreman where medical help may be obtained if it is needed. (7-1-97)

c. The employee shall not participate in practical jokes or horseplay. (7-1-97)

d. The employee shall make a prompt report of every accident regardless of severity to the foreman, first aid attendant, or person in charge, ~~of every accident regardless of severity.~~ (Such reports are required and are necessary ~~for his protection~~ in order that there may be a record of his injuries.) (7-1-97)()

e. The employee shall at all times apply the principles of accident prevention in his daily work and shall use proper safety devices and protective equipment. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment, or interfere in any way

with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment, or fail or neglect to do every other thing reasonably necessary to protect the life and safety of himself and fellow employees, and by observing safe practice rules shall set a good example for his fellow workmen. (7-1-97)

f. The employee shall not report to the job ~~under the influence of~~ **impaired by** intoxicants **or legal or illegal drugs** and shall not use intoxicants **or such drugs** while on the job. The employer shall prohibit any employee from working on or being in the vicinity of any job while under the influence of or ~~affected~~ **impaired** by intoxicants **or drugs**. Employers shall be responsible for the actions of any employee known to be in an intoxicated **or impaired** condition while on the job. ~~(Workers are reminded that intoxication on the job may result in forfeiture of compensation for injury to say nothing of the hazard created to fellow workers.)~~ (7-1-97)()

~~**g.** The employee shall not be permitted to work while under the influence of hallucinatory drugs or chemicals or other drugs covered by the Federal Narcotics Act, unless such drugs or chemicals are prescribed by a licensed Medical Doctor, provided the employee does not create a hazard to himself or his fellow workers. (7-1-97)~~

h.g. The employee shall wear, use and properly care for personal protective safety equipment issued to him. These items shall be returned to the employer **up**on termination of employment. (7-1-97)()

h.h. Workers exposed to head hazards shall wear approved head protection. (7-1-97)

h.i. Proper eye protection shall be worn while **doing performing** work where a known eye hazard exists. (7-1-97)()

h.j. The employee should consider the benefits of accident prevention to himself and to his job. ~~(Safety-consciousness is the ability to anticipate accidents and a desire to prevent them.)~~ (7-1-97)()

h.k. The employee should make an effort to understand his job. ~~(An efficient worker understands the job, and studies everything pertaining to it.)~~ (7-1-97)()

h.l. The employee should anticipate every way in which a person might be injured on the job, and conduct the work to avoid accidents. (7-1-97)

h.m. The employee should be on the alert constantly for any unsafe condition or practice. ~~(An employee's own knowledge and interest in the work makes the best possible safety inspector.)~~ (7-1-97)()

h.n. The employee shall learn first aid ~~to be applied on the job, in the home, or anywhere else.~~ (3-29-10)()

h.o. The employee should keep physically fit, and obtain sufficient rest. (7-1-97)

h.p. The employee should be certain, ~~after receiving instructions,~~ that **they all instructions received** are understood completely before starting the work. (7-1-97)()

h.q. The employee should actively participate in safety programs. (7-1-97)

h.r. The employee should study the safety educational material posted on the bulletin boards and distributed by the employer or safety committee. (7-1-97)

h.s. The employee should advise inexperienced fellow-employees of safe ways to ~~do~~ **perform** their work and warn them of dangers to be guarded against. (7-1-97)()

h.t. It is the employer's responsibility to ~~see that~~ **ensure compliance with** the foregoing provisions ~~are complied with.~~ (7-1-97)()

011. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.02 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - HEALTH, SAFETY, AND SANITATION

DOCKET NO. 07-0802-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations to applicable standards or regulations, or replace outdated or unclear provisions related to common logging practices. Through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. The rulemaking identifies practices related to the provision of first aid and the proper contents of first aid kits. The rulemaking also amends provisions related to safety and fire equipment and the use of personal protective equipment.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0802-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt reasonable rules for affecting the purposes of the Workers' Compensation Act therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

There are no provisions for administrative appeal of these rules. The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

~~007.~~ -- 008. (RESERVED)

009. DEFINITIONS.

For definitions, refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging – General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. FIRST AID.

01. Transportation. (7-1-97)

a. Suitable means of transportation shall be established and maintained at the site of all operations to be used in the event any employee is seriously injured. (7-1-97)

- b. Transportation shall be of a nature to render reasonable comfort to an injured employee. (7-1-97)
- c. Each crew bus, or similar vehicle, shall be equipped with at least one (1) ~~ten-unit~~ first aid kit with the required contents as indicated in Subsection 010.06 of these rules. (7-1-97)()
- 02. Communication.** (7-1-97)
 - a. Every employer shall arrange suitable telephone or radio communication at the nearest reasonable point, and shall ~~work out a definite~~ establish an emergency action plan ~~of action~~ to be taken in the event of serious injury to any employee. (7-1-97)()
 - b. Instructions covering ~~this~~ the emergency action plan ~~of action~~ shall be made available to all work crews. (7-1-97)()
 - c. When ~~practical~~ practicable, a poster shall be ~~fastened and maintained either~~ displayed on, or ~~in~~ near the cover of each first aid cabinet ~~and at or near all~~ phones, ~~plainly stating. The poster shall display~~ the phone numbers of applicable emergency services. The use of the ~~Boise~~ Idaho State EMS Communication Center is recommended. The number is 1-800-632-8000 ~~or 208-846-7610.~~ (7-1-97)()
 - d. Every employer shall obtain their specific job location (longitude and latitude preferred) and furnish such to crew for emergency evacuation. (3-29-10)()
- 03. Attendance for Seriously Injured.** (7-1-97)
 - a. Seriously injured employees shall, at all times, be attended by the most qualified available person to care for the injured employees. (7-1-97)
 - b. Seriously injured employees shall be carefully handled and removed to a hospital, or given medical attention as soon as possible. (7-1-97)
 - c. Caution shall be used in removing a helpless or unconscious person from the scene of an accident to prevent further injury. (7-1-97)
- 04. First Aid Training.** All woods workers shall be required to complete an approved course in first-aid and have a current card. (3-29-10)
- 05. Stretcher or Spine Board.** A ~~stretcher or~~ spine board (designed for ~~and~~ or adaptable to the work location and terrain) and two blankets ~~kept~~ maintained in sanitary and serviceable condition shall be available where such conditions ~~are a factor in~~ require the use of such to provide for the proper transportation ~~of~~ and first aid to an injured workman. (7-1-97)()
- 06. First Aid Kits.** (7-1-97)
 - a. The employer shall provide first aid kits at each work site where trees are being felled, at each active landing, and in each employee transport vehicle. (3-29-10)
 - b. The following list sets forth the minimally acceptable number and type of first-aid supplies for required first-aid kits. The contents of the first-aid kits ~~should~~ shall be adequate for small work sites, consisting of approximately two (2) to three (3) employees. When larger operations or multiple operations are being conducted at the same location, additional first-aid kits ~~should~~ shall be provided at the work site or additional quantities of supplies ~~should~~ shall be included in the first-aid kits:

TABLE 010.06 SUGGESTED <u>REQUIRED</u> CONTENTS	
1.	Gauze pads (at least 4 x 4 inches)

TABLE 010.06 SUGGESTED REQUIRED CONTENTS	
2.	Two (2) large gauze pads (at least 8 x 10 inches)
3.	Box adhesive bandages (band-aids)
4.	One (1) package gauze roller bandage (at least two (2) inches wide)
5.	Two (2) triangular bandages
6.	Wound cleaning agent such as sealed moistened towelettes
7.	Scissors
8.	At least one (1) blanket
9.	Tweezers
10.	Adhesive tape
11.	Latex gloves
12.	Resuscitation equipment such as resuscitation bag, airway, or pocket mask
13.	Two (2) elastic wraps
14.	Splint
15.	Directions for requesting emergency assistance

(3-29-10)()

c. Special kits, or the equivalent, shall be provided and approved for special hazards peculiar to any given work location. (7-1-97)

d. ~~These~~ All kits, as applicable, shall be readily available and kept supplied. (7-1-97)()

e. First aid kits shall be in metal, or other sanitary containers. Such containers shall be designed and constructed so as to be impervious to conditions of weather, dust, dirt, or other foreign matter. (7-1-97)

011. SAFETY EQUIPMENT AND PERSONAL PROTECTIVE EQUIPMENT.

01. General Requirements. (7-1-97)

a. Special protective equipment or apparel required for safe employment, other than clothing or equipment customarily supplied by employees, shall be furnished by the employer where necessary for the safety of employees. (7-1-97)

b. Employees are required to utilize all prescribed safety equipment and special protective equipment or apparel, and they shall exercise due care in maintaining it in safe, efficient and sanitary conditions. (7-1-97)

c. Defective safety equipment shall not be used. Where the need for their use is indicated, protective covering, ointments, gloves or other effective protection shall be provided for and used by persons exposed to materials ~~which~~ that are irritating to the skin. (7-1-97)()

02. Inspection, Maintenance and Sanitizing. (7-1-97)

a. Each employer shall maintain a regular system of inspection and maintenance of personal protective equipment furnished to workers. (7-1-97)

b. Air line equipment shall have a necessary regulator and shall be inspected before each use. (7-1-97)()

- c. Workers shall check their equipment at the beginning of each shift. (7-1-97)
- 03. Eye Protection.** (7-1-97)
- a. Where workers are subject to eye hazards (flying particles, dusts, hazardous liquids, gases, mists or vapors, or injurious light rays) they shall be furnished with and shall wear eye protection suitable for the hazards involved. Such eye protection shall conform to the American National Standard Institute standards for Head, Eyes and Respiratory protection. (7-1-97)
- b. Face shields may be used in lieu of other forms of eye protection where the nature of the operation is such that they will furnish equivalent protection. (7-1-97)
- c. Clean water in ample quantities shall be immediately available where materials are handled that are caustic or corrosive to the eyes. (7-1-97)
- 04. Foot and Leg Protection.** (7-1-97)
- a. Employees shall wear footwear suitable for the work conditions. (7-1-97)
- b. Employees shall wear sharp caulk-soled boots or other footwear which will afford maximum protection from slipping. (7-1-97)
- c. Special types or designs of shoes, or foot guards, ~~may~~ **shall** be required to be worn where conditions exist that make their use necessary for the safety of the workers. (7-1-97)()
- d. Leggings or high boots of leather, rubber or other suitable material ~~should~~ **shall** be worn by climbers, persons exposed to hot substances, or caustic solutions, etc., or where poisonous snakes may be encountered. (7-1-97)()
- e. Employees whose duties require them to operate a chain saw shall wear ballistic nylon or equivalent protection covering each leg from upper thigh to boot top, except when working as a climber or working from a bucket truck. (3-29-10)
- 05. Hand Protection.** (7-1-97)
- a. Hand protection suitable for the required usage ~~should~~ **shall** be worn wherever the nature of the work requires extra protection for the hands. (7-1-97)()
- b. Gloves shall not be worn where their use would create a hazard. (7-1-97)
- 06. Head Protection.** (7-1-97)
- a. Persons required to work where falling or flying objects, overhead structures, exposed electrical conductors, equipment or material create a hazard shall wear approved safety hard hats or caps at all times while exposed to such hazards. (7-1-97)
- b. Employees working in locations which present a ~~hair~~ catching or fire hazard ~~to hair~~ shall wear caps or other head ~~covering protection which that~~ completely covers the hair. (7-1-97)()
- 07. Life Jackets, Vests and Life Rings.**
- NOTE:* Where ~~buoyant protective~~ **personal buoyancy** equipment is provided, it shall be of a design and shall be worn in a manner that will ~~tend to~~ maintain the wearer's face above water. It shall be capable of floating a sixteen (16) pound weight for three (3) hours in fresh water. Such equipment shall not be dependent upon manual or mechanical manipulation or chemical action to secure the buoyant effect. (7-1-97)()
- a. Employees shall be provided with, and shall wear, approved buoyant protective equipment at all

times while working on or over water, as follows: (7-1-97)

- i. On floating pontoons, rafts and floating stages. (7-1-97)
- ii. On open decks of floating plants (such as dredges, pile-drivers, cranes, pond saws, and similar types of equipment) which are not equipped with bulwarks, guardrails or life lines. (7-1-97)
- iii. During the construction, alteration or repair of structures extending over or adjacent to water, except when guardrails, safety nets, or safety belts and life lines are provided and used. (7-1-97)
- iv. Working alone at night where there are potential drowning hazards regardless of other safeguards provided. (7-1-97)
- v. On floating logs, boom sticks or unguarded walkways. (7-1-97)

b. Life rings with sufficient line attached to meet conditions shall be located at convenient points along exposed sides of work areas adjacent to water. Such rings, if used at night where a person might be beyond illuminated areas, ~~should~~ shall be provided with a means of rendering them visible.

NOTE: Consult U.S. Coast Guard requirements for operations in navigable waters. (~~7-1-97~~)()

08. Life Lines -- Safety Belts. (7-1-97)

a. Each life line and safety belt shall be of sufficient strength to support, without breaking, a weight of two thousand five hundred (2,500) pounds. (7-1-97)

b. All life lines and safety belts shall be periodically inspected by the supervisor in charge. Employees shall inspect their belts and lines daily. Any defective belts or life lines shall be discarded or repaired before use. (7-1-97)

c. Life lines shall be safely secured to strong stable supports and maintained with minimum slack. (7-1-97)

09. Work Clothing. (7-1-97)

a. Clothing shall be worn which is appropriate to work performed and conditions encountered. (7-1-97)

b. Loose sleeves, cuffs or other loose or ragged clothing shall not be worn near moving machinery. (7-1-97)

c. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritants or oxidizing agents shall be removed immediately and not worn again until properly cleaned. (7-1-97)

d. When it is necessary for workers to wear aprons or similar clothing near moving machines or hazardous materials, such clothing shall be so arranged that it can be instantly removed. (7-1-97)

e. Clothing with exposed metal buttons, metal visors or other conductive materials shall not be worn around exposed electrical conductors. (7-1-97)

10. Respiratory Equipment. (7-1-97)

a. When filter or cartridge-type respirators are required to be used regularly, each employee shall have one such respirator for his own exclusive use. (7-1-97)

b. Employers and employees shall familiarize themselves with the use, sanitary care and limitations of such respiratory equipment as they may have occasion to use. (7-1-97)

c. Whenever practical, harmful dusts, fumes, mists, vapors and gases shall be suppressed by water, oil or other means which will minimize harmful exposure and permit employees to work without the use of respiratory equipment. (7-1-97)

d. Whenever compressed air from an oil-lubricated compressor is used to supply respiratory equipment, a filter shall be inserted in the supply line to remove any oil, sediment or condensation that it may contain. Such filter shall be maintained in efficient working condition. (7-1-97)

e. When self-contained respiratory equipment is used in hazardous locations, a standby unit shall be maintained for rescue purposes. (7-1-97)

11. Hearing Protection. Where workers are subject to hazardous noise levels, they shall be furnished with and shall wear hearing protection suitable for the level of hazard involved. (7-1-97)

12. Additional Information and Requirements. Additional information and requirements for the use of safety equipment and personal protective equipment may be found in the Safety and Health Standards *for Places of Public Employment*, established in IDAPA 07.09.01, “Safety and Health Rules for Places of Public Employment.” (7-1-97)()

012. FIRE PREVENTION, PROTECTION AND SUPPRESSION.

01. General Requirements. (7-1-97)

a. Additional Standards pertinent to the storage, distribution, and use of liquefied petroleum gases and other flammables or combustibles may be obtained by reference to regulations of the Idaho Department of Law Enforcement State Fire Marshal and the National Fire Protective Association pamphlets. (7-1-97)()

b. Fire fighting equipment, suitable for the hazards involved, shall be provided for the protection of workmen. Such equipment shall be readily accessible, and shall be plainly labeled as to its character and method of operation. Locations of such equipment shall be conspicuously posted. (7-1-97)

c. All equipment and apparatus for fire protection and fire fighting shall be regularly inspected and be maintained in good and serviceable condition at all times. A record of the date of the latest inspection shall be kept with each portable fire extinguisher. This includes all automatic sprinkler systems and hose lines. (7-1-97)

d. Fire extinguishers, whether portable or automatic, shall comply with appropriate current standards as published by the National Fire Protection Association. Portable fire extinguishers shall also be subject to an annual maintenance inspection by the Division. They must also be visually inspected by the employer each month, and such inspections documented. (7-1-97)()

e. Electrical lights, apparatus, and wiring used in locations where flammable or explosive gases, vapors, mists, or dusts are present shall be of the type accepted by the State adopted Electrical Code for the State of Idaho. (7-1-97)()

f. Smoking while refueling equipment is prohibited. (7-1-97)

g. All fuel storage tanks, service tanks, etc., shall be bonded for ground for fueling purposes. (7-1-97)

h. When lights are used in enclosed rooms, vaults, manholes, tanks or other containers which may contain flammable or explosive vapors, mists, gases, or dusts, such lights shall be of the approved vapor proof types. (7-1-97)

i. No torch, flame, arc, spark, or other source of ignition shall be applied to any tank or container that has contained or does contain flammable or explosive vapors or materials until such container has been made to be inerted or otherwise purged of flammable or explosive vapors or materials, except that “hot tapping” on tanks may be done providing that: (7-1-97)()

- i. There shall be at least four (4) feet of liquid above the point of the “hot tap”; and (7-1-97)
- ii. ~~That~~ The work shall be carried out under the direction of a supervisor experienced in this type of work. (7-1-97)()

NOTE: A test for flammability or explosiveness of the interior of such vessels shall be made using a device which will determine the concentration of flammable vapors for this purpose. Unless the percentage of flammable vapors is found to be less than twenty percent (20%) of its lower explosive limit, no source of ignition shall be permitted. (7-1-97)

j. Frequent testing for determining the concentration of flammable and explosive vapors shall be made, and if the concentration is found to exceed twenty percent (20%) of its lower explosive limit, sources of ignition shall be extinguished or removed immediately. Fire extinguishing equipment adequate to cope with possible hazards shall be maintained close at hand. (7-1-97)

k. Smoking, the use of open flames, tools which are not approved for such areas, and other sources of ignition are prohibited in locations where flammable or explosive gases, vapors, mists, or dusts are present. Warning signs shall be conspicuously posted in such areas. (7-1-97)

l. Where salamanders and other fuel-burning heating devices are used, they shall be provided with adequate means for preventing the emission of sparks or other sources of ignition. ~~They~~ Such devices shall be insulated or placed a sufficient distance from combustible structures and materials to prevent causing fires. Adequate ventilation shall be provided. (7-1-97)()

m. When welding or cutting is done special precautionary measures ~~should~~ shall be exercised before, during and after the job is finished to eliminate any possibility of ~~serious~~ immediate or delayed fires. (7-1-97)()

02. Flammable Liquids. (7-1-97)

a. For the purpose of this ~~S~~section ~~of the Rule~~, “Flammable Liquids” shall mean any liquid having a flash point below one hundred forty (140) degrees Fahrenheit and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) at one hundred (100) degrees Fahrenheit. (7-1-97)()

b. All flammable liquids shall be stored in approved containers suitable for their particular contents, and such approved containers shall be stored in areas removed from any direct source of ignition. (7-1-97)

c. Flammable liquids shall be kept in approved covered containers when not in actual use. (7-1-97)

d. The name of the flammable liquid contained therein shall be placed on all stock containers, and whenever such liquids are taken from the stock containers and put into other approved containers for use ~~in the plant~~, it shall be the responsibility of the employer to ~~see~~ ensure that these containers (except small containers of flammable liquids which are scheduled for immediate use and disposal) also bear the name of the flammable liquid contained therein. (7-1-97)()

e. Flammable liquids shall not be used indoors to clean or wash floors, walls, any part of ~~the a~~ building structure, furniture, equipment, machines or machine parts, unless sufficient ventilation is provided to bring and maintain the concentration of explosive vapors in the atmosphere below twenty percent (20%) of its lower explosive limit.

NOTE: The use of flammable liquids may create toxic contaminants in the atmosphere above permissible threshold limit values. (7-1-97)()

03. Transferring Flammable Liquids and Powdered Materials. In transferring flammable liquids or finely divided flammable or explosive materials from one ~~(+) metal~~ container to another, the containers shall be in firm contact with each other or be continuously bonded throughout the transfer so as to prevent the accumulation of static charges. Where portable tanks, mixers, or processing vessels are used for flammable liquids or flammable or explosive compounds, they shall be bonded and grounded while being filled or emptied. (7-1-97)()

04. Transportation of Flammable Liquids. (7-1-97)

a. When transporting gasoline or other flammable liquids ~~in six and one-half (6 1/2) gallon quantities or more~~, approved containers shall be used. (7-1-97)()

b. If tank truck service is not available or used, gasoline and other flammable liquids ~~in quantities exceeding six and one-half (6 1/2) gallons~~ shall be transported in approved containers. Bungs shall be tight and containers shall be secured to prevent movement. (7-1-97)()

c. It may be permissible to transport gasoline or other flammable liquids on passenger vehicles if in approved, closed safety containers of not more than six and one-half (6 1/2) gallon capacity, provided such containers are carried in a suitable and safe location outside the passenger compartment. (7-1-97)

013. DESIGNATED LOGGING CAMPS.

A camp used in a logging operation shall comply with the following requirements: (7-1-97)

01. Trees and Snags. Trees and snags ~~which~~ that may constitute a hazard to persons in the camp area shall be felled. (7-1-97)()

02. Sanitation. The Idaho Department of Environmental Quality rules for sanitation must be observed as to water, toilets, washrooms, refuse, etc. (7-1-97)

014. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.03 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - EXPLOSIVES AND BLASTING

DOCKET NO. 07-0803-1601 (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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. The provisions contained therein the rules related to explosives and blasting are outdated, and no longer applicable to the logging industry as the overwhelming majority of loggers do not engage in the practice, but instead contract such work out to professionals who are properly trained and qualified to do so. Through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking.

This rulemaking would repeal IDAPA 07.08.03 from the logging safety rules related to the use, handling, transportation, and storage of explosive and blasting agents and practices related thereto.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.04 - MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - GARAGES, MACHINE SHOPS, AND RELATED WORK AREAS

DOCKET NO. 07-0804-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. This rulemaking also makes several minor edits to clarify several provisions related to the use of garages and machine shops in support of logging operations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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Division of Building Safety
1090 E. Watertower St., Ste. 150
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Meridian, ID 83642
Phone: (208) 332-8986 / Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0804-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein.
(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

~~007.~~ -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. GARAGES AND MACHINE SHOPS AND RELATED AREAS.

01. General Requirements. (7-1-97)

a. Machine shops and other structures where workers are employed shall be constructed, ventilated, lighted and maintained in a safe working condition. (7-1-97)

b. Engines, pulleys, belts, gears, sprockets, collars and other moving parts of machinery shall be properly guarded. (7-1-97)

c. Grinding wheels shall have proper and adequate eye guards or hoods. Face shields shall be worn by employees while grinding. (7-1-97)

- d. Machines shall be in good repair and good housekeeping shall be maintained. (7-1-97)
- e. Proper goggles or hoods shall be made available and used in grinding and cutting, acetylene welding, electric arc and other types of welding. (7-1-97)
- f. Tools shall be kept in good condition and care shall be taken in the handling- and storing of all tools and materials so as to minimize chances for injury. ~~(7-1-97)~~()
- g. An approved screen shall be provided, and used, to protect other workers from welding flashes. (7-1-97)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.05 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - SIGNALS AND SIGNAL SYSTEMS

DOCKET NO. 07-0805-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. This rulemaking also makes revisions to and clarifies several of the requirements related to signaling and radio signal systems as used in logging operations.

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

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

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Meridian, ID 83642
Phone: (208) 332-8986 / Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0805-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

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009. DEFINITIONS.

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010. GENERAL REQUIREMENTS.

- 01. Rigging.** (7-1-97)
 - a.** Rigging shall be moved by established signals and procedures only. (7-1-97)
 - b.** Signals shall be thoroughly understood by the crew. (7-1-97)
- 02. Daily Test Required.** Each electric or radio signal system shall be tested daily before operations begin. (7-1-97)
- 03. Personnel in Clear Before Moving Logs or Turns.** (7-1-97)

a. Operators of yarding equipment shall not move logs or turns until all personnel are in the clear and a signal has been given. (7-1-97)

b. Operators of yarding equipment shall be alert to signals at all times. (7-1-97)

011. SIGNALING.

01. One Worker to Give Signals. (7-1-97)

a. ~~The~~ Worker sending drag shall be the only one to give signals. ~~(3-29-10)~~()

b. Any person is authorized to give a stop signal when a worker is in danger or other emergency conditions are apparent. ~~(7-1-97)~~()

02. Signal Must Be Clear and Distinct. (7-1-97)

a. Machine operators shall not move any line unless the signal received is clear and distinct. (7-1-97)

b. If in doubt the operator shall repeat the signal as understood and wait for confirmation. (7-1-97)

03. Hand Signal Use Restricted. (7-1-97)

a. Hand signals are permitted only when in plain sight of the operator. (7-1-97)

b. Hand signals may be used at any time as an emergency stop signal. (7-1-97)

04. Persons in Clear Before Signal Given. All persons shall be in the clear before a signal is given to move logs or turns. (7-1-97)

05. Throwing Material Prohibited. Throwing of any type of material as a signal is prohibited. (7-1-97)

06. Use of Jerk Wire Prohibited. The use of a jerk wire whistle system for any type of yarding operations is prohibited. ~~(7-1-97)~~()

07. Audible Signaling to Be Installed and Used. A whistle, horn or other audible signaling device, clearly audible to all persons in the affected area, shall be installed and used on all machines operating as yarders. (3-29-10)

08. Audible Signaling Device at the Machine to Be Activated. When radio or other means of signal transmission is used, an audible signal must be activated at the machine. (7-1-97)

012. ELECTRIC SIGNAL SYSTEMS.

01. Weatherproof Wire and Attachments to Be Used. Where an electrical signal system is used, all wire and attachments shall be of the weather proof type. (7-1-97)

02. Electric Signal Systems to Be Properly Installed and Adjusted. Electric signal systems shall be properly installed and adjusted ~~again~~ as necessary. They shall be protected against accidental signaling, and shall be maintained in good operating condition at all times. ~~(7-1-97)~~()

03. All Connections to Be Weatherproof. All connections in insulated signal wire shall be weatherproof. (7-1-97)

013. RADIO SIGNALING SYSTEMS.

01. Use of Conventional Space Transmission of Radio Signals. When conventional space

transmission of radio signals is used under and in accordance with an authorization granted by the Federal Communications Commission to initiate any whistle, horn, bell or other audible signaling device, or such transmission of radio signals is used to activate or control any equipment, the following specific rules contained in this section will apply.

NOTE: This rule shall apply only to devices operating on radio frequencies authorized pursuant to the rules and regulations of the Federal Communications Commission. ~~(7-1-97)~~()

02. Description on Outside of Case. (7-1-97)

a. Each radio transmitter and receiver shall have its tone frequency(s) in hertz (CPS), the manufacturer's serial number, and the assigned radio frequency clearly and permanently indicated on the outside of the case. (7-1-97)

b. When the duration of ~~the a~~ tone frequency~~(s)~~ performs a function, the pulse-tone duration shall also be permanently indicated on the outside of the case. ~~(7-1-97)~~()

c. On the FCC restricted frequencies one hundred fifty-four point fifty-seven (154.57) MHZ and one hundred fifty-four point sixty (154.60) MHZ, a maximum of two (2) watts of power will be allowed. (7-1-97)

03. Activating Pulse-Tone Limitations. The activating pulse-tone of any multi-tone transmitter shall be of not more than forty (40) milliseconds duration. (7-1-97)

04. Adjustment, Repair or Alteration. All adjustments, repairs or alterations of radio-signaling devices shall be done only by or under the immediate supervision and responsibility of a person holding a first or second class commercial radio operator's license, either radio-telephone or radio-telegraph, issued by the Federal Communications Commission. (7-1-97)

05. Testing of Tone-Signal Controlled Devices. (7-1-97)

a. Tone-signal controlled devices shall be tested each day before work begins. If any part of the equipment fails to function properly, the system shall not be used until the source of trouble is detected and corrected. (7-1-97)

b. Audible signals used for test purposes shall not include signals used for movement of lines or material.

NOTE: Equipment or machines controlled by radio-signaling devices ~~should~~ shall be designed and built to "fail safe" or stop, in case of failure of the radio-signaling device. ~~(7-1-97)~~()

06. Interference, Overlap, Fade-Out or Blackout. When interference, overlap, fade-out or blackout of radio signals is encountered, the use of the tone-signal controlled device shall be immediately discontinued. The use of such tone-signal controlled device shall not be resumed until the source of trouble has been detected and corrected. (7-1-97)

07. Number of Transmitters Required. (7-1-97)

a. Two (2) radio transmitters shall be in the vicinity of the rigging crew at all times when transmitters are being used by persons who are around the live rigging. (7-1-97)

b. Only one (1) radio transmitter ~~with~~ shall be required, if in possession of a signalman who has no other duties and remains in an area where he is not subjected to hazards created by moving logs or rigging. ~~(7-1-97)~~()

08. Voice Communication. (7-1-97)

a. Voice Communication shall be used for explanation purposes only. (7-1-97)

b. Actual activation of equipment shall be done by audible horn, bell or whistle and not by voice. (7-1-97)

c. The signal must be audible throughout the entire yarding and machine area. (7-1-97)

014. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.06 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - TRUCK ROAD STANDARDS

DOCKET NO. 07-0806-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. This rulemaking also makes revisions to and clarifies several of the requirements related to the safe construction of logging roads, and the safe operation of equipment thereupon.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
Phone: (208) 332-8986 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0806-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt ~~reasonable~~ rules for effecting the purposes ~~of the Workers' Compensation Act~~ therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

00~~7~~. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging – General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. TRUCK ROAD STANDARDS.

01. Building Roads. (7-1-97)

a. When building roads, all construction shall be carried on in accordance with good logging engineering practices and shall be constructed and maintained in a manner to insure reasonably safe operation. (7-1-97)

b. ~~The D~~ue consideration shall be given to the following factors: (7-1-97)()

i. ~~The T~~ype of material used for roadbed and surfacing. (7-1-97)()

ii. ~~The T~~ype of hauling equipment which will travel road. (7-1-97)()

iii. ~~The S~~ize of loads to be hauled. (7-1-97)()

- iv. ~~The P~~pitch and length of grades. (7-1-97)()
- v. ~~The D~~egree of curvature and visibility on turns. (7-1-97)()
- vi. ~~The V~~olume of traffic. (7-1-97)()
- c. Truck roads shall not be too steep for safe operation of logging, or work trucks which operate over them, and should not exceed twenty percent (20%) grade unless an auxiliary means of truck lowering is provided. (7-1-97)
- d. Sufficient turnouts shall be provided and a safe side clearance maintained along all truck roads. (7-1-97)
- e. Brush and other materials that obstruct the view at intersections or on sharp curves shall be eliminated and all possible precautions taken. (7-1-97)
- f. Culverts and bridge structures shall be adequate to support the maximum imposed loads without exceeding the maximum safe working unit stresses. Such structures shall be maintained in good condition and shall be inspected ~~yearly~~ annually by a qualified ~~man~~ individual. (7-1-97)()
- g. Dangerous trees, snags and brush, which may create a hazard, shall be cleared a safe distance on both sides of the right-of-way. (7-1-97)()
- 02. Main Truck Roads.** (7-1-97)
- a. Main truck roads shall be of sufficient width and evenness to insure the safe operation of equipment. (7-1-97)
- b. Truck roads with blind curves where visibility is less than three hundred (300) feet shall be of sufficient width for two (2) trucks to pass ~~or~~ controlled by some type of signal system ~~shall be maintained~~, or speed shall be limited to fifteen (15) miles per hour. (7-1-97)()
- c. Conditions such as broken planking, deep holes, large rocks, logs, etc., which prevent the safe operation of equipment shall be immediately corrected. (7-1-97)
- d. Wheel guard rails on bridges shall be not less than eight (8) inches above deck and shall be substantially fastened to withstand impact of shearing wheels. Such guard rails shall extend the full length of the bridge. (7-1-97)()
- 03. Operation of Equipment.** ~~Pile Drivers, power driven shovels~~ Excavators, tractors, bulldozers, and other equipment shall be operated in a safe and careful manner. All precautions shall be taken to insure the safety of all employees. (7-1-97)()
- 011. -- 999. (RESERVED)**

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.07 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - TRANSPORTATION OF EMPLOYEES

DOCKET NO. 07-0807-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. This rulemaking also makes revisions to and clarifies several of the requirements related to the safe transportation of employees during logging operations, including emergency situations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
Phone: (208) 332-8986 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0807-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt reasonable rules for affecting the purposes ~~of the Workers' Compensation Act~~ therein.
(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code.
(7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

0047. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms."
(7-1-97)()

010. TRANSPORTATION OF EMPLOYEES.

01. General Requirements. (7-1-97)

- a. Anchored seats and seat belts shall be provided for each person riding in any vehicle. (7-1-97)
- b. Vehicles used for the transportation of employees shall be constructed, or accommodated, for that purpose, and shall be equipped with adequate seats with back rests properly secured in place, ~~and~~ Vehicles shall be protected on their sides and ends to prevent fall~~ing~~ ing from the vehicle. (7-1-97)()
- c. Vehicles, as described above, shall be equipped with adequate steps, stirrups, or other similar devices, so placed and arranged that the employees can safely mount or dismount the vehicle. (7-1-97)
- d. ~~On~~ Vehicles designed to transport nine (9) or more passengers, shall be equipped with an

emergency exit not less than six and one-half (6 1/2) feet in area, with the smaller dimension being not less than eighteen (18) inches. ~~Such exit~~ shall be placed at or near the back of the vehicle ~~or near the back~~ on the side opposite the regular entrance. The route to and egress from the exit must be unobstructed. (7-1-97)()

e. Every emergency exit shall be conspicuously marked "Emergency Exit," and be so fastened that it can be readily opened by a passenger in the case of emergency. (7-1-97)

f. Emergency doors shall be not less than twenty-four (24) inches in width. (7-1-97)

g. Every vehicle used for the transportation of employees shall be equipped with an Underwriters Laboratories, Inc. approved fire extinguisher, or its equivalent, with at least a four (4) BC rating. (7-1-97)

h. ~~Regular~~ All drivers of vehicles used for the transportation of employees shall have an appropriate operator's license for the state of Idaho. (7-1-97)()

i. ~~Before operating any vehicle, a~~ Drivers shall ~~check it, and~~ inspect vehicles before operating them. ~~If # a vehicle~~ is found to be ~~in any way~~ unsafe, it shall be reported to a proper authority and shall not be operated until it has been made safe. (7-1-97)()

j. Brakes, steering mechanism and lights shall be tested immediately before starting any trip. (7-1-97)

k. No flammable materials, or toxic substances shall be transported in passenger compartments of vehicles while carrying personnel. (7-1-97)

l. ~~Should it become necessary, and only under emergency conditions, to t~~Transporting more individuals than the seating capacity ~~in of~~ the vehicle, is permitted only under emergency conditions. Should it become necessary in an emergency, all employees not having seats must ride within the vehicle. (7-1-97)()

m. Under no circumstances shall employees ride on fenders or running boards. (7-1-97)

n. An employee must never ride in, or on, any vehicle with his legs hanging over the end or sides. (7-1-97)

o. If tools are transported at the same time that employees are being transported, the tools shall be enclosed in boxes or racks and properly secured to the vehicle. (7-1-97)

p. No one shall board, or leave, moving equipment except in the case of an emergency (except trainmen or others whose duties require such). (7-1-97)()

q. Equipment shall be operated in a safe manner and in compliance with traffic regulations. Safe speeds shall be maintained at all times. (7-1-97)

r. No explosives shall be transported on, or in, vehicles used primarily for carrying personnel while such vehicles are being used for carrying personnel. (7-1-97)

s. The driver shall do everything reasonably possible to keep ~~the crew~~ vehicles s under control at all times, and shall not operate in vehicles at excessive of a speeds at which the driver can stop the vehicle in one-half (1/2) the distance between the vehicle and the range of unobstructed vision. The driver shall take into consideration the condition of the roadway, weather factors, curves, grades and grade crossings, the mechanical condition of the vehicle and equipment and other pertinent items. The driver shall clear rocks from between dual tires before driving on multi-lane roads. A daily inspection shall be made of trucks and trailers with particular attention to steering apparatus, brakes, boosters, brake hoses and connections, reaches and couplings. Any defects found shall be corrected before the equipment is used. (7-1-97)()

011. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.08 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - FALLING AND BUCKING

DOCKET NO. 07-0808-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify and edit rule provisions, provide updated references and citations, or replace outdated or unclear provisions related to common logging practices. Through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. It also provides several amendments to clarify and update provisions related to the safe cutting and falling of trees, and the use of mechanical delimiters and felling equipment. Finally, several provisions which illustrate and identify the proper cutting techniques of some common cutting methods are updated.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0808-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2061A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt ~~reasonable~~ rules for affecting the purposes ~~of the Workers' Compensation Act~~ therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

~~There are no documents that have been incorporated by reference into these rules.~~ ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

0047. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. FALLING AND BUCKING.

01. General Requirements. (7-1-97)

a. There shall be an established method of checking ~~in~~ the workers ~~in~~ from the woods. Each

supervisor shall be responsible for their crew being accounted for at the end of each shift. (7-1-97)()

b. Cutters not in sight of another employee shall have radio communications with crew members on that job site. ()

b.c. Common sense and good judgment must govern the safety of cutters as effected by weather conditions. At no time shall they work if wind is strong enough to prevent the falling of trees in the desired direction, or when vision is impaired by weather conditions or darkness. (7-1-97)

e.d. All cutters shall have a current first aid ~~card~~ certification. Employers shall provide an opportunity for cutters to take a standard first aid course. (3-29-10)()

e.e. Tools of cutters such as axes, sledges, wedges, saws, etc., must be maintained in safe condition. Battered sledges, and wedges shall not be used. When power saws are used, wedges shall be made of soft material, such as wood or plastic. (7-1-97)

e.f. Cutters shall not be placed on hillsides immediately below each other or below other operations where there is possible danger. (7-1-97)

f.g. Trees shall not be felled if a falling tree endangers any worker, line, or any unit in operation. (7-1-97)

g.h. Before starting to fall or buck any tree or snag, the cutter must survey the area for possible hazards and proceed according to safe practices. Snags, which are unsafe to cut, shall be blown down with explosives, or felled by other methods. (7-1-97)

h.i. Dangerous or hazardous snags shall be felled prior to or in the course of cutting a strip. No danger tree shall be felled by one (1) cutter where and when the assistance of a fellow employee is necessary to minimize the danger or hazards involved. In the case that any danger tree or snag cannot be safely felled and must remain standing or unattended, such tree or snag shall be clearly identified and suitably marked, including all surrounding impact area, and the employee's supervisor shall be notified as soon as possible. (7-1-97)

i.j. In falling timber, adjacent brush and ~~or~~ snow shall be cleared away from and around the tree to be felled to provide sufficient room to use saws and axes and provide an adequate escape path. (7-1-97)()

j.k. Cutters shall not fall into another strip; leaners on the line shall be traded. Trees shall be felled into the open whenever conditions permit. (7-1-97)

k.l. Undercuts and side cuts shall be large enough to safely guide the trees and eliminate the possibility of splitting and ~~or~~ barber chairing. Particular care shall be taken to hold enough wood to prevent the tree from prematurely slipping or twisting from the stump. Undercuts shall be cleaned out to the full depth of the saw cut. Especially large undercuts are necessary in heavy leaners. When required to safely fell a tree, mechanical or other means shall be employed to accomplish this objective. Pre-cutting of trees for the purpose of production logging is prohibited.

NOTE: Trees with no perceptible lean having an undercut to a depth of one quarter (1/4) of the diameter of the tree with an undercut height equal to one fifth (1/5) of the diameter of the tree will be assumed to be in reasonable compliance with ~~the~~ this rule. (7-1-97)()

l.m. Back-cuts shall be above the level of the upper horizontal cut of the undercut. (3-29-10)

m.n. While wedging, fallers shall watch for limbs or other material which might be jarred loose. Cutting of holding wood in lieu of using wedges is prohibited. (7-1-97)

n.o. When falling or bucking a tree is completed the power saw motor should be stopped. ~~The P~~ power saw motor ~~should~~ shall be stopped while the operator is traveling to the next tree. (7-1-97)()

~~p~~**p.** Cutters shall not work on the downhill side of the log being bucked unless absolutely unavoidable and only when the log is blocked or otherwise secured to prevent rolling when cut is completed. (7-1-97)

~~q~~**q.** Cutters must give timely warning to all persons within range of any log which may have a tendency to roll or slide after being cut off. (7-1-97)

~~r~~**r.** Logs shall be completely bucked through whenever possible. If it becomes hazardous to complete a cut, then the log shall be marked and identified by a predetermined method. Rigging crews shall be instructed to recognize such marks and when possible cutters shall warn rigging crew of locations where such unfinished cuts remain. (7-1-97)()

~~s~~**s.** A competent person properly experienced in this type of work shall be placed in charge of falling and bucking operations. Inexperienced workers shall not be allowed to fall timber or buck logs unless under the direction of ~~an~~ experienced workers. (7-1-97)()

~~t~~**t.** Power saws shall be kept in good repair at all times. All exhaust parts on power chain saws shall be constructed and maintained so the operator is exposed to a minimum amount of fumes and noise. (7-1-97)

~~u~~**u.** ~~Chain saws shall have sprockets and drive end of the bar adequately guarded. Idler ends, when used as two man saw, shall also be guarded.~~ (7-1-97)

~~v~~**v.** ~~Combustion engine driven power saws shall be equipped with a clutch. Saws with faulty clutches shall not be used.~~ (7-1-97)

~~w~~**w.** Combustion engine driven power saws shall be equipped with an automatic throttle which will return the motor to idling speed upon release of the throttle. (7-1-97)

~~x~~**x.** Power saw motors shall be stopped while being fueled. (7-1-97)

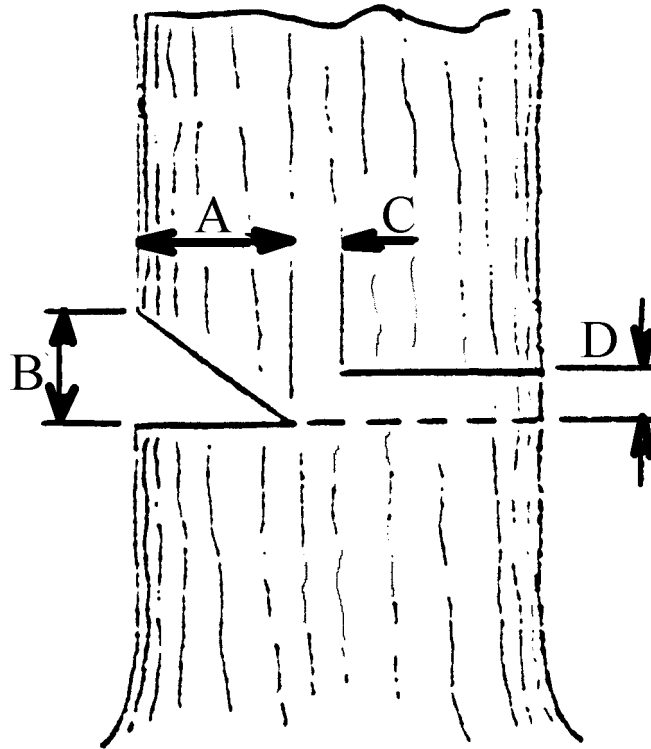
~~y~~**y.** All personnel shall wear approved head protection, proper clothing and footwear. (7-1-97)

~~z~~**z.** Employees, whose normal duties require them to operate a chain saw, shall wear ballistic nylon or equivalent protection covering each leg from upper thigh to boot top except when working as a climber or working from a bucket truck. (7-1-97)

011. ILLUSTRATION OF UNDERCUTS.

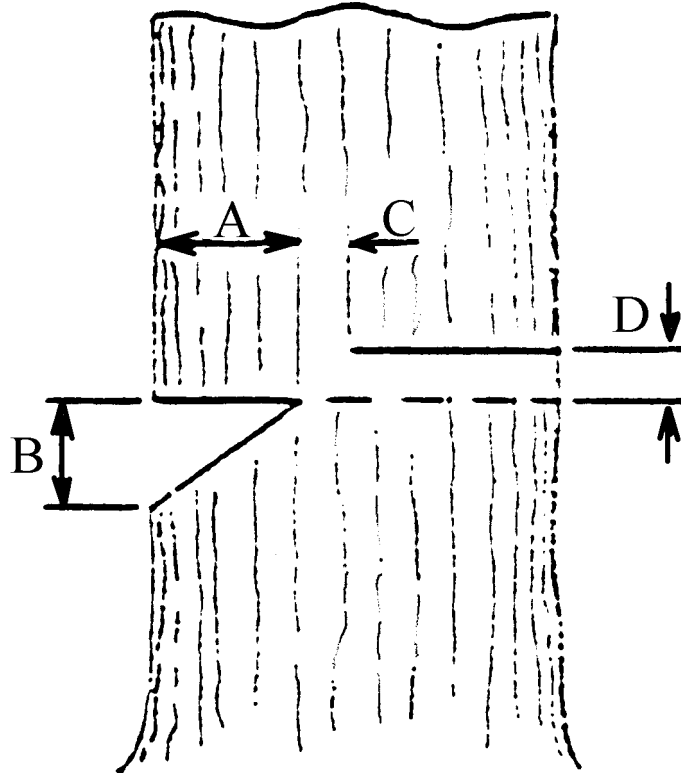
01. Illustration of Undercuts. (7-1-97)

FIGURE 011.01-A - CONVENTIONAL UNDERCUT



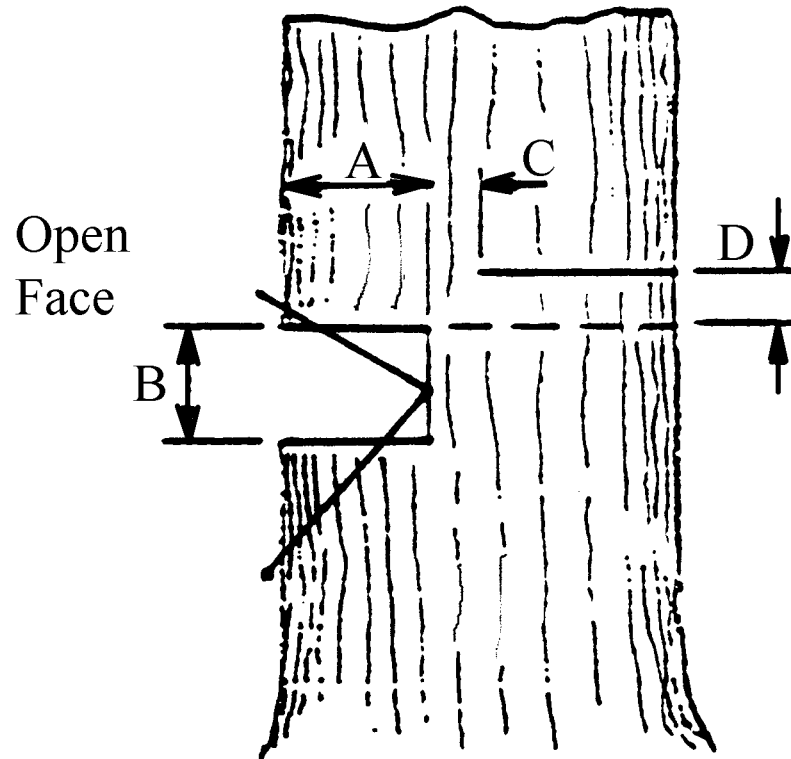
a. Conventional Undercut (~~Figure 011.01 A~~) ~~Can~~ May be made with parallel saw cut and a diagonal cut. Backcut (D) shall be above undercut. (~~3-29-10~~)()

FIGURE 011.01-B - HUMBOLT UNDERCUT



b. Humbolt Undercut (~~Figure 011.01-B~~). A cut in which B both cuts made with the saw (~~Figure 011.01-B~~) leaves a square end log (See Figure 011.01-B). The cut is the same as a conventional cut (See Figure 011.01-A) except that waste is on the stump. Backcut (D) shall be above undercut. (~~3-29-10~~)()

FIGURE 011.01-C - OPEN FACE UNDERCUT



c. Open Face Undercut (~~Figure 011.01-C~~). A cut in which two (2) angle cuts are made with the saw (See Figure 011.01-C) -- It is ~~u~~used when it is necessary that the face does not close until the tree is near the ground. ~~(3-29-10)~~()

012. MECHANICAL DELIMBERS AND FELLER BUNCHERS.

01. General Requirements. (7-1-97)

a. Before start-up or moving equipment, check the surrounding area for fellow employees or equipment. ~~(7-1-97)~~()

b. If any protective device is missing, it is to be replaced as soon as possible. If it affects a safe operation, the machine is to be shut down. (7-1-97)

c. When a machine is working, extreme caution ~~shoudl~~ shall be used when approaching. The ~~Operator~~ ~~shoudl~~ shall be notified by radio or visual contact. ~~(7-1-97)~~()

d. All raised equipment shall be lowered to the ground or to a safe position and the park brake set before leaving the machine. (7-1-97)

013. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.09 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - RIGGING, LINES, BLOCKS, AND SHACKLES

DOCKET NO. 07-0809-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry; accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify and edit rule provisions, provide updated references and citations, or replace outdated or unclear provisions and illustrations related to common logging practices. Through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. It also provides several amendments to clarify and update provisions related to the use of guylines, and guyline anchors, as well as wire ropes and lines. Additionally, a table providing for wire rope specifications was updated and moved to a more appropriate location in a different chapter of the logging rules. Finally, throughout the chapter existing illustrations (figures) were replaced with updated and/or clearer figures to assist loggers in more easily identifying common logging equipment or practices.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0809-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

There are no provisions for administrative appeal of these rules. The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

00~~7~~. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. RIGGING.

01. General. The determining factor in rigging-up shall be the amount of rated stump pull which a

machine can deliver on each line. (7-1-97)

02. Equipment Classification. (7-1-97)

a. Equipment shall be classed according to the manufacturer's rating. (~~7-1-97~~)()

b. Where lower gear ratios or other devices are installed to increase the power of equipment, the size of the rigging shall be increased proportionately so that it will safely withstand the increased strains to conform to Subsection 010.04. of ~~this chapter~~ these rules. (~~7-1-97~~)()

03. Safe Loading. Rigging, and all parts thereof, shall be of a design and application to safely withstand all expected or potential loading to which it will be subjected. (7-1-97)

04. Allowable Loading or Stress. (7-1-97)

a. In no case shall the allowable loading or stress be imposed on one half (1/2) of the rated breaking strength of any parts of the rigging. (~~7-1-97~~)()

b. This shall not be construed as applying to chokers. (7-1-97)

05. Chokers. Chokers shall be at least one eighth (1/8) inch smaller than the mainline. (7-1-97)

06. Placing, Condition, and Operation of Rigging. The placing, condition and operation of rigging shall be such as to ensure safety to those who will be working in the vicinity. (7-1-97)

07. Arrangement and Operation. Rigging shall be arranged and operated so that rigging or loads will not pound, rub, or saw against lines, straps, blocks, or other equipment. (7-1-97)

08. Line Hazards. (7-1-97)

a. Running lines and changed settings shall be made in a way to avoid bight of line hazards. (7-1-97)

b. Signals to operator shall be made before moving lines. (7-1-97)

09. Reefing. Reefing or similar practices to increase line pull shall be prohibited. (7-1-97)

10. Inspection of Rigging. (7-1-97)

a. A thorough inspection, by the operator or qualified person, of all blocks, straps, guylines, and other rigging shall be made before they are placed in position for use. (7-1-97)

b. This inspection shall include an examination for damaged, cracked or worn parts, loose nuts and bolts, lubrication, condition of straps and guylines. (7-1-97)

c. The repairs or replacements necessary for safe operation shall be made before rigging is used. (7-1-97)

011. GUYLINES.

01. General Requirements. (7-1-97)

a. Guylines shall be of plow steel or equivalent, and in good condition. (~~7-1-97~~)()

b. Guylines shall be provided in sufficient number, condition and location to develop stability and strength equivalent to the breaking strength of any component part of the rigging or equipment. (7-1-97)

c. Guylines shall be fastened by means of shackles or hooks and slides. The use of loops or molles for

attaching guylines is prohibited. The use of wedge buttons on guylines is prohibited. (7-1-97)()

d. The “U” part of a shackle shall be around the guyline and the pin passed through the eye of the guyline. Pins shall be secured with molles, cotter-keys, or the equivalent. (7-1-97)

e. Guylines shall be kept tightened while equipment or rigging they support is in use. (7-1-97)

02. Anchoring Guylines. (7-1-97)

a. Stumps used for fastening guylines and skylines shall be carefully chosen as to position, height and strength. They shall be tied back if necessary. See Figures 011.02-A and 011.02-B.

FIGURE 011.02-A

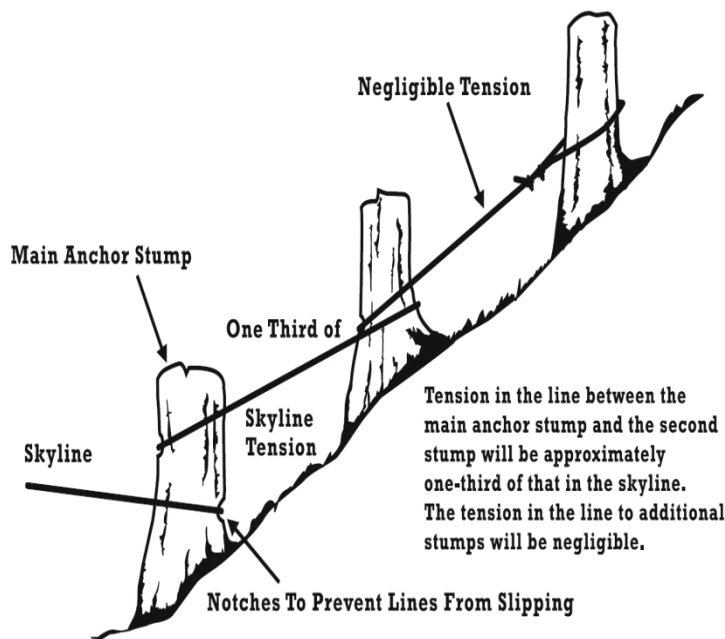
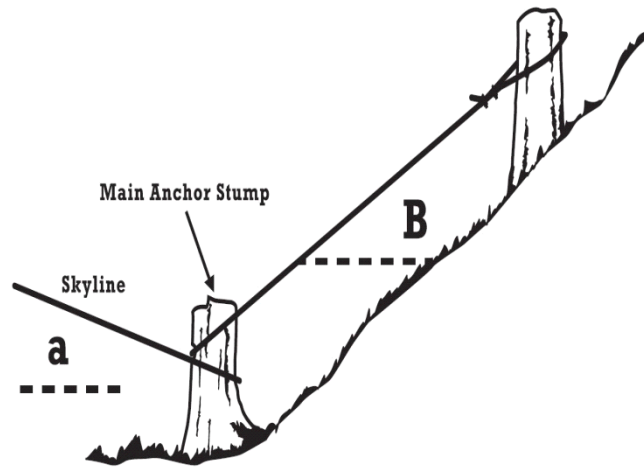


FIGURE 011.02-B



Profile of a common two-stump anchor.

(7-1-97)

b. Properly installed deadman anchors are permitted. Guylines ~~anchors~~ shall not be directly attached ~~directly~~ to deadman ~~anchors~~. Suitable straps or equally effective means shall be used. (7-1-97)()

c. Stumps, trees and guyline anchors shall be inspected from time to time while an operation is in progress and hazardous conditions immediately corrected. (7-1-97)()

d. Standing trees which will reach landing or work areas shall not be used for guyline anchors. (7-1-97)

e. Any guyline anchor tree that can reach the landing or work area shall be felled before using as an anchor. (7-1-97)

03. Effectiveness of Guys. (7-1-97)

a. Guys making an angle with the horizontal greater than sixty (60) degrees will be considered less than fifty percent (50%) effective. For the effectiveness of other angles see Table 011.03-A.

TABLE 011.03-A	
Degree	Effectiveness
60 to 45	50% to 75%
45 to 30	75% to 85%
30 to 10	85% to 95%

(7-1-97)

- B. b. For the effectiveness of guys according to the number of guys and their spacing, see Table 011.03-

TABLE 011.03-B		
No. of Guys Equally	Guys Most Effective When Pull Is:	Guys Will Support Strain Equal To The Following:
3	Opposite 1 guy	100% of strength of 1 guy
4	Halfway between 2 guys	140% of strength of 1 guy
5	Opposite 1 guy or halfway between 2 guys	160% of strength of 1 guy
6	Opposite 1 guy or halfway between 2 guys	200% of strength of 1 guy
7	Opposite 1 guy or halfway between 2 guys	225% of strength of 1 guy
8	Halfway between 2 guys	260% of strength of 1 guy
9	Opposite 1 guy or halfway between 2 guys	290% of strength of 1 guy
10	Opposite 1 guy or halfway between 2 guys	325% of strength of 1 guy

(7-1-97)()

04. Minimum Guyline Requirements. A ~~4~~ minimum of four (4) top guys are required on any portable spar tree used for yarding, swinging, loading or cold-decking. (7-1-97)()

012. LINES, SHACKLES AND BLOCKS.

01. General Requirements. (7-1-97)

a. All lines, shackles, blocks, etc., should be maintained in good condition and shall be of sufficient size, diameter and material to withstand one and one half (1 1/2) times the maximum stress imposed. (7-1-97)

b. Wire rope or other rigging equipment ~~shall be replaced~~ which shows a fifteen percent (15%) reduction in strength ~~shall be replaced~~. (7-1-97)()

02. Splices. (7-1-97)

a. Two (2) lines may be connected by a long splice, or by shackles of patent links of the next size larger than the line where practical. (7-1-97)

b. A ~~S~~ safe margin of line must be used for making long splices. See Table 012.02-A.

TABLE 012.02-A		
Rope Diameter	Unraveled	Total Length
3/8"	8'	16'
5/8"	13'	20'

TABLE 012.02-A		
Rope Diameter	Unraveled	Total Length
3/4"	15'	30'
7/8"	18'	36'
1"	20'	40'

(7-1-97)()

03. Clips.

(7-1-97)

a. Clips should be spaced at least six (6) rope diameters apart to ~~get~~ achieve maximum holding power. See Table 012.03-A

TABLE 012.03-A		
Diameter of Rope	Number of Clips	Required Space Between Clips
1-1/2-inch	8	10 inches
1-3/8-inch	7	9 inches
1-1/4-inch	6	8 inches
1-1/8-inch	5	7 inches
1- inch	5	6 inches
7/8-inch	5	5-1/4 inches
3/4-inch	5	5-1/2 inches
3/8 to 5/8-inch	4	3 inches

(7-1-97)()

b. Clips should always be attached with the base or saddle of the clip against the longer or “live” end of the rope. See Figure 012.03-A. This is the only ~~right way~~ approved method.

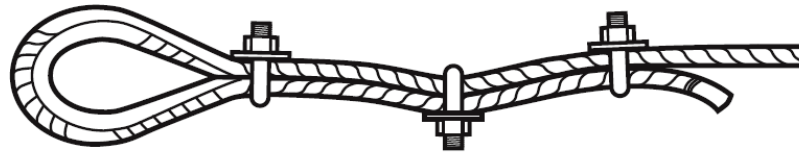
FIGURE 012.03-A



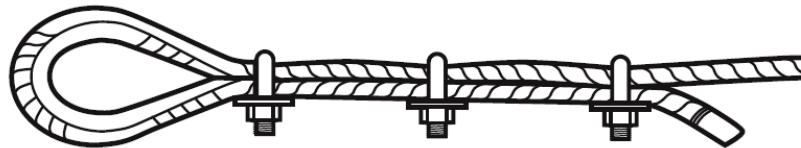
(7-1-97)()

c. Do not reverse the clips or stagger them. See Figure 012.03-B. Otherwise the “U” bolt will cut into the live rope when the load is applied.

FIGURE 012.03-B



Wrong



Wrong

(7-1-97)

d. After the rope has been used and is under tension, the clips should again be tightened to take up any looseness caused by the tension reducing the rope diameter. Remember that even when properly applied a clip fastening has only about ninety percent (90%) of the strength of the rope and far less than that when rigged improperly. (3-29-10)

04. Blocks. All blocks must be of steel construction or of material of equal or greater strength and so hung that they will not strike or interfere with other blocks or rigging. (7-1-97)

05. Pins. All pins in blocks shall be properly secured by keys of the largest size the pin hole will accommodate (7-1-97)

06. Shackles. (7-1-97)

a. Spread in jaws of shackles shall not exceed by more than one (1) inch the size of yoke or swivel of the block to which it is connected. (7-1-97)

b. All shackles must be made of forged steel or material of equivalent strength and one (1) size larger than the line it connects. (7-1-97)

07. Cable Cutting. Cable cutters, soft hammers, or a cutting torch shall be available and shall be used for cutting cables. (7-1-97)()

08. Damaged or Worn Wire Rope. Worn or damaged ~~W~~wire rope worn or damaged beyond the point of creating a safety hazard shall be taken out of service or properly repaired before further use. (7-1-97)()

~~**09. Wire Rope Certification.**~~ (7-1-97)

~~**a.** All wire rope offered for sales shall be certified as to its breaking strength by the manufacturer or vendor in accordance with the U. S. Bureau of Standards specifications. See Table 012.09-A~~

TABLE 012.09 A—TYPICAL WIRE ROPE SPECIFICATIONS, (6X19, OR 6X25 IWRC*)					
Cable Dimensions		Improved Plow Steel		Extra-Improved Plow Steel	
Diameter (inches)	Weight per foot (pounds)	Safe-working-load** (pounds)	Breaking-strength (pounds)	Safe-working-load (pounds)	Breaking-strength (pounds)
1/4	0.116	1,960	5,880	2,270	6,800
5/6	0.18	3,050	9,160	3,510	10,540
3/8	.26	4,370	13,120	5,000	15,100
7/16	.35	5,930	17,780	6,800	20,400
1/2	.46	7,700	23,000	89,800	26,600
9/16	.59	9,700	29,000	11,200	33,600
5/8	.72	12,000	36,000	13,700	41,200
3/4	1.04	17,100	53,200	19,600	58,800
7/8	1.42	23,100	69,200	26,500	79,600
1	1.85	30,000	90,000	64,500	103,500
1-1/8	2.34	37,700	113,200	43,300	130,000
1-1/4	2.89	46,300	139,000	53,300	159,800
1-3/8	3.5	55,700	167,000	64,000	192,000
1-1/2	4.16	65,900	197,800	76,000	228,000
1-5/8	4.88	76,000	230,000	88,000	264,000
1-7/8	6.50	101,300	304,000	116,000	348,000
2	7.39	114,739	344,000	132,000	396,000
2-1/8	8.25	128,700	386,000	147,300	442,000
2-1/4	9.36	143,300	430,000	164,700	494,000
2-1/2	11.6	175,300	526,000	201,300	604,000
2-3/4	14.0	209,300	628,000	204,700	722,000

Specifications may vary with different line materials and swedge lines.

(7-1-97)

013. TYPICAL RIGGING SYSTEMS.

01. See Figures 013.01-A through 013.01-N.

(7-1-97)

[THE FOLLOWING ILLUSTRATIONS ARE BEING DELETED FROM RULE]

FIGURE 013.01-A; FIGURE 013.01-B; FIGURE 013.01-C; FIGURE 013.01-D; FIGURE 013.01-E; FIGURE 013.01-F (LIVE SLYLINE with carriage stop); FIGURE 013.01-G (SLACKLINE); FIGURE 013.01-H; FIGURE 013.01-I; FIGURE 013.01-J; FIGURE 013.01-K; FIGURE 013.01-L; FIGURE 013.01-M; FIGURE 013.01-N1; FIGURE 013.01-N2

0143. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.10 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - CANOPY AND CANOPY CONSTRUCTION FOR LOGGING EQUIPMENT

DOCKET NO. 07-0810-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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During the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. The rulemaking also makes minor editorial revisions related to the safe operation of logging tractors and similar logging equipment.

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

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

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DATED this 2nd day of September, 2016.

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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

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(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

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(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

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~~007.~~ -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. GENERAL REQUIREMENTS.

01. Driver Protection Guard. (7-1-97)

a. A substantial metal guard for the protection of the driver shall be installed on every piece of equipment, where exposed to overhead hazards. (7-1-97)

b. This guard shall be strongly constructed to afford adequate protection for the driver against overhead hazards. (7-1-97)

c. ~~#~~ This guard shall be of sufficient width and height so that it will not impair the movements of the driver or prevent his immediate escape from the equipment in emergencies. (7-1-97)()

- d. ~~#~~ This guard shall be of open construction to allow the driver all the visibility possible. (7-1-97)()
- 02. Canopy Framework.** (7-1-97)
- a. The canopy framework shall consist of at least two (2) arches, either transverse or longitudinal. (7-1-97)
- b. If transverse, one (1) arch shall be installed at the rear of the equipment and the other at the center of the equipment. They shall be joined together by three (3) longitudinal braces, one (1) at the top and one (1) at each side of the arches. (7-1-97)
- c. There shall be a shear or deflecting guard extending from the leading edge of the forward arch to the front part of the frame of the tractor or similar equipment. (7-1-97)
- d. If longitudinal arches are used, they shall be extended from the rear of the tractor or equipment to the front frame of the tractor or equipment and each arch shall have an intermediate support located approximately at the dash so that ingress or egress will not be impeded. (7-1-97)
- e. Regardless of the type of construction used, the fabrication and method of connecting to the tractor or equipment shall be of such design as to develop a strength equivalent to that of the upright members. (7-1-97)
- 03. Canopy Structure.** The canopy structural framework shall be fabricated of pipe of the following size, or materials of equivalent strength, depending upon the gross weight of the tractor or similar equipment as equipped. Under twenty-eight thousand (28,000) lbs., two (2) inch double extra strong pipe (XXS); twenty-eight thousand (28,000) to fifty-eight thousand (58,000) lbs., three (3) inch double extra strong pipe (XXS); over fifty-eight thousand (58,000) lbs., four (4) inch double extra strong pipe (XXS). (7-1-97)
- 04. Gusset Plates or Braces.** Gusset plates or braces shall be installed on the canopy framework so that the framework will withstand a horizontal pressure equal to twenty-five percent (25%) of the gross weight of the tractor or similar equipment, as equipped, when such pressure is applied to any vertical member at a point not more than six (6) inches below the roof of the canopy. (7-1-97)
- 05. Clearance Above the Deck.** The clearance above the deck of the tractor or similar equipment at points of egress shall be not less than fifty-two (52) inches and the clearance above the driver's seat shall be of such height as will allow sufficient clearance above the driver's head. (7-1-97)
- 06. Overhead Covering.** The overhead covering on the canopy structure shall be of not less than three-sixteenth (3/16) inch steel plate except that the forward eighteen (18) inches may be made of one quarter (1/4) inch woven wire having not more than one (1) inch mesh. (7-1-97)
- 07. Rear Covering.** (7-1-97)
- a. The opening in the rear of the structure shall be covered with one quarter (1/4) inch woven wire having not less than one and one half (1 1/2) inch or more than two (2) inch wire mesh. This covering shall be affixed to the structural members so that ample clearance will be provided between the screen and the back of the operator. (7-1-97)
- b. Structural members shall present smooth, rounded edges and the covering shall be free from projections which would tend to puncture or tear flesh or clothing. (7-1-97)
- 08. Pin Connections.** (7-1-97)
- a. Pin connections are recommended for joints in the structural frame and especially at connections to the tractor frame or similar equipment frame. (7-1-97)
- b. Gusset plates shall be installed at each place where individual pieces of pipe are joined. (7-1-97)

09. Sideguards. When practical, sideguards shall be installed to protect the operator from hazards. (7-1-97)

011. TRACTORS AND SIMILAR LOGGING EQUIPMENT.

01. Operating Condition. The general operating condition of a tractor or equipment shall be sufficient ~~by good~~ to ensure the safety of the driver and other workmen. (~~7-1-97~~)()

02. Guards. All guards shall be kept in place and in good repair at all times when the tractor or similar equipment is used. (7-1-97)

03. Repairs or Adjustments. Repairs or adjustments to clutches, frictions, or other parts of equipment which may cause hazardous movement of equipment shall not be done while engines are running. (7-1-97)

04. Blades or Similar Equipment. (7-1-97)

a. Blades or similar equipment shall be blocked or otherwise securely supported when making repairs or performing other work around such equipment when they are elevated from the ground. (7-1-97)

b. Equipment under repair or adjustment should be tagged out. (7-1-97)

05. Brakes and Steering. (7-1-97)

a. All equipment shall be equipped with a braking system capable of stopping and holding the maximum load on all grades at all times. (7-1-97)

b. Any defect found in the braking system or steering devices of any equipment used in skidding or yarding operations shall not be used until repaired or replaced. (~~7-1-97~~)()

06. Starting of Equipment. Equipment shall be started (cranked) only by the operator or other experienced persons. (7-1-97)

07. Seatbelts. (7-1-97)

a. Seatbelts shall be installed on all tractors and mobile equipment having roll-over protection or in accordance with a design by a ~~P~~professional ~~E~~engineer which offers equivalent employee protection. (~~7-1-97~~)()

b. Seatbelts shall be used when operating any machine equipped with Roll Over Protection Structure (ROPS), Falling Object Protection Structure (FOPS), or overhead guards. (3-29-10)

08. Pin Connections. (7-1-97)

a. Pin connections are recommended for joints in the structural frame and especially at connections to the tractor frame or similar equipment frame. (7-1-97)

b. Gusset plates shall be installed at each place where individual pieces of pipe are joined. (7-1-97)

09. Sideguards. When practical, sideguards shall be installed to protect the operator from hazards. (7-1-97)

012. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.11 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - SKIDDING AND YARDING

DOCKET NO. 07-0811-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations, or replace outdated or unclear provisions and illustrations related to common logging practices. Additionally, several sections related to cable yarding, yarding machinery, wire rope, and tree climbing were added. These areas can be critical components of logging operations; however, they were not adequately addressed by the rules. Through the negotiated rulemaking process, the logging industry requested the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. It also provides several amendments to clarify and update provisions related to skidding and yarding generally. Additionally, the rulemaking adds several sections related to cable yarding, yarding machinery, wire rope, and tree climbing. Yarding section amendments contain measures to ensure safe practices and provisions to ensure safe yarding equipment. Wire rope provisions include descriptions of different types of wire rope characteristics, specifications related to tensile strength, and other safety and precautionary issues related to wire life, wire connections, and inspection and care of lines. Tree climbing provisions were also added related to plans and procedures for climbing trees, safe climbing operational practices, and proper climbing equipment. Additionally, a table providing for wire rope specifications was updated and moved from a different chapter of the logging rules and included herein as a more appropriate location. Finally, throughout the chapter updated and/or clearer illustrations (figures) were added to assist loggers to more easily identify common logging equipment or practices.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0811-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

There are no provisions for administrative appeal of these rules. The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

00~~7~~. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General

Provisions,” Section 007, and IDAPA 07.08.15, “Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms.” (7-1-97)()

010. SKIDDING AND YARDING.

- 01. General Requirements.** (7-1-97)
- a.** All personnel shall wear approved head protection and proper clothing at all times in skidding and yarding. (7-1-97)
- b.** Getting on or off moving equipment is strictly prohibited. (7-1-97)
- c.** Equipment operators shall move rigging only upon the signal of an authorized person. (7-1-97)()
- d.** Workers shall at all times watch for and protect themselves and their fellow workers from side-winders, rolling logs, up ending logs, snags, and other hazards caused by the movement of equipment, logs and/or lines. (7-1-97)
- e.** Chokers should be placed near, but not closer than two (2) feet, from the ends of logs if possible. (7-1-97)
- f.** Choker holes shall be dug from the uphill side of a log if there is any danger of its rolling. (7-1-97)
- g.** Knots shall not be used to connect separate lengths of chain or cable. (7-1-97)
- h.** Chaser (hooker) shall not unhook logs (trees) until rigging has stopped and the equipment operator is aware of his location. (7-1-97)()
- i.** Riding on drag or logs or any part of equipment used in skidding and yarding except in the area of the driver’s seat is prohibited. (7-1-97)
- j.** A tool handle, stick, iron bar, or similar object shall be used in guiding lines onto drums. Guiding lines with hands is prohibited. (7-1-97)
- k.** Make sure all personnel are in the clear before skidding turn, drag, log, or tree into landing. (7-1-97)
- l.** All personnel shall keep out of the bight of line and clear of running lines. (7-1-97)
- m.** Logs shall not be swung over personnel. (7-1-97)
- n.** Knot bumping should be done before a log is loaded. (7-1-97)()

011. CABLE YARDING.

- 01. Safety A.** Personnel shall not ride hooks, lines, rigging, or logs suspended in the air or being moved. ()
- 02. Safety B.** Personnel shall not hold on to haywire, running lines, drop lines, or chokers as an assist when walking uphill. ()
- 03. Safety C.** Personnel shall not work in the bight of lines under tension. ()
- 04. Safety D.** Personnel shall be “in the clear” before any signal to move any lines is given. ()

012. YARDING MACHINERY.

01. Equipment Assessment. When personnel arrive at a job site with a set of machinery on hand to perform yarding operations, evaluation of the conditions at the landing shall be made, and reassessment of the capacity of the available equipment shall be performed to determine if it meets the task. The principal options and features for yarders, log loaders, and processors are described in this section. ()

02. Manufacturer's Manual. Yarders of various types are used in logging operations, including ground-based and rigged trees to lift the lines, and mobile steel towers. The manufacturer's manual shall always be consulted for essential features and inspection points on each particular machine. ()

03. Types of Yarding Equipment. Yarding operations may include the use of, but is not limited to the following yarding equipment: ()

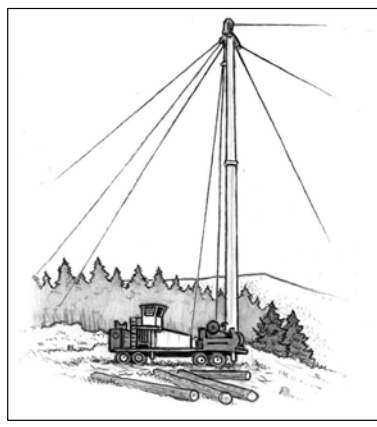
a. Straight Tube Telescoping Tower. This equipment uses a hydraulic ram or multiple-sheave cable system to raise the tower. Some telescoping towers allow use at the telescoped height. The tower may be used partially retracted if guyline anchors need to be placed closer to the landing or on steep slopes. ()

i. This equipment may travel by self-propulsion, or be either trailer or track-mounted. It has long reach capacity with a typical height of ninety (90) to one hundred ten (110) feet. ()

ii. The advantages of this equipment include the ability to operate heavy payloads, the tower height allows for more line deflection, and some yarders allow yarding one hundred eighty (180) degrees without moving yarder or guylines. ()

iii. The disadvantages of this equipment are that it is heavy and difficult to move, it requires appropriate roads and it may have to be disassembled to move on public roads, it requires large landing areas, and it needs large guyline anchor capacity.

FIGURE 012.03-A



STRAIGHT TUBE TELESCOPING TOWER

()

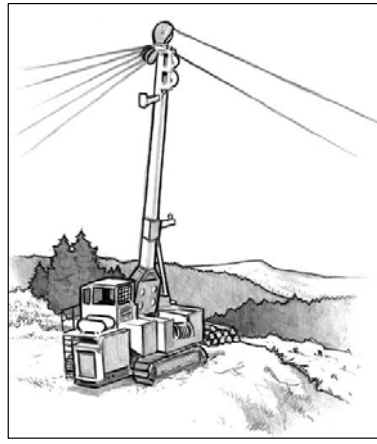
b. Fixed Leaning Tower. This equipment is a one (1)-piece tower that may be front-mounted vertical, or leaning. The height of the tower varies with make and model. ()

i. This equipment may travel by self-propulsion, or be either trailer or track-mounted. It has medium reach capacity with a typical height of forty (40) to eighty (80) feet. ()

ii. The advantages of this equipment include faster line setup, smaller landing area requirements, it is lighter and easier to move, and has lower guyline anchor requirements. ()

iii. The disadvantages include a smaller yarding window which necessitates moving the tower and guylines more frequently, and smaller payloads than straight tube towers. ()

FIGURE 012.03-B



FIXED LEANING TOWER

()

c. Swing Yarder. This equipment is similar to the fixed leaning tower in nearly all respects; however, the swing yarder is also capable of swinging logs onto the road or landing, and capable of using a running skyline. Track mounts are more stable when moving. ()

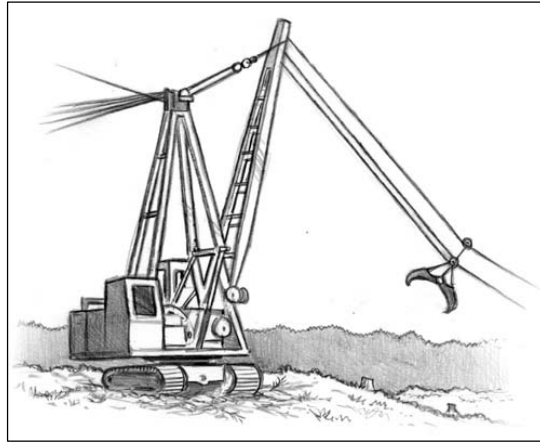
d. Grapple Yarder. This equipment uses a swing yarder or yoader system. The grapple is controlled by signals from the rigging slinger, or by the yarder engineer using a video link on the carriage. Swing capability is necessary to allow a wider logging corridor. A grapple system is typically used in conjunction with a machine anchor and elevated support on the back end of the unit, making for quick road changes. ()

i. This equipment may travel by track-mount or rubber-tire mount. It has medium to short reach capacity. ()

ii. The advantages of this equipment include the need for a smaller crew size, typically only a yarder engineer, landing worker, and a hooktender, and it is easier to rig up which is ideal for smaller logging areas. ()

iii. The disadvantages of this equipment are that it requires extensive planning to achieve full production, it must have moderate to good deflection, access to the back of unit is generally necessary, and it possesses limited yarding width. ()

FIGURE 012.03-C



GRAPPLE YARDER

()

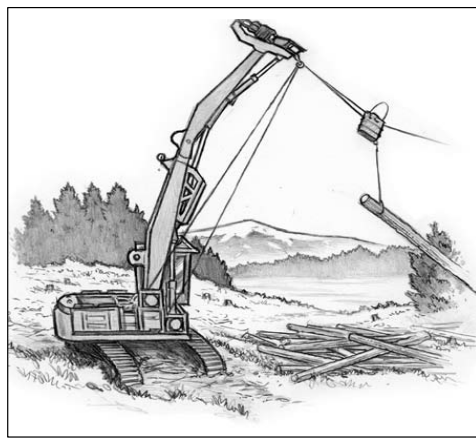
e. Yoader. This yarder is typically a log loader with two (2) drums mounted at the base of the boom. Both lines run through sheaves mounted on the boom or heel rack. The lines can be set up in a standing, live, or running skyline configuration, or a high-lead configuration. ()

i. This equipment may travel by track-mount or rubber-tire mount. It has medium reach capacity. ()

ii. The advantages of this equipment are that guylines are not necessary, it is easier to move, easy road changes, it is easier to rig up which is ideal for smaller logging areas, and it may be used as a loader. ()

iii. The disadvantages of this equipment are that it requires/results in slower line speeds, it requires blocking up front of the tracks to create stability, and rigging height is limited.

FIGURE 012.03-D



YOADER

()

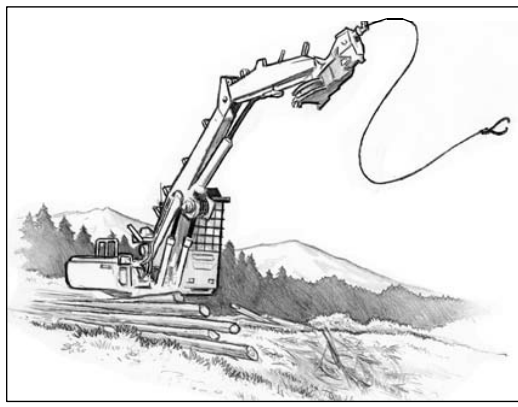
f. Tong-tosser/Jammer System. These are two (2) systems which basically use the same machine as the yoader, with either tongs or chokers on the end of the line to secure the logs. This version typically uses one (1) drum on the machine with a spitter wheel at the end of the boom to pull the line from the drum and push it out to the brush. The yarder engineer usually gets the tongs or chokers swinging and then tosses them to the waiting choker setters. ()

i. This equipment travels by track-mount. It has short reach capacity. ()

ii. The advantages of this equipment are that guylines are not necessary, it is easier to move, it is easier to rig up which is ideal for smaller logging areas, and it may be used as a loader. Additionally, it does not require line layouts or anchors. ()

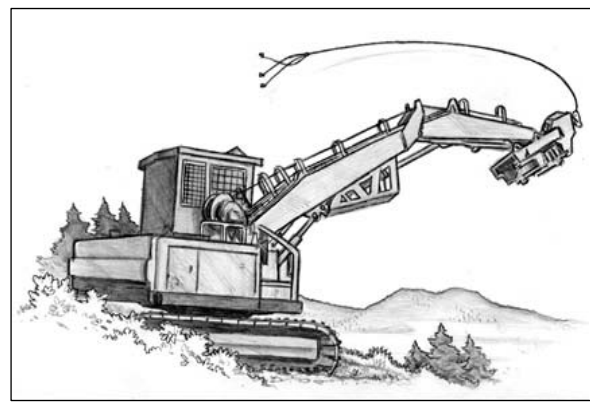
iii. The disadvantages of this equipment are that it results in slower line speeds, it requires blocking up front of the tracks to create stability, rigging height is limited, and there is a greater potential risk to the rigging crew.

FIGURE 012.03-E



TONG-TOSSER WITH GRAPPLE

FIGURE 012.03-F



JAMMER-SYSTEM WITH CHOKERS

()

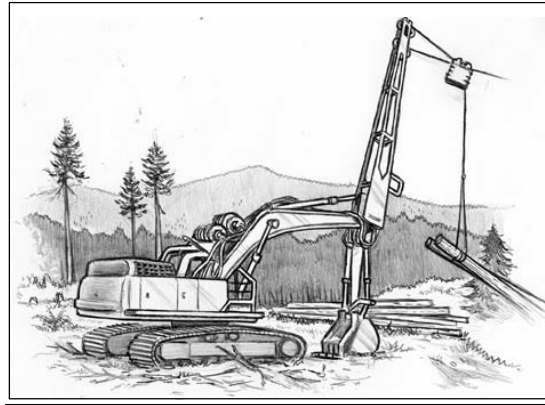
g. Stiff-leg Spar Yarder. One of various configurations for this yarder uses an excavator or log loader fitted with a third boom between the main and jib boom, which is elevated to provide lift. The elevated boom is typically rigged with two (2) or three (3) lines. Works with high lead, standing, running, or slackline configurations. ()

i. This equipment travels by track-mount. It has medium reach capacity. ()

ii. The advantages of this equipment are that guylines may not be necessary, it is easier to move, it is easier to rig up which is ideal for smaller logging areas, and it may be used as a loader or excavator. Additionally, it does not require line layouts or anchors. Additionally, jib boom offers greater stability, and the rigging height is greater than yoader or tong-tosser/jammer system. ()

iii. The disadvantages of this equipment are that it results in slower line speeds, the attached tower boom may need to be removed for other operations, and it generates heavy stress on boom and components. ()

FIGURE 012.03-G



STIFF-LEG SPAR YARDER

()

013. WIRE ROPE.

01. General Characteristics. Wire rope comes in many grades and dimensions, and every rope has its own characteristics with regard to strength and resistance to crushing and fatigue. A larger rope will outlast a smaller rope of the same materials and construction, used in the same conditions, because wear occurs over a larger surface. Similarly, a stronger rope will outlast a weaker rope, because it performs at a lower percentage of its breaking strength, with reduced stress. ()

02. Wire Rope Terms. Common grades of wire rope include extra improved plow steel (EIPS) and swaged powerflex, among others. The following terms are commonly used for wire rope: ()

a. Abrasion Resistance. Ability of outer wires to resist wear. Abrasion resistance is greater with larger wires. ()

b. Core. The foundation of a wire rope which is made of materials that will provide support for the strands under normal bending and loading conditions. A fiber core (FC) can be natural or synthetic. If the core is steel, it can be a wire strand core (WSC) or an independent wire rope core (IWRC). ()

c. Crushing Resistance. Ability of the rope to resist being deformed. A rope with an independent wire core is more resistant to crushing than one with a fiber core. ()

d. Die-form Line. Made from strands that are first compacted by drawing them through a drawing die to reduce their diameter. The finished rope is then swaged or further compressed. ()

e. Fatigue Resistance. Ability of the rope to withstand repeated bending without failure (the ease of bending a rope in an arc is called its "bendability"). Fatigue resistance is greater with more wires. ()

f. Strength. Referred to as breaking strength, usually measured as a force in pounds or tons. The breaking strength is not the same as the load limit, which is calculated as a fraction of the breaking strength to ensure safety. ()

g. Swaged Line. Manufactured by running a nominal-sized line through a drawing die to flatten the outer crown and thus reduce the rope diameter. This compacted rope allows for increased drum capacity and increased line strength. ()

03. Typical Wire Rope Specifications. The table below lists a few examples of wire-rope breaking strengths. ()

TABLE 012.09-A -- Typical Wire Rope Specifications

<u>Diameter (inches)</u>	<u>6x26 Improved Plow Steel</u>		<u>6x26 Swaged</u>		<u>Swaged Compact-Strand</u>	
	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>
<u>1/2</u>	<u>0.46</u>	<u>11.5</u>	<u>0.6</u>	<u>15.2</u>	<u>0.63</u>	<u>18.6</u>
<u>9/16</u>	<u>0.59</u>	<u>14.5</u>	<u>0.75</u>	<u>19</u>	<u>0.78</u>	<u>23.7</u>
<u>5/8</u>	<u>0.72</u>	<u>17.9</u>	<u>0.93</u>	<u>23.6</u>	<u>1.01</u>	<u>28.5</u>
<u>11/16</u>			<u>1.10</u>	<u>28.8</u>	<u>1.18</u>	<u>35.3</u>
<u>3/4</u>	<u>1.04</u>	<u>25.6</u>	<u>1.37</u>	<u>34.6</u>	<u>1.41</u>	<u>42.2</u>
<u>13/16</u>			<u>1.56</u>	<u>39.6</u>	<u>1.63</u>	<u>49.3</u>
<u>7/8</u>	<u>1.42</u>	<u>34.6</u>	<u>1.83</u>	<u>46.5</u>	<u>1.91</u>	<u>56.0</u>
<u>15/16</u>			<u>1.95</u>	<u>53.3</u>	<u>2.20</u>	<u>66.1</u>
<u>1</u>	<u>1.85</u>	<u>44.9</u>	<u>2.42</u>	<u>60.6</u>	<u>2.53</u>	<u>73.7</u>
<u>1-1/8</u>	<u>2.34</u>	<u>56.5</u>	<u>2.93</u>	<u>75.1</u>	<u>2.97</u>	<u>92.9</u>
<u>1-1/4</u>	<u>2.89</u>	<u>69.3</u>	<u>3.52</u>	<u>92.8</u>	<u>3.83</u>	<u>112.1</u>
<u>1-3/8</u>	<u>3.5</u>	<u>83.5</u>	<u>4.28</u>	<u>108.2</u>	<u>4.62</u>	<u>128.6</u>

TABLE 013.03-A

<u>Diameter (inches)</u>	<u>6x26 Improved Plow Steel</u>		<u>6x26 Swaged</u>		<u>Swaged Compact-Strand</u>	
	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>	<u>Weight (lbs/ft)</u>	<u>Breaking Strength (tons)</u>
<u>1/2</u>	<u>0.46</u>	<u>11.5</u>	<u>0.6</u>	<u>15.2</u>	<u>0.63</u>	<u>18.6</u>
<u>9/16</u>	<u>0.59</u>	<u>14.5</u>	<u>0.75</u>	<u>19</u>	<u>0.78</u>	<u>23.7</u>
<u>5/8</u>	<u>0.72</u>	<u>17.9</u>	<u>0.93</u>	<u>23.6</u>	<u>1.01</u>	<u>28.5</u>
<u>11/16</u>			<u>1.10</u>	<u>28.8</u>	<u>1.18</u>	<u>35.3</u>
<u>3/4</u>	<u>1.04</u>	<u>25.6</u>	<u>1.37</u>	<u>34.6</u>	<u>1.41</u>	<u>42.2</u>
<u>13/16</u>			<u>1.56</u>	<u>39.6</u>	<u>1.63</u>	<u>49.3</u>

<u>7/8</u>	<u>1.42</u>	<u>34.6</u>	<u>1.83</u>	<u>46.5</u>	<u>1.91</u>	<u>56.0</u>
<u>15/16</u>			<u>1.95</u>	<u>53.3</u>	<u>2.20</u>	<u>66.1</u>
<u>1</u>	<u>1.85</u>	<u>44.9</u>	<u>2.42</u>	<u>60.6</u>	<u>2.53</u>	<u>73.7</u>
<u>1-1/8</u>	<u>2.34</u>	<u>56.5</u>	<u>2.93</u>	<u>75.1</u>	<u>2.97</u>	<u>92.9</u>
<u>1-1/4</u>	<u>2.89</u>	<u>69.3</u>	<u>3.52</u>	<u>92.8</u>	<u>3.83</u>	<u>112.1</u>
<u>1-3/8</u>	<u>3.5</u>	<u>83.5</u>	<u>4.28</u>	<u>108.2</u>	<u>4.62</u>	<u>128.6</u>

Source: Cable Yarding Systems Handbook, 2006, Worksafe BC. Table lists typical breaking strengths. See manufacturer's specifications for specific lines. ()

04. Synthetic Rope. High-tensile strength synthetic lines are considerably lighter than standard wire rope; however, some lines are dimensionally as strong as standard wire rope. Accordingly, high-tensile strength synthetic lines are permitted to be used in appropriate logging applications, including as substitutes for brush straps, tree straps, tail and intermediate support guylines, guyline extensions, skyline extensions, and haywire. Manufacturers' standards and recommendations for determining usable life or criteria for retirement of such lines shall be followed. Personnel shall examine the lines for broken or abraded strands, discoloration, inconsistent diameter, glossy or glazed areas caused by compression and heat, and other inconsistencies. Rope life is affected by load history, bending, abrasion, and chemical exposure. Most petroleum products do not affect synthetic ropes. ()

05. Inspection and Care. ()

a. Wire rope shall be inspected daily by a qualified individual and repaired or taken out of service when there is evidence of any of the following conditions: ()

i. Twelve and five tenths percent (12.5%) of the wires are broken within a distance of one (1) lay. ()

ii. Evidence of chafing, sawing, crushing, kinking, crystallization, bird-caging, corrosion, heat damage, or other damage that has weakened the rope structure. ()

b. Qualified personnel shall closely inspect those points subject to the most wear, including the knob ends of lines, eye splices, and those sections of line that most often run through blocks or carriages. If there is doubt about the integrity of the line, it is far safer to replace a suspect line, or cut out and resplice a defective area, than risk a failure during operation. Evaluation of the load-bearing yarder lines shall be stringent. A qualified person shall also inspect all other lines used on site and remove any that are unsafe. ()

06. Additional Precautions. The following precautions shall also be observed: ()

a. Ensure the working load limit for any line is adequate for the intended use. ()

b. The manufacturer's specifications with regard to assigned breaking strength shall be followed. Such specifications as determined by engineering test results should factor the grade of the wire, number of strands, number of wires per strand, filler wire construction, lay pattern of the wires, and the diameter of the line. ()

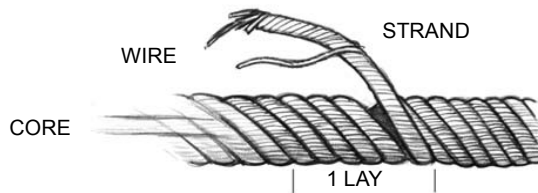
07. Safety Factor. Operators shall follow the manufacturer's specifications in determining load limits. The working load limit is a fraction of a line's breaking strength – a factor of three (3), or one-third (1/3) the breaking strength, is commonly used as a safety factor for running and standing lines, when workers are not exposed to breaking lines or loads passing overhead. A safety factor of three (3) is commonly used to determine the working load limit for a standing or running line. A standard six (6) x twenty-six (26) IWRC wire rope with a diameter of one (1) inch has a breaking strength of approximately forty-five (45) tons – divide by three (3) – equals fifteen (15) tons

working load limit. ()

08. Wire Labeling. ()

a. The elements of a typical wire rope are labeled, for example, six (6) x twenty-five (25) FW PRF RL EIPS IWRC. The label indicates a six (6)-strand rope with twenty-five (25) wires per strand (six (6) x twenty-five (25)), filler-wire construction (FW), strands pre-formed in a helical pattern (PRF), laid in a right-hand lay pattern (RL), using an extra-improved plow steel (EIPS) grade of wire, and strands laid around an independent wire rope core (IWRC). See figure 013.08-A for proper labeling of wire rope. ()

FIGURE 013.08-A



b. Out of Service Standard Example. A six (6) x twenty-five (25) IWRC wire rope = six (6) strands in one (1) lay with twenty-five (25) wires per strand = one hundred fifty (150) wires. The rope must be taken out of service when twelve and five tenths percent (12.5%), or one-eighth (1/8), of the wires are broken within the distance of one (1) lay = one hundred fifty (150) divided by eight (8) = eighteen and seventy-five one hundredths (18.75), or nineteen (19) broken wires. ()

09. Wire Line Life. Table 013.08-A provides the allowable life of a line in million board feet in accordance with line size and use. Figure 013.09-A illustrates both the correct and incorrect manner in which to measure line size (diameter). ()

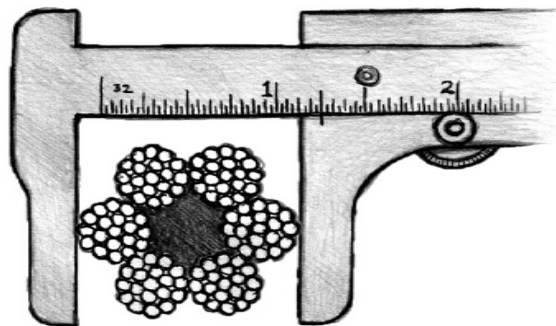
**TABLE 013.08-A
LINE LIFE BY WOOD HAULED**

System	Use	Line Size (inches)	Line Life (million board feet)
Standing Skyline	Skyline	1-3/4	20-25
		1-1/2	15-25
		1-3/8	8-15
	Mainline	1 to 1-1/8	15-20
		1	10-15
	Haulback	3/4 to 7/8	8-12

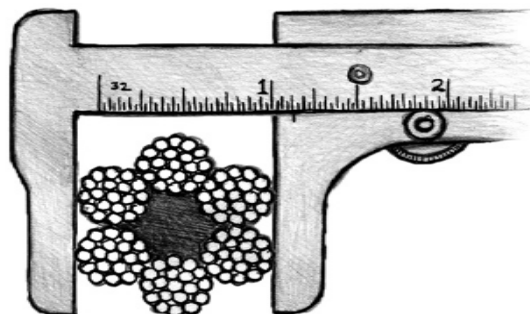
<u>Live Skyline</u>	<u>Skyline</u>	<u>1-1/2</u>	<u>10-20</u>
		<u>1-3/8</u>	<u>8-15</u>
		<u>1</u>	<u>6-10</u>
	<u>Mainline</u>	<u>1</u>	<u>10-15</u>
		<u>3/4</u>	<u>8-12</u>
		<u>5/8</u>	<u>8</u>
	<u>Haulback</u>	<u>3/4 to 7/8</u>	<u>8-12</u>
		<u>1/2</u>	<u>6-10</u>
	<u>Dropline</u>	<u>7/16</u>	<u>5-8</u>
<u>High Lead</u>	<u>Mainline</u>	<u>1-3/8</u>	<u>8-15</u>
		<u>1-1/8</u>	<u>6-12</u>

Source: *Willamette Logging Specialist's Reference* by Keith L. McGonagill, 1976. Portland, OR: Willamette National Forest. Calculations of line life refer to EIPS 6x21 wire rope for the skyline, and EIPS 6x26 for other lines. Figures will be different for other classes of wire rope. ()

FIGURE 013.09-A



Correct way to measure line diameter



Incorrect way to measure line diameter

()

10. Dynamic Loads. Operators shall consider high dynamic loads when calculating safe working limits of wire ropes. Wire ropes are often subjected to high dynamic loads, which greatly multiply the force on a line and may exceed the safe working limit. Even a split second of time over the limit can lead to premature failure of a line. Typical dynamic loads occur when a turn hits a stump, a turn comes down off of the back hillside to full suspension, or when excessive force is applied to pulling a turnout of its bed. A high dynamic load or a sudden shock load that exceeds the working limit may not result in immediate failure, but rope strands may stretch and weaken, and may fail at a later time. ()

11. Other Common Wire Rope Considerations. ()

a. Wire Rope Stretching and Line Diameter. A stretched wire rope has a reduced diameter. Operators shall check for stretched lines by measuring the diameter, particularly on older lines and any line used in stressful situations. ()

b. Older Wire Rope. Standing lines and guylines are often kept in service for multiple years (four (4) to five (5), and as long as ten (10) years in some instances) without exhibiting any obvious signs of excessive wear other than rust. Operators shall check date stamps of wire rope and evaluate line life. Operators shall also inspect the core of older lines periodically for a fractured or dry core, which could indicate other deficiencies such as broken wires, excessive wear, or line deformation. ()

c. Hard Use. The life of a wire rope is also affected by hard use. Line life can be measured by the volume of wood hauled (see Table 013.08-A). Line life is reduced when a line exceeds its elastic limits, is heavily shocked, or rubbed against rocks or other lines. As a line wears, the safe working load limit shall be lower and the payload adjusted appropriately. ()

d. Wire Rope endurance and elastic limits. Working within the endurance and elastic limits of lines can help preserve line life. The following principles shall be observed when evaluating the integrity and safe use of wire rope: ()

i. The “endurance limit” for all lines is fifty percent (50%) of the breaking strength. If wire rope tensioning regularly exceeds the endurance limit, the life of the line is reduced through fatigue. ()

ii. The “elastic limit” for all lines is sixty to sixty-five percent (60-65%) of the breaking strength. When a wire rope is loaded to its normal safe working limit, the line stretches, but then returns to its original size when the load is released. If a load increases past the elastic limit through prolonged exertion or repeated stress, the line will stretch and stay stretched, resulting in a permanent reduction in the breaking strength. ()

e. Lubrication and Abrasion. Wire rope is lubricated in the factory to reduce internal friction and corrosion, and prolong the life of the rope. Heat from friction causes the internal lubricant to deteriorate. Friction occurs when the rope stretches under load, particularly in places where it bends around sheaves or other objects. An improperly lubricated line can pick up particles of dirt and sand that will increase abrasion. Accordingly, operators shall: ()

i. Check for and ensure the proper lubrication of all lines and wire rope, following the manufacturer’s instructions. Commercial wire rope lubricants are available. ()

ii. Carefully inspect lines for faults in areas where dust and sand may collect. ()

iii. Store all wire rope and lines off the ground. ()

12. Line Connections. ()

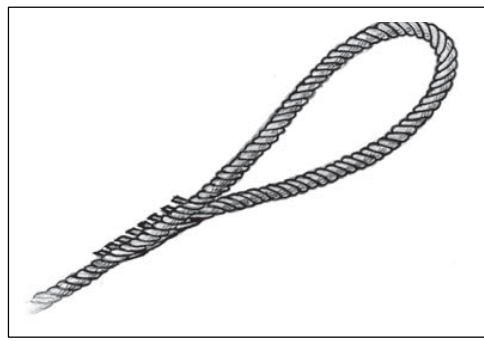
a. Inspection. Operators shall regularly inspect shackles, hooks, splices, and other connecting equipment for damage and wear, as well as ensure the connectors are the correct type and size for the line and

intended use. ()

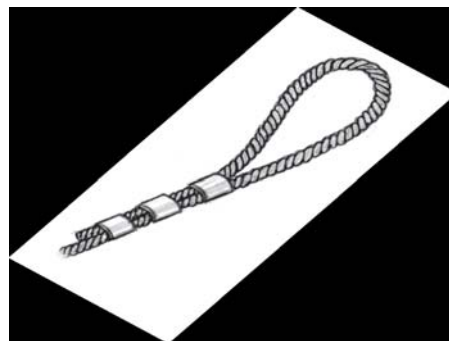
b. Wire Splicing. Splices are used to form an eye at the end of a line, extend the length of a line, or repair a broken or damaged line. The splicing of wire rope requires special skill and shall only be performed under the supervision of a competent person with using the proper tools. Reference materials are available with detailed instructions for numerous types of splices. Individuals splicing wire shall always wear appropriate eye protection while splicing or assisting with a splicing procedure.

c. The logger's eye splice and three (3)-pressed eye are the most common methods to form an eye for use as a skyline terminal. See Figure 013.12-A. The spliced eye is approximately eighty percent (80%) efficient. A three (3)-pressed eye can reach ninety percent (90%) line strength. The pressed eye is typically performed at the rigging shop. Spliced eyes may be placed in the field, but may require additional time to install. ()

FIGURE 013.12-A



THE LOGGER'S EYE SPLICE



THREE-PRESSED EYE

d. Guyline Care. Guylines are a vital link in holding up a tower. Guyline extensions shall not be excessively moved around by dragging on the ground, or left on the ground for long periods of time as they will deteriorate faster. ()

e. Line Deformity. A line may deform where it loops around a shackle or pin, producing weakness that may result in line failure. A thimble in the loop protects the line. Thimbles may be used on standing lines, but not on running lines. Examples of the appearance of deformed lines and the use of thimbles in shackles are illustrated in Figure 013.12-B. ()

FIGURE 013.12-B



DEFORMED EYE



EYE WITH THIMBLE

13. Shackles and Hooks. ()

a. Hooks. Hooks shall be inspected to ensure that they have not sprung open. Ensure that shackles are positioned correctly to bear the load. Haywire swivels shall be inspected frequently, due to their susceptibility to wear rapidly. ()

b. Shackle Safety. Proper bells or shackles shall be used to connect the guylines to the stumps, and the guyline lead blocks to the ring at the top of the tower. Connections shall have at least one and a half (1-1/2) times the strength of the guyline. The pins of the shackles must be secured to protect against dislodgement, and a nut and cotter key, or a nut and molly may be used for that purpose. The use of loops or mollies to attach guylines is prohibited. Examples of the appearance of some shackle equipment is illustrated in Figure 013.13-A.

FIGURE 013.13-A



**SHACKLE WITH
SAFETY PIN**



HAYWIRE SWIVEL



HAYWIRE HOOKS

c. The following practices shall be observed in order to ensure the safe use of shackles: ()

i. A shackle must have a rated breaking strength greater than the rated breaking strength of the lines attached to it, and the manufacturer's rated strengths to determine oversized requirements shall be used. Accepted industry standards shall be utilized and adhered to when determining the correct shackle size based on the type and nature of the logging operation being performed. Examples of the appearance of some shackle equipment for the purposes of proper selection is illustrated in Figure 013.13-B. ()

ii. Shackles with pins, and securing nuts with mollies or a cotter key shall be used on standing or overhead rigging. ()

iii. Screw shackle pins shall not be used in any standing or overhead rigging. ()

iv. Screw shackle pins, where allowed to be used, shall be tightened securely. ()

v. Shackle pin mollies shall be rolled sufficiently and fit the pin hole fully. Mollies shall be tucked a minimum of three (3) times. ()

vi. The shackle shall always be placed with the pin nearest to the yarder, so that in the event the shackle fails the least amount of hardware may be thrown at the yarder. ()

vii. Replace shackles that are bent, broken, or show excess wear on the inner surfaces. Examples of the appearance of some damaged or non-conforming shackles are illustrated in Figure 013.13-A.

FIGURE 013.13-A



REPLACE SHACKLES THAT ARE BENT, BROKEN, OR SHOW EXCESS WEAR ON THE INNER SURFACES.

FIGURE 013.13-B



SLEEVE WITH KNOCKOUT PIN



BELL WITH KNOCKOUT PIN



SLEEVE WITH SAFETY PIN



FLUSH PIN STRAIGHT SIDE

14. Knobs, Ferrules, and Eyes.

a. Poured nubbins and a double-end hook are acceptable connectors in place of shackles in some instances. The use of quick nubbins (wedge buttons) as guylines and skyline end fittings is prohibited unless attaching guylines to guyline drums. Operators shall follow the manufacturer's recommendations when attaching sockets and similar end fastenings.

b. Poured nubbins achieve ninety-nine percent (99%) of line strength and may be used. Quick nubbins only achieve a maximum of sixty-five percent (65%) under ideal conditions, and accordingly operators shall consider whether they are appropriate for safe use in any given application. Pressed ferrule are not certifiable for strength, and shall not be used. Examples of the appearance of some knob, ferrule, and nubbin equipment are illustrated in Figure 013.14-A.

c. Operators shall inspect knobs, ferrules, and eyes at cable ends for loose or broken wires, and corroded, damaged, or improperly applied end connections. Poured nubbins shall be date stamped.

FIGURE 013.14-B



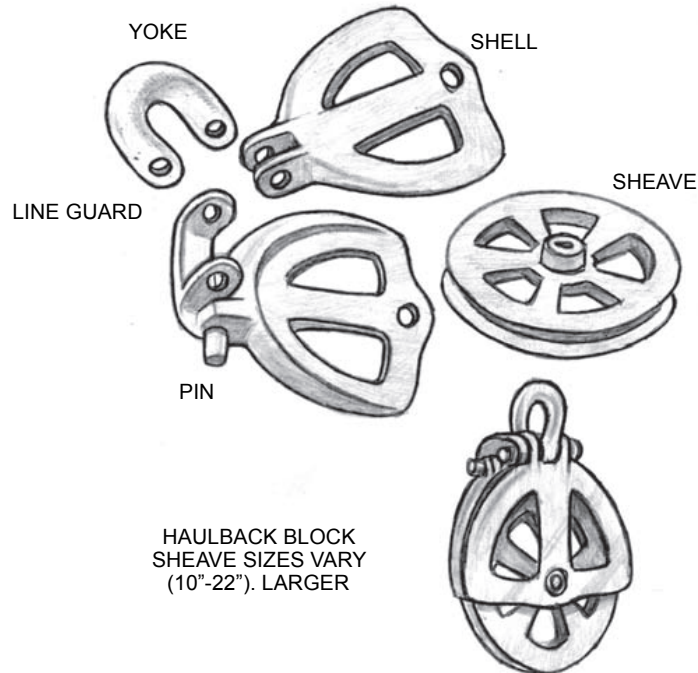
BABBITED KNOB & PRESSED FERRULE

QUICK NUBBIN (WEDGE BUTTON)

()

15. **Brush Blocks.** Brush blocks shall be thoroughly inspected for cracks, wear, or deterioration. Operators shall closely examine the areas subject to the most wear, including bearings, sheave, frame, yoke, and pins. Defective parts shall be replaced immediately. Blocks shall be greased every time before each use.

FIGURE 013.15-A



()

16. **Chains and Straps.** Chains or straps shall always be sized and used correctly for the intended purpose. Determining which size to use may depend on various factors. Oversized trailer lift straps, for example, shall have a breaking strength equal to five (5) times the load to be lifted. Towing chains shall have a tensile strength equivalent to the gross weight of the towed vehicle. The manufacturer's specifications or other appropriate reference materials shall always be consulted to ensure the right chain or strap is used for a task.

()

a. Operators shall periodically inspect chains for damaged, worn, or stretched links. Chains with more than ten percent (10%) wear at the bearing surface shall be replaced. Operators shall periodically inspect straps, and examine them for broken wires or wear. Examples of the appearance of damaged and safe chains are illustrated in Figure 013.16-A. ()

FIGURE 013.16-A



GOOD CHAIN



STRETCHED CHAIN



WORN CHAIN (INSIDE LINKS)

()

014. TREE CLIMBING.

Loggers are often required to climb considerable heights to top trees or hang rigging on lift trees. All workers who may be exposed to fall hazards shall be specifically trained and equipped with fall protection. ()

01. Rescue Plan. Before rigging any tree, the employer must develop rescue procedures, which includes identifying appropriate equipment, personnel, and training to perform a rescue in case a climber is injured or incapacitated in the tree. A second set of climbing gear and a person with climbing experience shall be readily available. Equipment and procedures that will support an injured climber's chest and pelvis in an upright position during a rescue shall be used. When an injured climber is wearing only a climbing belt, provisions must be made to prevent the climber from slipping through it; this may include using a rope to create an upper-body support system. Consideration should be made to replacing climbing belts with a climbing harness. ()

02. Before Leaving the Ground. Employers shall check climbing equipment and immediately remove defective equipment from service. Personnel shall ensure that hardware and safety equipment is securely fastened before placing weight on the lanyard or life-support rope. All climbing knots shall be tied, dressed, and set prior to ascending. All personnel shall follow the recommendations of the manufacturer of the cordage with respect to the use of splices. ()

03. Climbing Equipment. ()

a. A climbing harness provides both pelvic and upper-body support, and may be a one (1)-piece, full-body harness, or any two (2)-piece design that meets industry standards. ()

b. Climbing and life-support lines shall be conspicuous and easily identifiable. ()

c. All lines and webbing used for life support shall have a minimum breaking strength of five thousand four hundred (5,400) pounds and may only be used for climbing. ()

d. When a cutting tool is used in a tree, the climbing rope (lanyard) shall be a high-quality steel safety chain of three-sixteenths (3/16) inch size or larger, or a wire-core rope. ()

e. A life-support rope evidencing excessive wear or damage or that has been subjected to a shock load

shall be removed from climbing service. ()

04. Climbing Operations. ()

a. Ensure climbers are appropriately well-trained in climbing and in the use of all equipment to carry out assigned tasks. ()

b. While climbing operations are underway, co-workers and others on the ground shall stay clear of potential falling objects. If co-workers must work directly below a climber, the climber shall stop any activity in which objects could be dropped or dislodged until the area below is cleared. Climbers shall provide warning whenever any material may be likely to fall or is dropped deliberately. Unsecured equipment, rigging, or material shall not be left in the tree. ()

c. Yarding activity must cease within reach of a tree or guylines of a tree where a climber is working. Machinery may operate in reach of the climber to hoist rigging into the tree. In such circumstance the following shall apply: ()

i. A spotter shall be utilized and yarding operations shall be performed with extra caution; ()

ii. The machine operator and the spotter shall give the task their undivided attention; ()

iii. Equipment that is nearby and which may be noisy, such as power saws, tractors, or logging machines shall be shut down if the noise interferes with signal communications with the climber; and ()

iv. Lines attached to a tree in which a climber is working shall not be moved except on a signal from the climber. ()

d. Tree climbers shall use a three (3)-point climbing system whereby three (3) points of contact must be firmly in place on a secure surface before moving to another point. Along with hands and feet, other points on the body, such as a hooked knee, can be considered a point of contact if it can support the full body weight. Additionally, the places of support must be secure, and climbers should use care to void unsound branches or stubs as a contact point. A lanyard around the tree secured to the safety harness or climbing belt on both ends constitute two (2) points of contact. ()

e. Climbing without being secured to the tree is prohibited, except in conifers, when in the judgment of a qualified climber, the density of branches growing from the stem make attaching the lanyard more hazardous than simply climbing the tree. In such instances, the climber shall evaluate the tree farther up, and use attachments when it is safe to do so. ()

05. Topping Trees. Only an experienced climber with experience felling trees shall top a tree. Cutters shall not cut when wind or other conditions make doing so hazardous. Standard safe felling procedures shall apply, with the additional following requirements: ()

a. A chainsaw with a bar short enough to make both the face-cut and backcut easily from one side shall be used. ()

b. Cutters shall determine the felling direction and ensure there are no obstructions. Consideration shall be given to the fact that an impact could cause violent movement in the tree being topped where the climber is perched. ()

c. A safety chain shall be wrapped around the tree just below the cut to prevent the tree from splitting or slabbing down inside the climbing rope. ()

d. The cutter shall ensure he is comfortable, and avoid any awkward cutting position. ()

e. Exact cuts should be made. There is no escape route for the climber to get away from the stem to avoid kickback or a splintered hinge. When making horizontal side cuts, extra care shall be used to stay on the line of

the backcut to avoid wood breaking away with the saw as the top falls.

()

015. TYPICAL RIGGING SYSTEMS.

01. See Figures 015.16-A through 015.16-H.

FIGURE 015.16-A

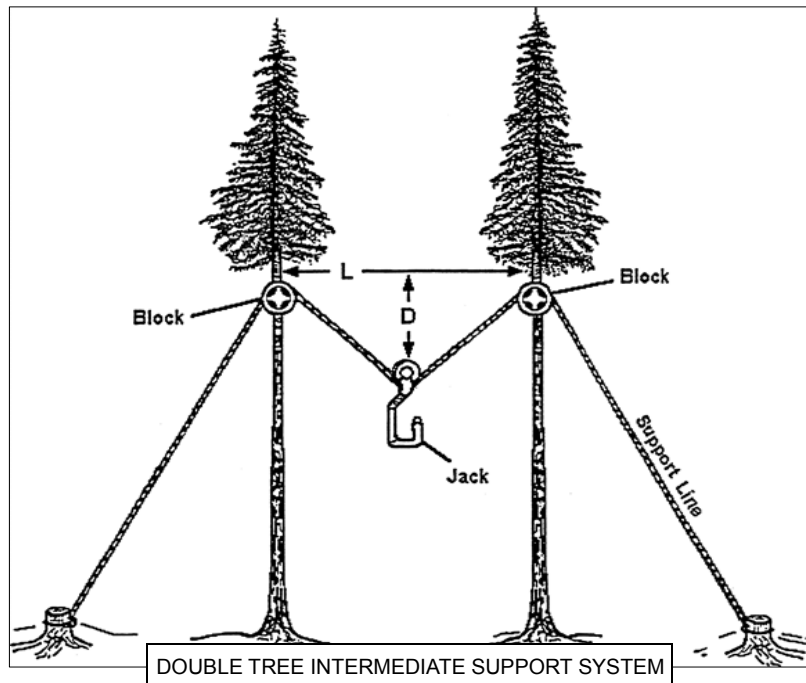


FIGURE 015.16-B

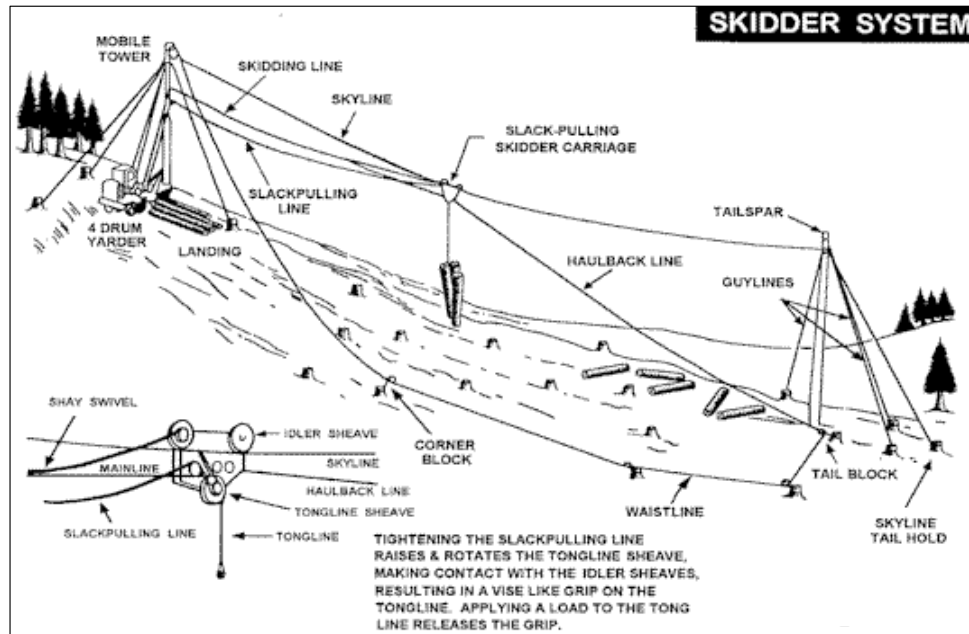


FIGURE 015.16-C

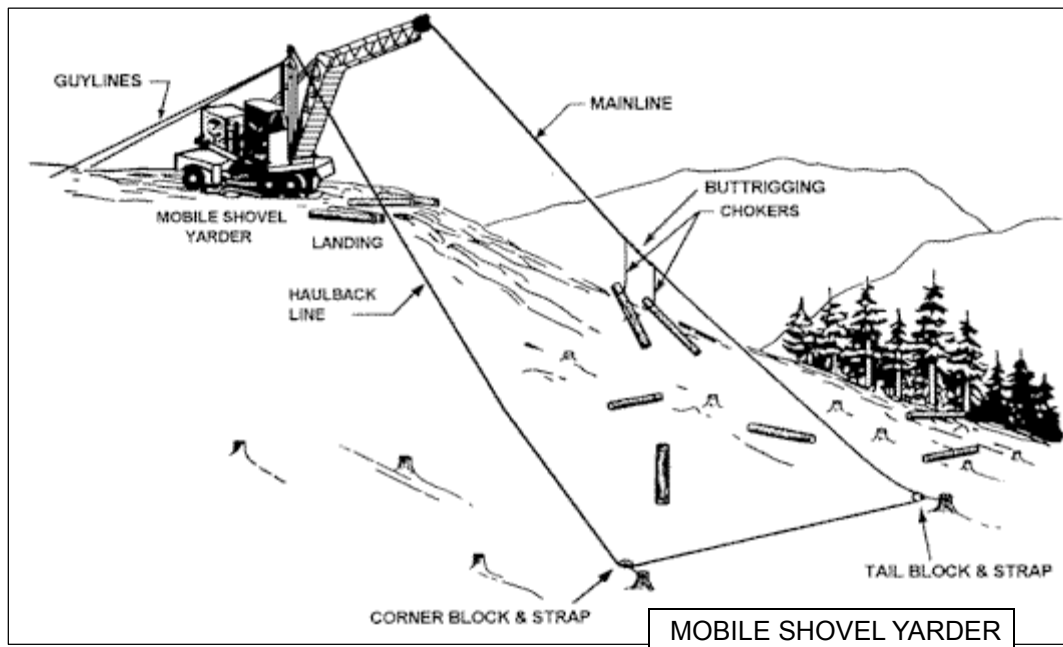


FIGURE 015.16-D

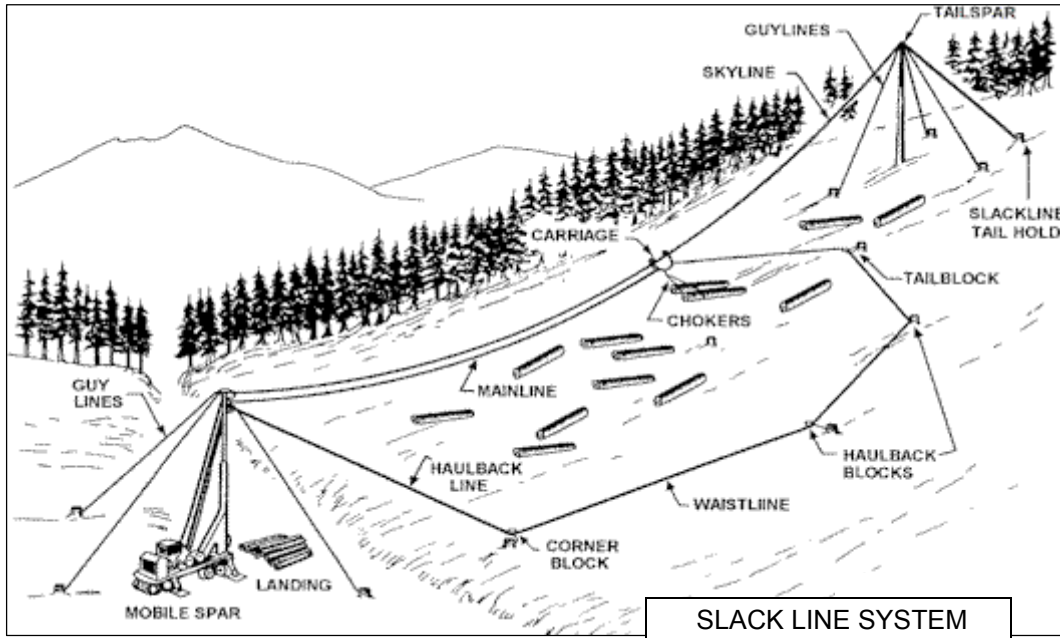


FIGURE 015.16-E

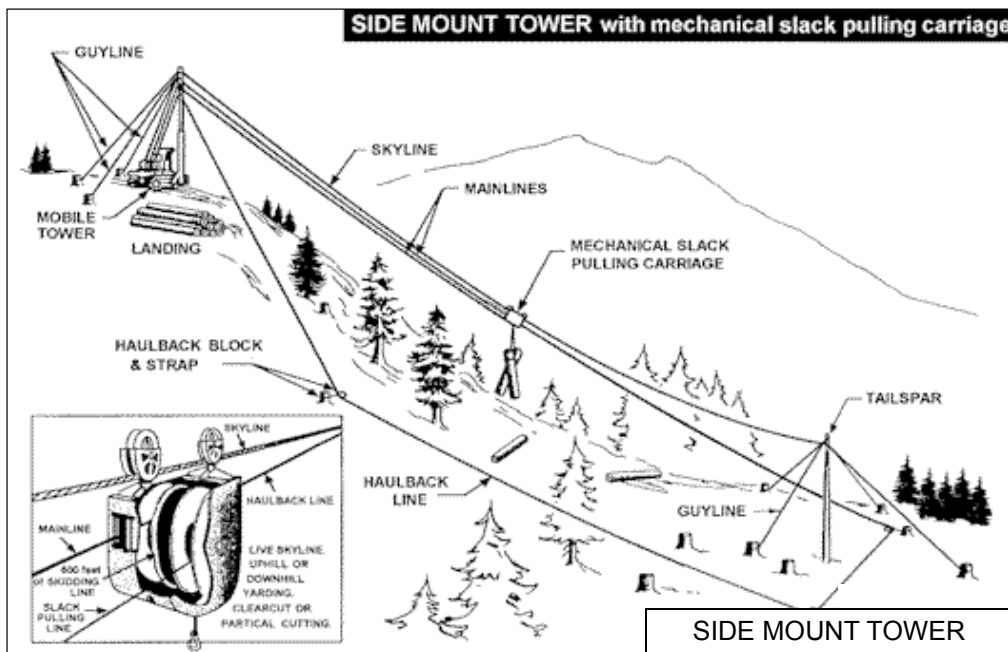


FIGURE 015.16-F

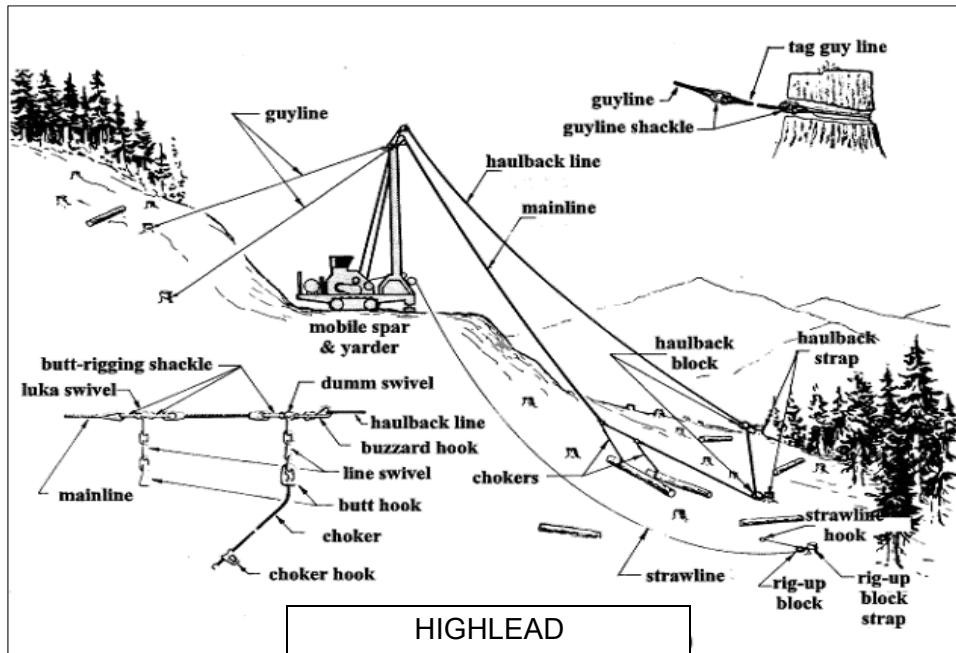


FIGURE 015.16-G

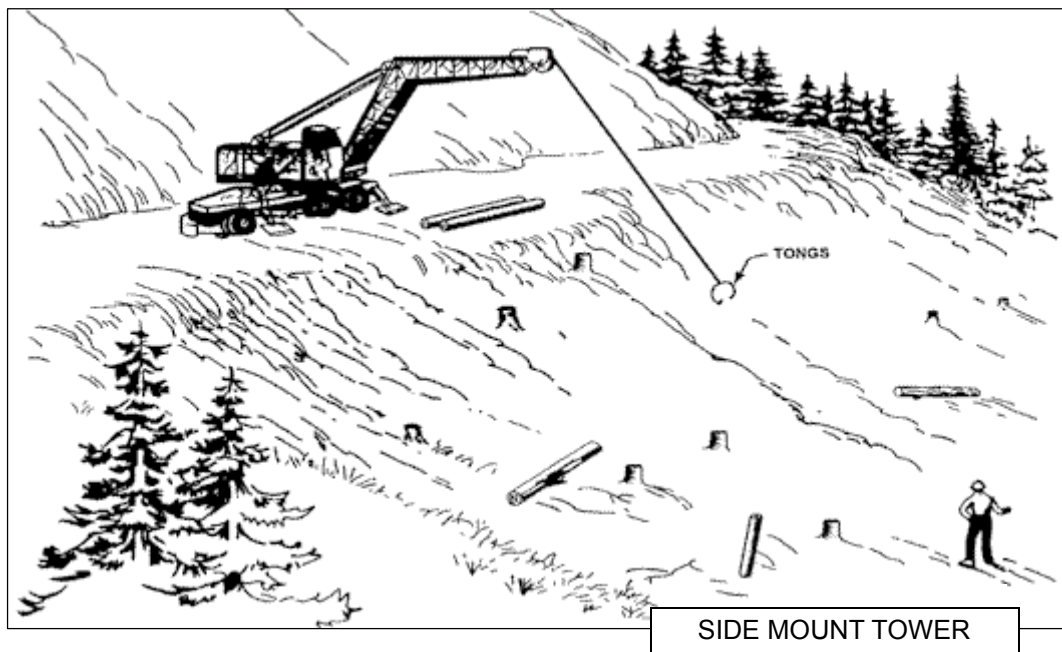
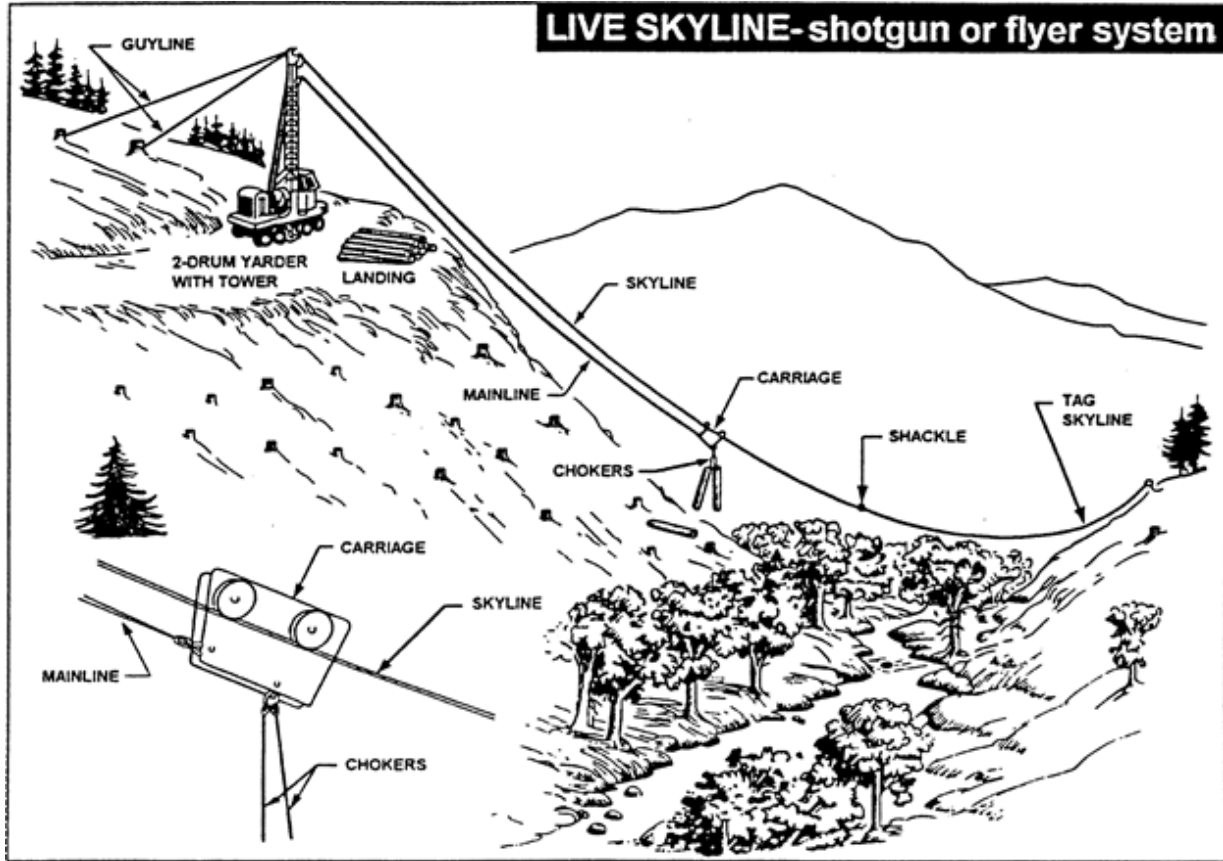


FIGURE 015.16-H



0176. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.12 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - ROAD TRANSPORTATION

DOCKET NO. 07-0812-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required updates to references, as well as minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. The rulemaking also makes minor editorial revisions to several references and other rule provisions related to safe logging truck transportation.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0812-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein.
(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

00~~7~~. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. LOG TRUCK TRANSPORTATION.

01. General. The following requirements are supplemental to any Idaho law governing automobiles, trucks, tractors, trailers, and any combination of these units. If there are any discrepancies in the codes between this section and ~~the any F~~ederal ~~and or~~ Idaho ~~motor~~ vehicle regulations pursuant to title 49, Idaho Code, applicable for in the state of Idaho, ~~the such federal of other~~ governmental regulations will govern ~~(Idaho Code Title 49 Chapter 25)~~.
(7-1-97)()

02. Stopping and Holding Devices for Log Trucks. (7-1-97)

a. Motor logging trucks and trailers must be equipped with brakes ~~and~~ or other control methods which will safely stop and hold the maximum load on the maximum grade. Air or vacuum brake lines shall be of the type intended for such use and shall have fittings which will not be interchangeable with water or other lines.

(7-1-97)()

b. Brake Test - A brake test shall be made before and immediately after moving a vehicle. Any defects shall be eliminated before proceeding. (7-1-97)

03. Lighting Equipment Required. (7-1-97)

a. Motor vehicles used on roads not under the control of the ~~State Highway~~ **Idaho Transportation** Board, counties or cities, shall have equipment necessary for safe operation, such as head, tail, and stop lights. (7-1-97)()

b. Such lights shall be used during clearance periods of reduced visibility. (7-1-97)

04. Safe Operating Requirements. (7-1-97)

a. The driver shall do everything reasonably possible to keep his truck under control at all times and shall not operate in excess of a speed at which he can stop the truck in one-half (1/2) the distance between him and the range of unobstructed vision. (7-1-97)

b. The driver shall take into consideration the condition of the roadway, weather factors, curves, grades and grade crossings, the mechanical condition of his equipment, and other ~~pertinent items~~ **relevant factors**. (7-1-97)()

c. The driver shall clear rocks from between dual tires before driving on multi-lane roads. (7-1-97)

d. A daily inspection shall be made of trucks and trailers with particular attention to steering apparatus, brakes, boosters, brake hoses and connections, reaches, and couplings. Any defects found shall be corrected before equipment is used. (7-1-97)

05. Stakes, Bunks, or Chock Blocks. All stakes and bunks, installed on log trucks and trailers, together with the means provided for securing and locking the stakes in a hauling position, shall be designed and constructed of materials of such size and dimensions that ~~they~~ will withstand a pressure of fifteen thousand (15,000) pounds applied outward against the tops of the stakes, and, or extensions when used, without yield or permanent set resulting in the stakes, bunks or the means provided for securing and locking the stakes.

NOTE: Test Procedure - A test pressure of fifteen thousand (15,000) pounds is applied to the top of one (1) stake, using the top of the stake opposite as a base for applying pressure. Bunk is not to be secured to floor or other base except in a manner similar to that used to mount it to truck or trailer. Stakes must return to normal upright position at end of test and stakes and all component parts examined and checked with original specifications. If no yield results in any part, the design and construction may be considered as meeting code requirements. (7-1-97)()

06. Stake Extensions. (7-1-97)

a. Stake extensions shall not be used unless all component parts of the bunking system are of sufficient size and strength to support the added stresses involved. (7-1-97)

b. Truck drivers shall report ~~to the proper authority~~, missing or broken stake extensions **to the proper authority**. (7-1-97)()

07. Stake and Chock Tripping Mechanisms. Stakes and chocks ~~which~~ **that** trip shall be constructed in such a manner that the tripping mechanism, which releases the stake or chocks, is activated at the opposite side of the load from the stake being tripped. (7-1-97)()

08. Linkage for Stakes or Chocks. (7-1-97)

a. The linkage used to support the stakes or chock must be of adequate size and strength to withstand

the maximum imposed impact lead. (7-1-97)

b. "Molly Hogans" or cold shuts are prohibited in chains or cable used for linkage. (7-1-97)

09. Notify Engineer When Around Truck. (7-1-97)

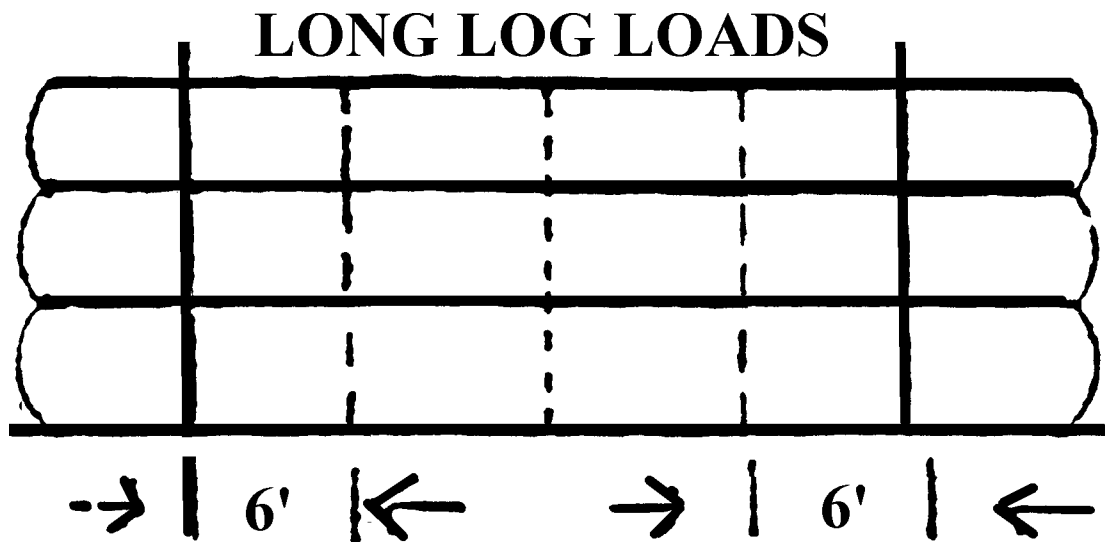
a. Persons shall not walk along side of or be underneath any truck being loaded. (7-1-97)

b. Prior to performing any duties, such as releasing bunk locks, placing or removing compensating pin, scaling logs, reading scale, chopping limbs or making connections, ~~they~~ persons shall notify the loading engineer of their intentions and be acknowledged. (7-1-97)()

10. Number of Wrappers Required. (7-1-97)

a. Each unit used for hauling logs longer than twenty six (26) feet, shall have the load secured by a minimum of three (3) wrappers, one within six (6) feet of each bunk. See Figure 010.10-A.

FIGURE 010.10-A

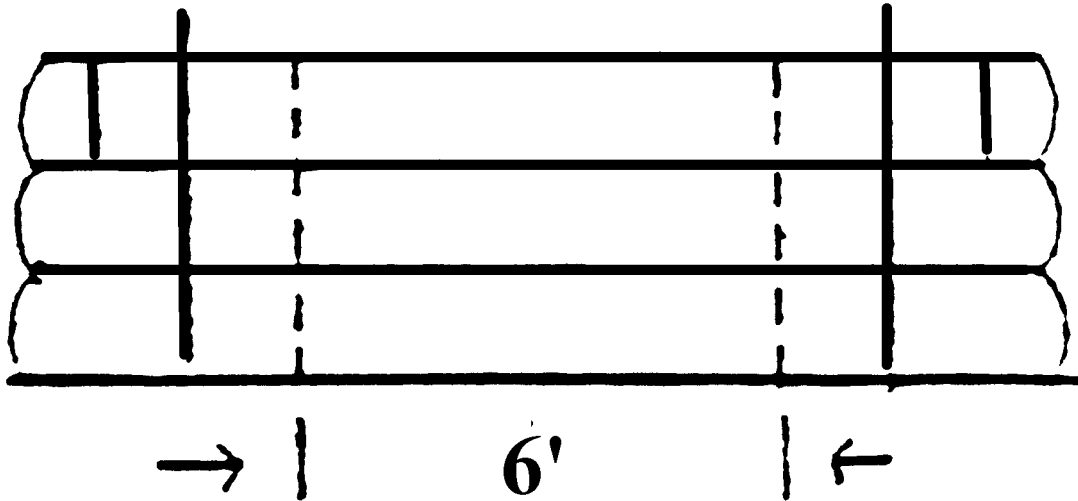


(7-1-97)

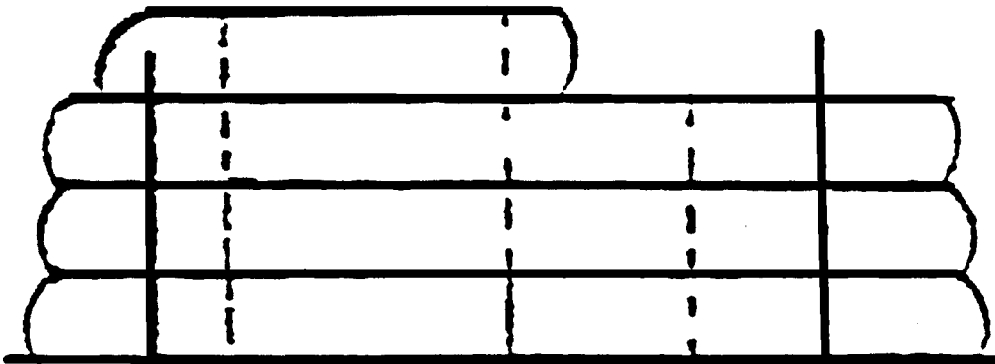
b. All exposed outside logs shall be secured by one (1) wrapper passing near each end of the log. See Figure 010.10-A.

FIGURE 010.10-B

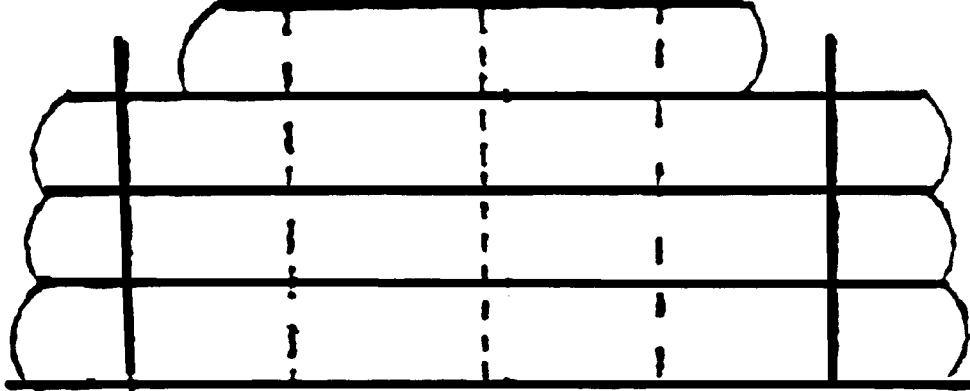
SHORT LOG LOADS



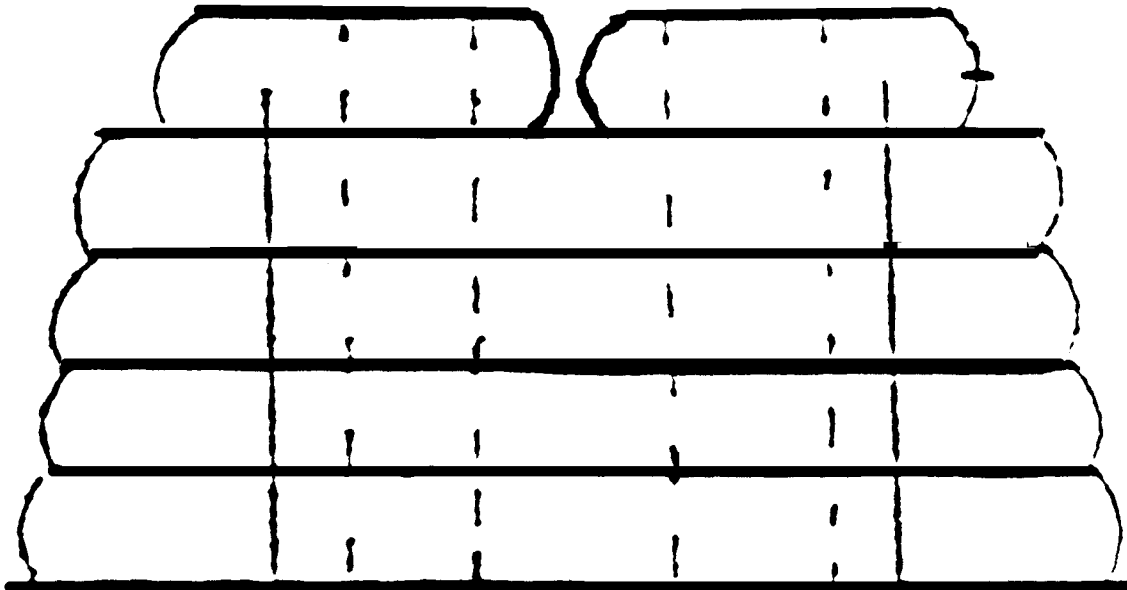
LONG LOG LOAD WITH SHORT LOGS IN REAR OR IN FRONT



**LONG LOG LOAD WITH
SHORT LOGS IN CENTER**



**LONG LOG LOAD WITH
SHORT LOGS BUTTED**



(7-1-97)

c. On one (1) log load where trailer bunk is equipped with cheese blocks, one (1) wrapper securing log to the trailer bunk will be sufficient. Outside wrappers on short logs shall have a minimum of six (6) feet spread.

(See Figure 010.10-C.)

NOTE: High loads are defined as logs loaded above bunk stakes.

FIGURE 010.10-C



(7-1-97)

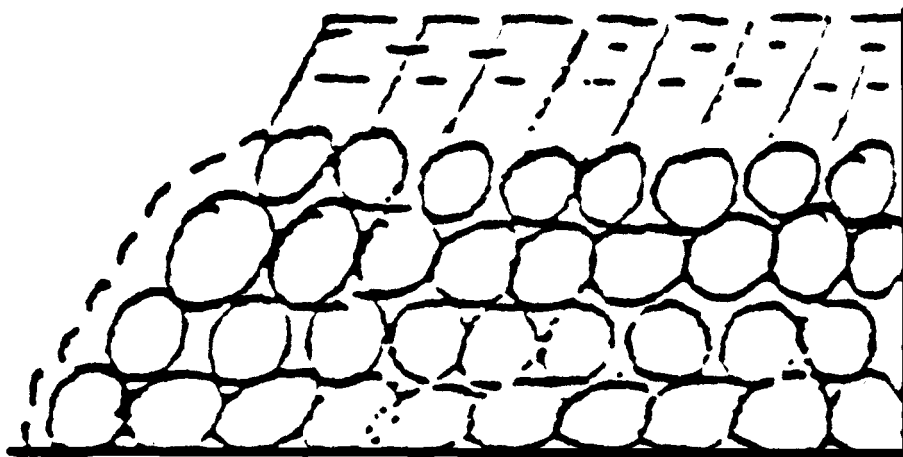
11. Requirements for Crosswise Loaded Trucks.

(7-1-97)

a. When loads of short logs are loaded crosswise, the logs shall be properly contained by use of stake or chock blocks and shall be secured by a minimum of two (2) wrappers. (See Figure 010.11-A.)

FIGURE 010.11-A

CROSSWISE LOADED TRUCK



(7-1-97)

b. Binders shall be securely fastened to the vehicle.

(7-1-97)

12. Construction of Wrappers.

(7-1-97)

- a. Cables shall have a spliced eye or swaged fittings. (7-1-97)
- b. “Molly Hogans” or cold shuts are prohibited to make splices or connections. (7-1-97)
- c. Wrappers shall have a minimum breaking strength of not less than thirteen thousand (13,000) pounds. (7-1-97)
- 13. Binder Placement Requirements.** (7-1-97)
 - a. Binders shall be placed in a manner whereby they will be released on the side opposite the brow log, or on the side where the unloading equipment operator can see the binders. (7-1-97)
 - b. Truck drivers shall be required to stop vehicles, dismount, check and tighten loose load binders, either just before or immediately after leaving a private road to enter the first public road they encounter. (7-1-97)
- 14. Precautions When Placing or Removing Binders and Wrappers.** (7-1-97)
 - a. Binders and wrappers shall remain on the load until an approved safeguard has been provided to prevent logs from rolling off the side of truck where binders are being released. (7-1-97)
 - b. At least one (1) wrapper shall remain secured while relocating or tightening other binders. (7-1-97)
- 15. Binders and Wrappers to Be Placed Before Leaving Landing Area.** Binders and wrappers shall be placed and tightened around the completed load before shifting the load for proper balance and a wrapper or wrappers shall be placed and secured to hold the load in place before the truck is moved from the landing area or out of sight of the landing crew. (7-1-97)
- 16. Adequate Reaches Required.** (7-1-97)
 - a. Log trailers must be connected to tractors by reaches of a size and strength to withstand all imposed stresses. (7-1-97)
 - b. Spliced reaches shall not be used. (7-1-97)
 - c. Documented reach inspections shall be performed annually. ()
- 17. Proper Lay of Logs in Stakes or Bunks.** (7-1-97)
 - a. The method of loading shall be such that the logs in any tier or layer unsecured by stakes or cheese blocks shall have their centers inside of the centers of the outer logs of the next lower tier or layer so that the load is stable without the aid of binders. (7-1-97)
 - b. Logs shall be well saddled without crowding so that there will be no excessive strain on the wrappers or stakes. (7-1-97)
 - c. No more than one half (1/2) of any log shall extend above the stakes unless properly and securely saddled. (7-1-97)
 - d. Bunk logs shall extend not less than twelve (12) inches beyond the bunk, with the exception of non-oscillating bunks. ()
- 18. Traffic Travel on Right Side of Road Except Where Posted.** All trucks shall keep to the right side of the road. ~~(E, except where road is plainly and adequately posted for left side traveling.)~~ (7-1-97)()
- 19. Towing of Trucks.** When trucks must be towed on any road, the person guiding the vehicle being towed shall, by prearranged signals, govern the speed of travel. (7-1-97)

20. Scaling and Branding. When at the dump or reload and where logs are scaled or branded on the truck, the logs shall be scaled or branded before the wrappers are released. (7-1-97)

21. Metal Parts Between Bunk and Cab to Be Covered. Suitable material shall be used on treading surfaces between the bunk and cab to prevent persons from slipping on the metal parts. (~~7-1-97~~)()

22. Bunks to Be Kept in Good Condition and Repair. (7-1-97)

a. Log bunks or any part of bunk assembly bent enough to cause bunks to bind shall be straightened. (7-1-97)

b. Bunks shall be sufficiently sharp to prevent logs from slipping. (7-1-97)

23. Following Other Vehicles. (7-1-97)

a. A vehicle not intending to pass shall not follow another vehicle closer than one hundred fifty (150) feet. (~~7-1-97~~)()

b. Passing shall be done only when it can be done safely. The passing vehicle shall consider all factors which may be essential, such as condition of the roadway, width of the road, and distance of clear visibility ahead. (7-1-97)

24. Reaches to Be Clamped When Towing Unloaded Trailer. A positive means, in addition to the clamp, shall be installed on the reach of log truck trailers when the trailers are being towed without a load. (7-1-97)

25. Inserting of Compensating Pin. (7-1-97)

a. Persons shall never enter the area below suspended logs or trailers. (7-1-97)

b. At dumps where the load must remain suspended above the bunks until the truck is moved away and when the trailer is the type with a compensating pin in the reach, a device shall be installed ~~which~~ that will allow the trailer to be towed away from the danger area. (~~7-1-97~~)()

26. Safety Chains. (7-1-97)

a. All trailers shall be secured with a safety chain, or chains, which connect the frame of the truck assembly to the trailer unit. (7-1-97)

b. The chains shall be capable of holding the trailer in line in case of failure of the hitch assembly. (7-1-97)

011. STEERED TRAILERS.

01. Steered Trailers. Steered trailers not controlled from the truck cab shall be designed, constructed, and operated ~~as follows~~ in accordance with this section. (~~7-1-97~~)()

a. Secure seat. A secure seat with substantial foot rests shall be provided for the steerer at the rear of the bunk. Any arrangement that permits the steerer to ride in front of the bunk is prohibited. (7-1-97)

b. Unobstructed exit. The seat for the steerer shall be so arranged that the steerers ~~have~~ has an unobstructed exit from both sides and the rear. (~~7-1-97~~)()

c. Bunk support. The bunk support shall be so constructed that the steerer has a clear view ahead at all times. (7-1-97)

d. Adequate means of communication. Adequate means of communication shall be provided between

the steerer and the truck driver. (7-1-97)

e. Eye protection and respirator. Eye protection and respirator shall be provided for the steerer. (7-1-97)

f. Fenders and splash plates. The trailer shall be equipped with fenders or splash plates to protect the steerer from mud and dust so far as possible. (7-1-97)

g. Lights. If used during a period of reduced visibility on roads not under the control of the ~~State Highway~~ Idaho Transportation Board, counties or cities, the trailer shall be equipped with head, tail and stop lights. (7-1-97)()

012. COMMON CARRIERS.

01. Responsibility. It shall be the responsibility of the common carrier, and particularly the operator of the common carrier, upon entering the premises of any sawmill, woodworking or allied industry, to exercise all possible caution and to use all necessary safety devices and precautions to their fullest extent. (7-1-97)

02. Audible and Visual Warning Devices. (7-1-97)

a. All common carriers equipped with audible and visual warning devices shall activate such warning devices before entering a danger zone, and they shall remain activated as long as the carrier is moving in that zone. (7-1-97)

b. A danger zone shall be defined as an area where men or vehicles are working or normally work. (7-1-97)

03. Train Operations. When a train is operating on a plant railway system, the safety rules shall apply as outlined by the Association of American Railroads governing train, engine and transportation of employees. (7-1-97)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0813-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. The rulemaking also makes minor editorial revisions to several citations and other rule provisions related to log handling.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
Phone: (208) 332-8986 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0813-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt ~~reasonable~~ rules for affecting the purposes ~~of the Workers' Compensation Act~~ therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

0047. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. SPECIFIC REQUIREMENTS.

01. Log Dumps, Landings, Log Handling Equipment, Loading, and Unloading. (7-1-97)

a. Only authorized persons shall operate log handling equipment. Machine operators shall be capable and experienced personnel. No persons other than the operator may be in the operator's compartment while machine ~~ary~~ is operating, except for purposes of operating instructions. Unnecessary talking to the operator of log handling equipment while the machine is in operation is prohibited. (7-1-97)()

b. Machine operators shall make necessary inspection of machines each day before starting work. All repairs or adjustments shall be made before any strain or load is placed upon the equipment. (7-1-97)

c. Substantial barriers or bulkheads ~~to~~ protecting the operator shall be provided for all log handling machines where the design, location, or use of such machines exposes the operator to material or loads being handled. Such barriers or bulkheads shall be of adequate area and capable of withstanding impact of materials handled.

(7-1-97)()

d. A safe and adequate means of access to, and egress from, the operator's station shall be provided. Necessary ladders, steps, step plates, foot plates, running boards, walkways, grab irons, handrails, etc., shall be provided and maintained. (7-1-97)

e. All moving parts shall be guarded in an approved manner to afford complete protection to the operator and other workers. (7-1-97)

f. Throttles and all power controls shall be maintained in good operating condition. (7-1-97)

g. Landings shall be prepared and arranged to provide maximum safety for all employees and shall provide ample space for the safe movement of equipment and storage and handling of logs. (7-1-97)

h. Adequate means shall be used to prevent logs from rolling into the road or against trucks. Workers shall be sure that logs are securely landed before approaching them. While unhooking chokers, workers shall choose the safest approach. This is usually from the upper side of the log. (7-1-97)

i. Logs shall not be landed at loading areas until all workers, tractors, trucks, or equipment are in the clear. All persons shall stay in the clear of running lines, moving rigging, and loads until rigging or loads are stopped. (7-1-97)

j. The loading machine shall be set so that the operator shall have an unobstructed view of the loading area, or a signalman shall be properly placed and his signal shall be followed. Signaling the operator shall be done by standard hand signals, whistles, or other positive means of communication. (7-1-97)

k. Machines, sleds, or bases shall be of sufficient strength to safely withstand moving, and machines shall be securely anchored to their bases. (7-1-97)

l. Mufflers shall be installed on all internal combustion engines of log handling equipment and located or guarded in such a manner as to prevent accidental contact with the muffler or exhaust pipes and afford protection from fumes. (7-1-97)

m. Brakes shall be installed on all machine drums and maintained in effective working condition. (7-1-97)

n. Brake levers shall be provided with a ratchet or other equally effective means for securely holding the drum. (7-1-97)

o. Brake bands shall have a safety factor of five (5) times the stress to be imposed and they shall be of a design which will render them impervious to exposure. Operators shall test brakes before lifting any load at the start of each shift. (7-1-97)()

p. In no case shall stresses in excess of the manufacturer's recommendation be permitted. Equipment not carrying a manufacturer's recommendation shall not exceed stresses of more than one half of the yield strength of the material used. Conversion of ~~C~~ranes, ~~S~~hovels, etc., into yarders shall be in conformity with these rules. Necessary guylines ~~and~~ or outriggers shall be provided and used to effectively prevent mast, A-frames, etc., from tipping or overturning. (7-1-97)()

q. The manufacturer's recommendations for line sizes, if in compliance with ~~this Code~~ these rules, shall be followed and such line sizes shall not exceed the rated capacity of the machine using it. (7-1-97)()

r. Fork lifts or arms, tongs, clams or grapples shall be lowered to their lowest position and all equipment brakes set before the operator leaves the machine. (7-1-97)

s. Log unloaders shall not be moved about the premises for distances greater than absolutely necessary with the lift extended or with the loads higher than necessary for clear vision. (7-1-97)

- t.** All log handling machines which have lift arms that create a shear point with the driver's cab or position shall be provided sheer guards that will eliminate the operator's exposure to such hazard. Grapple arms or other positive means of keeping logs on the forks shall be required on fork lift-type loading machines. (7-1-97)()
- u.** All workers shall be in the clear and in view of the machine operator before a lift is made. (7-1-97)
- v.** All mobile log handling machines shall be equipped with rearview mirrors, a horn or other audible warning device, and lights front and rear so as to illuminate the entire length of the load being lifted or carried. An automatic warning device that will activate when the vehicle is moved is preferable in areas where other workers are employed. (7-1-97)
- w.** Logs or loads shall not be swung over occupied equipment or workers and no ~~one~~ **person** shall ride the load or rigging. (7-1-97)()
- x.** While logs are being loaded, no ~~one~~ **person** shall remain on the chain deck or behind the truck cab protector where they could be pinned between the end of a log and cab, tank, or cab protector. Cab protectors shall be cleaned of all loose gear before trucks are moved from the landing. (7-1-97)()
- y.** An unimpaired clearance of not less than three (3) feet shall be maintained from swinging or moving parts of machines, where such swinging or moving parts create a hazard to personnel. If this clearance cannot be maintained, suitable barricades or safeguards shall be installed to isolate the hazardous area. (7-1-97)
- z.** A-frames, towers, masts, etc., shall be designed and constructed to provide adequate structural strength and height for positive control of materials or loads lifted. When in use, they shall be guyed or braced to provide stability and prevent tipping. Their bases shall be secured against possible displacement. (7-1-97)
- aa.** When moving machines on sleds, etc., stumps shall be used, when available, in preference to trees. These stumps shall be carefully examined to make sure that they will safely withstand the strains imposed by moving. If there is any doubt, the stumps shall be tied back. Insecure trees used for holds shall be guyed. Workers shall stand in the clear while pulls are being made. When holds are being changed, the machine shall be secured with a separate line if there is danger of the machine sliding. When snubbing machines down steep grades, the main line shall be used for snubbing and the haul back for pulls. Only the operator and those required to assist him shall ride on the machine while it is being moved.
- NOTE: All lines, blocks, etc., and their use shall be in conformity with the applicable provisions of the "Rigging, Lines, Blocks, and Shackles" (IDAPA 07.08.09) of this Standard. (7-1-97)
- bb.** All log handling equipment shall be equipped with brakes capable of holding and controlling the vehicle with capacity load. (7-1-97)
- cc.** A limit stop which will prevent the lift arms from over-traveling shall be installed on all electric powered log unloaders. (7-1-97)
- dd.** Gas powered vehicles shall not be refueled while motor is running nor in the vicinity of smoking or open flames. (7-1-97)
- ee.** All log handling equipment shall be **provided equipped** with approved fire extinguisher of at least five (5) B.C. rating easily accessible to operator. (7-1-97)()
- ff.** Methods of unloading logs shall be properly arranged and used in a manner to provide protection to all employees. (7-1-97)
- gg.** A substantial log dump shall be constructed at each log pond or mill dumping ground. The road bed shall be of hard packed stone, heavy planking or equivalent material. (7-1-97)
- hh.** Where logs are dumped directly into water from truck or rail car, a substantial brow log eighteen

(18) inches or more in diameter shall be provided and securely anchored. (7-1-97)

ii. After cars or trucks are spotted at such dump or landing, no person will be permitted to pass between **a** brow log and **a** truck or rail car. (7-1-97)()

jj. The use of plain end hooks without a bell is prohibited. Loading hooks shall be kept in good repair at all times. They shall be equipped with at least one half (1/2) inch diameter hand ropes in good condition and of sufficient length for workers to be in the clear. When carrying tongs, they shall not be rested on both shoulders with points around the neck. (7-1-97)

kk. Where there is danger of tongs or hooks pulling out of the logs, straps shall be used. (7-1-97)

ll. All equipment should be so positioned, equipped, or protected so that no part shall be capable of coming within ten (10) feet of any power line. (7-1-97)()

mm. Bunk logs shall extend not less than twelve (12) inches beyond the bunks, with the exception of non-oscillating bunks. (7-1-97)()

nn. The method of loading shall be such that the logs in any tier or layer unsecured by stakes or cheese blocks shall have their centers inside of the centers of the outer logs of the next lower tier or layer so that the load is stable without the aid of binders. Logs shall be well saddled without crowding so that there will be no excessive strain on the binders, bunk chains, or stakes. No more than one half (1/2) of any log shall extend above the stakes unless properly and securely saddled. (7-1-97)

oo. Binders shall be so placed that they will not be fouled by the unloading machine and that they may be released from the side on which the unloader operates. Proper protection shall be provided for workers while removing wrappers. (7-1-97)

pp. Whenever loads consist of logs to be dumped at different landings, lots shall be separated with gut wrappers. Wrappers shall be used for the entire load, as required for single unit loads. Not more than two (2) lots shall be loaded on a single vehicle. (7-1-97)

qq. Truck drivers shall be in the clear and in view of the log unloader operator before forks are moved into the load or against it, before a lift is made. All persons are prohibited from standing under, or near, the ends of logs being lifted or moved. (7-1-97)

rr. Loads or logs shall not be moved or shifted while binders are being applied or adjusted.

NOTE: For logs in transit see "Log Truck Transportation" (IDAPA 07.08.12, Section 010). (7-1-97)

ss. The unloading machine or lines shall be so positioned to securely hold the logs to keep them from rolling off on the side from which the wrappers, bunk blocks, or stake trips are being released, and they shall not be released until the machine is so placed. Signs to this effect shall be prominently posted at each landing or dump. An extra wrapper shall be placed to hold the logs if it becomes necessary to move a wrapper to prevent it from being fouled by the unloading machine. Stake finger trips shall be released by using rip chains. The use of hammers, peaveys, etc., is strictly prohibited. (7-1-97)

tt. All log dumps, trailer loading areas, and landings shall be kept reasonably free from bark and other debris. (7-1-97)

uu. Artificial log ponds, subject to stagnation, shall be drained and refilled at such intervals necessary to keep them in a sanitary condition. (7-1-97)

vv. Logs in storage decks shall be so arranged as to prevent logs from rolling off the face of the deck. (7-1-97)

ww. All log load wrappers shall be arranged so that they must be released in view of the unloader

operator or signal person. When binders are released by remote control devices and when the person releasing the binders is in a safe location, and when in view of the unloading operators, or signal person, the binders may be released from either side. After the unloading machine is in position to hold the load, the binders shall be removed and the person removing them shall be in a safe location in view of the operator. The operator will be given a signal by the person releasing the binders before the machine or load is moved. (7-1-97)

02. Log Ponds. (7-1-97)

- a. Pond walks shall be kept in good repair and free of protruding nails and obstructions. (7-1-97)
- b. Persons working on logs or around booms in water shall wear sharp calked shoes. When conditions such as snow and ice render calks ineffective, other types of shoes with "safety soles" may be worn. (7-1-97)
- c. Approved buoyant life vests or life jackets shall be worn and fastened by the persons working on water. (7-1-97)
- d. Pike poles shall be of metal, fiberglass, or continuous, straight-grained No. 1 wood material. Metal or conductive pike poles shall not be used around exposed electrical conductors. Defective poles, blunt or dull pikes shall not be used. They shall be restricted to the use for which they are intended. (7-1-97)

e. Sufficient walkways and floats shall be proved and securely anchored to insure the safe passage ~~of~~ of workers. (7-1-97)()

f. Decks of floats or other walkways shall be kept reasonably level and above the waterline at all times and shall be capable of supporting four (4) feet from log haul. (7-1-97)

g. Pond walkways shall be at least four (4) feet or more in width for a distance of at least forty (40) feet from log haul. (7-1-97)

h. Gaps between end of boom sticks or walkways shall not be over twenty four (24) inches. (7-1-97)

03. Booms-Rafting-Towing. (7-1-97)

a. Life ~~R~~ Rings with a minimum of fifty (50) feet of approved line attached shall be provided at convenient points where water is more than five (5) feet in depth. Life rings shall be maintained so as to retain their positive buoyancy. (7-1-97)()

b. Workmen, whose duties require them to work from boats or from floating logs, boom sticks, or walkways along or on water, shall be provided with and shall wear approved, positive, buoyant equipment while performing such duties. (7-1-97)

04. Stiff Booms. (7-1-97)

a. All stiff booms shall be made of not less than two (2) boom sticks. Width of stiff booms shall be not less than thirty-six (36) inches from outside to outside float logs. Float logs shall be fastened together with not less than four by six inch (4" x 6") cross ties, or equivalent, or cable lashings notched into float logs. All stiff booms and floating walkways shall be decked with not less than two by six inch (2" x 6") planking and kept free of snow and other debris. (7-1-97)

b. All sorting gaps shall have a substantial stiff boom on either side of gap. Stiff booms or walkways shall be planked over with not less than two by six inch (2" x 6") or wider planks and shall be kept free of tripping hazards. (7-1-97)

05. Boom Sticks and Foot Logs. (7-1-97)

a. All regular boom sticks and foot logs shall be made of sound straight timber and shall be free of protruding knots and bark, and shall be of a size to support two (2) workers above the water line. (7-1-97)

b. Boom sticks which have been condemned shall be marked with three (3) chopped crosses ten (10) feet from the butt end and shall not be reused as boom sticks. (7-1-97)

c. Gaps between ends of boom sticks shall not be over twenty four (24) inches. All wire shall be removed from boom sticks or boom chains before they are reused or stored. (7-1-97)

d. When power driven machinery is used on booms or sorting jacks, it shall be placed on raft or float with enough buoyancy to keep machine well above waterline. If electric power is used it shall be grounded in an approved manner. Electric powered hand tools shall not be used unless the tool has a positive ground. (7-1-97)

e. When dog lines become hazardous, they shall be discarded. (7-1-97)

f. Booms, ponds, sorting jacks or walkways, shall be provided with sufficient illumination for all employees to have clear vision at all points where work is being carried on. (7-1-97)

06. Pond Boats and Tow Boats. (7-1-97)

a. All persons whose duties require them to work from boats, floating logs, boom sticks, or floating walkways shall wear sharp calked shoes. When conditions render calks ineffective, other approved foot gear may be worn. (7-1-97)

b. All metal decks of pond boats or tow boats shall be covered with a material that will prevent slippage of calks. (7-1-97)

c. All boats used by workmen shall be provided with at least one (1) life ring with fifty (50) feet of approved line attached. (7-1-97)

d. All power boats shall be provided with one (1) or more approved fire extinguishers of five (5) B-C rating or more for each fifteen (15) feet in length. (7-1-97)

e. Power boats shall not be re-fueled while the motor is running. (7-1-97)

f. All powered boats shall be vented in accordance with U.S. Coast Guard Regulations. (7-1-97)

g. All powered boats shall conform to operating requirements of the U.S. Coast Guard where applicable. (7-1-97)

07. Trailer Loading Hoist/Sawmill Log Dump. (7-1-97)

a. The hoist shall be designed and constructed in accordance with the National Electrical Code, so as to provide safe loading or unloading of the trailer. (7-1-97)

b. The hoist shall be equipped with a limiting device to maintain safe take-up limits of line on the hoisting drum. (7-1-97)

c. Regular service and inspection of the hoist and hoisting equipment shall be made to assure reliable serviceability of the facility. (7-1-97)

011. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.14 - MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING -

HELICOPTER LOGGING

DOCKET NO. 07-0814-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required minor editorial revisions to ensure clarity. Through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. This rulemaking also makes minor editorial revisions to several of the requirements related to helicopter logging operations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0814-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt reasonable rules for affecting the purposes of the Workers' Compensation Act therein. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

There are no provisions for administrative appeal of these rules. The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code. (7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

0047. -- 008. (RESERVED)

009. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms." (7-1-97)()

010. GENERAL REQUIREMENTS.

Safety requirements are as follows: (7-1-97)

01. Briefings. Prior to each day's operation, a briefing shall be conducted. This briefing shall set forth the daily plan of operation for the pilot and ground personnel. (7-1-97)

02. Personal Protective Equipment. Personal protective equipment for employees receiving the load shall consist of, as a minimum, consist of complete eye protection and hard hats secured by chinstraps. (7-1-97)()

03. Loose-Fitting Clothing. Loose-fitting clothing likely to flap in the downwash, and perhaps be snagged on the hoist line, shall not be worn. (7-1-97)

04. Reduced Visibility. When visibility is reduced by dust or other conditions, ground personnel shall keep clear of main and stabilizing rotors. (7-1-97)

05. Unauthorized Personnel. No unauthorized person shall be allowed to approach within fifty (50) feet of the helicopter when the rotor blades are turning. (7-1-97)

06. Approaching or Leaving Helicopter. All employees approaching or leaving a helicopter with blades rotating shall remain in full view of the pilot and remain in a crouched position. (7-1-97)

07. Areas to Avoid in Helicopter. Employees shall avoid the area from the cockpit or cabin rearward unless authorized to be there by the helicopter operator to be there. (7-1-97)()

08. Approach and Departure Zones. Helicopter approach and departure zones shall be designated and no equipment or personnel will occupy these areas during helicopter arrival or departure. (7-1-97)

09. External Loads. Helicopters with an external load shall not pass over areas where fallers are working. (7-1-97)

10. Open Fires. Open fires shall not be permitted in an area that could result in such fires being spread by rotor downwash. (7-1-97)

11. Compliance with FAA Regulations. Helicopters operations shall be expected to comply with any applicable regulation of the Federal Aviation Administration. (7-1-97)()

12. Protective Precautions. Every practical precaution shall be taken to provide for the protection of employees from flying objects in the rotor downwash. (7-1-97)

011. SPECIFIC REQUIREMENTS.

01. Signal Systems. (7-1-97)

a. Signal systems between air crew and ground personnel shall be understood and checked before hoisting the load. This applies to either radio or hand signal systems. (7-1-97)

b. There shall be constant reliable communication between the pilot and a designated signalman during the period of loading and unloading. (7-1-97)

c. The helicopter shall be equipped with a siren to warn workers of hazardous situations. (7-1-97)

02. Loading Logs. (7-1-97)

a. It shall be the responsibility of the firm, supervisor, or person who is in charge of the actual loading operation to comply with the Section in provisions of these rules applicable to log loading. (7-1-97)()

b. The helicopter operator shall be responsible for the size, weight and manner in which loads are attached to the helicopter. If, for any reason, the helicopter operator believes the lift cannot be made safely, the lift shall not be made. (7-1-97)

c. When employees are required to perform work under hovering aircraft, a safe means of access shall be provided for employees to reach the hoist line hook and engage or disengage cargo slings. (7-1-97)

d. Employees shall not work under hovering aircraft except while hooking or unhooking loads. (7-1-97)

e. The weight of an external load shall not exceed the manufacturer's rating. (7-1-97)

f. The hook-up crew shall not work on slopes below felled and bucked timber when an unsafe situation exists. Culls left, ~~that~~ **which** have a potential of rolling, should be moved to a safe position. ~~(7-1-97)~~()

03. Loading and Landing Areas. (7-1-97)

a. The minimum dimensions of a drop zone shall be determined by the length of the logs being hauled. All zones shall be at least one and one-half (1 1/2) times as long, and as wide as the length of the average log being harvested. (7-1-97)

b. Landing or loading machinery shall be a reasonable distance away from where logs are to be landed. (7-1-97)

c. Landing crew shall be in the clear before logs are landed. (7-1-97)

d. The approach to the landing shall be clear and long enough to prevent tree tops from being pulled onto the landing. (7-1-97)

e. Separate areas shall be designated for landing logs and fueling helicopters. (7-1-97)

f. Sufficient ground personnel shall be provided for safe helicopter loading and unloading operations. (7-1-97)

g. A clear area shall be maintained in all helicopter loading and unloading areas. (7-1-97)

h. Emergency landing areas for injured workers shall be located within a reasonable distance from all working areas. (7-1-97)

04. Hooks and Chokers. (7-1-97)

a. The electrical activating device of all electrically operated cargo hooks shall be designed and installed to prevent inadvertent operation. In addition, these cargo hooks shall be equipped with an emergency mechanical control for releasing the load. (7-1-97)

b. Logs will be laid on the ground and the helicopter completely free of the chokers before workers approach the logs. (7-1-97)

c. One (1) end of all the logs in the turn shall be touching the ground and at an angle no greater than forty-five ~~(45)~~ degrees **(45°)** before the chokers are released. ~~(7-1-97)~~()

d. If the load must be lightened, the hook shall be placed on the ground on the uphill side of the turn before the hooker approaches to release the excess logs. (7-1-97)

012. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.15 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - COMMONLY USED LOGGING TERMS

DOCKET NO. 07-0815-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. The rulemaking also makes minor editorial revisions to several commonly used logging terms.

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

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DATED this 2nd day of September, 2016.

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

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(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

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006. PUBLIC RECORDS ACT COMPLIANCE.

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0047. -- 008. (RESERVED)

009. ADDITIONAL DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007. (7-1-97)()

010. DEFINITIONS.

01. A-Frame. A structure made of the independent columns (of wood or steel) fastened together at the top and separated a reasonable width at the bottom to stabilize the unit from tipping sideways. (7-1-97)

02. Arch. A piece of equipment attached to the rear of a vehicle, used for raising one end of logs to facilitate skidding. (7-1-97)()

03. Back Cut. The final falling cut. (7-1-97)

04. Barber Chair. Slab portion of tree remaining on the stump above the back cut due to improper falling. (7-1-97)

05. Bell or Cup Hook With Spike. A hook consisting of a cylindrical cup from whose center there projects a spike. (7-1-97)

06. Bight. The loop of a line, the ends being "gast" elsewhere, or the angle formed by a line running through a block. (7-1-97)

07. **Binder.** Chain, cable, or steel strap used for binding loads of logs. (7-1-97)
08. **Blasting Cap.** A metal shell containing a detonating compound. (7-1-97)
09. **Brailing.** One (1) section of flat log raft enclosed by boom sticks. To place logs end to end in a long flat raft or boom. (7-1-97)
10. **Brow Log.** A log placed parallel to any roadway at a landing or dump to protect vehicles while loading or unloading. (7-1-97)
11. **Bullbuck.** The supervisor over cutting crew. (7-1-97)
12. **Buckle Guy Line.** Line used to stiffen or support a tree, pole, or structure between the top guys and the base. (7-1-97)
13. **Bunk.** The cross support for logs on a logging car or truck. (7-1-97)
14. **Butt Hook.** Hook at the end of a haul-in line for attaching chokers to line. ~~(7-1-97)~~()
15. **Butt Rigging.** Arrangement at the end of main line for attaching chokers. ~~(7-1-97)~~()
16. **Capped Fuse.** A piece of fuse to which a blasting cap has been crimped. (7-1-97)
17. **Carriage Logging.** A type of high lead logging using gravity, haul back, or remote control carriages to yard logs. (Bullet carriage is one type). (7-1-97)
18. **Cat Road.** A tractor road. (7-1-97)
19. **Chaser.** The member of the yarding crew who unhooks the logs at the landing or fights hang-ups on skid road. (7-1-97)
20. **Chipper.** A machine which cuts materials into chips. (7-1-97)
21. **Chock (Bunk Block-Cheese Block).** A wedge that prevents logs from rolling off the bunks. (7-1-97)
22. **Cheater.** ~~An~~ Extension to bunk stakes. ~~(7-1-97)~~()
23. **Choker.** A wire rope with special attachments put around the log near the end for hauling or lifting. ~~(7-1-97)~~()
24. **Cold Deck.** Any pile of logs which is yarded and left for future removal. (7-1-97)
25. **Cold Shut.** A link for joining two (2) chains, the link being closed cold with a hammer, not a weld. (7-1-97)
26. **Connecting Wires.** ~~Means~~ f Those wires that connect the leg wire of one (1) electric blasting cap or with the leading wires, when blasting in series. ~~(7-1-97)~~()
27. **Crotch Line.** Two (2) short lines attached to a hoisting line by means of a ring or shackle, the lower ends being attached to loading hooks and used for loading or unloading. ~~(7-1-97)~~()
28. **Cutter.** A term used to designate faller or buckner. (7-1-97)
29. **D or Strap Socket.** A socket with a closed loop and arranged to be attached to the end of a line. It is used in place of a spliced eye. (7-1-97)

30. **Dead Man.** ~~A~~ Buried log or other object used as an anchor. (7-1-97)()
31. **Detonator.** ~~Means~~ A blasting cap, electric blasting cap, or delay electric blasting cap. (7-1-97)()
32. **Dog Line.** Any line used to tie logs together. (7-1-97)
33. **Donkey- (Short for "Donkey Engine")-** ~~z~~ Power equipment equipped with drum and cable for moving or transporting logs as in loading or yarding. (7-1-97)()
34. **Drag-Turn.** Any log or group of logs attached by some means ~~to~~ of power and moved from a point of rest. (7-1-97)()
35. **Explosive.** Any chemical compound or mechanical mixture ~~that is~~ commonly used that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that an ignition by fire, friction concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or destroying life or limb. (7-1-97)()
36. **Fair Lead.** A combination of a pair of sheaves or roller set transversely or vertically in a unit in front of another pair of sheaves to guide a line coming from any direction and leading it properly to a drum. (7-1-97)
37. **Gin Pole.** A raised pole properly guyed and used to support lines and blocks. (7-1-97)
38. **Grapple.** A device attached to ~~a~~ hoisting line for mechanically handling logs. (7-1-97)()
39. **Gut Wrapper.** ~~An~~ ~~f~~ Intermediate binder for an individual tier of logs. (7-1-97)()
40. **Guy Lines.** The lines used to stay or support spar trees, booms, etc. (7-1-97)
41. **Haul Back.** A small wire line traveling between the power skidder and a pulley set near the logs. Used to return the main cable with tongs, chokers, or hooks to the next log. (7-1-97)
42. **Heel Block.** The block heel of boom. (7-1-97)
43. **Heel Boom.** A type of loading boom where one end of the log is pulled up against the boom. (7-1-97)
44. **Hook Tender, Hooker.** The worker who supervises the method of moving the logs from the woods to the place of loading. (7-1-97)
45. **Hazard.** Any condition or circumstance which may cause an accident or injury. (7-1-97)
46. **Jaggers.** Any projecting broken strand of cable. (7-1-97)
47. **Jammer.** A machine used for handling logs. (7-1-97)
48. **Jill Poke.** A projecting object out of its normal position. (7-1-97)
49. **Knob.** A metal ferrule arranged to be attached to the end of a line, used in place of a spliced eye. (7-1-97)
50. **Landing, Rollway.** Any place where logs are placed, after being yarded, awaiting loading or unloading. (7-1-97)
51. **Lang Lay Rope.** A wire rope, in which the wires in the strands of the rope are laid in the same direction. (7-1-97)

52. **Leading Wires.** Those wires between the “connecting wires” or “leg wires” and a portable generating devise or an approved type blasting battery in series blasting. (7-1-97)
53. **Leaners.** A live or dead leaning tree. (7-1-97)
54. **Loading Boom.** Any structure projecting from a pivot point to guide a log when lifted. (7-1-97)
55. **Log Stacker.** A machine with lift forks used to handle logs. (7-1-97)
56. **Magazine.** Any building or other structure used exclusively for the storage of explosives. (7-1-97)
57. **Operation (Show Woods Layout).** Any place where logging is being done. (7-1-97)
58. **Mainline.** A cable which pulls logs or trees to loading. (7-1-97)
59. **Pan (Skidding Pan).** A solid piece of metal placed behind a tractor on which one ~~(+) end of logs~~ rest. ~~(7-1-97)~~ ()
60. **Peeling Bar or Spud.** A tool for removing bark from trees or logs. (7-1-97)
61. **Pike, Pole.** A long pole whose end is shod with a sharp pointed steel spike, point, ~~and~~ or hook. ~~(7-1-97)~~ ()
62. **Portable Spar or Tower.** An engineered structure designed to be used in a manner similar to which a wooden spar tree would be used. (7-1-97)
63. **Powder.** Any explosive other than the detonating agent. (7-1-97)
64. **Primer.** A cartridge of explosive with a detonator inserted there in. (7-1-97)
65. **Reach.** An adjustable beam between a trailer and a motorized logging vehicle. ~~(7-1-97)~~ ()
66. **Receding Line.** The line on ~~which~~ a skidder or slack-line comparable to the haul back line on a yarder. ~~(7-1-97)~~ ()
67. **Reload.** Any area where logs are dumped and reloaded. (7-1-97)
68. **Running Line.** Any line which moves. (7-1-97)
69. **Sail Guy.** A guy which holds the outer end of a boom. (7-1-97)
70. **Sail Block.** A block hung inverted on the sail guy to hold the tong block in proper position. (7-1-97)
71. **Schoolmarm.** A crotched tree consisting chiefly of two (2) trunks. (7-1-97)
72. **Skids.** Any group of timbers spaced a short distance apart on which the logs are placed. (7-1-97)
73. **Side, Show, Chance.** That unit of a logging operation, including men and equipment that is sufficient to fall, buck, and load a given area ready for transportation of the logs to the mill. (7-1-97)
74. **Side Winders.** A piece of log, brush, or limb thrown up or sideways during skidding operation ~~4,~~ or a tree knocked down by another tree in falling. ~~(7-1-97)~~ ()
75. **Signalman, Whistle Punk.** The authorized worker who transfers signals from a given location to the operator. (7-1-97)
76. **Skidding.** Movement of logs on the ground. (7-1-97)

77. **Skyline.** The supporting line on various types of logging systems on which carriage, block, or bullet travels. (7-1-97)
78. **Slack Line.** A form of skyline where skyline is spooled on drum and can be raised or lowered. (7-1-97)
79. **Slack Puller.** Any device used to increase the movement of a line when its own weight is inadequate. (7-1-97)
80. **Snags.** Any dead standing trees. (7-1-97)
81. **Snubbing.** A method of retarding or controlling the movement of logs or machine by means of looping the line around a stationary object. (7-1-97)
82. **Spring Board.** A board with an iron tip used by fallers to stand on when they must stand above the ground level. (7-1-97)
83. **Strap.** Any short piece of line with an eye or "D" in each end. (7-1-97)
84. **Strawline.** A small line used for miscellaneous purposes. (7-1-97)
85. **Strip.** A definite location of timber allocated to a cutting crew. (7-1-97)
86. **Sweeper.** Unexpected and controlled lateral movement of a log, tree, etc., during skidding operations. (~~7-1-97~~) ()
87. **Swamp.** The falling or clearing of limbs and brush around or along a specific place. (7-1-97)
88. **Tag Line.** A line used to control movement during loading, unloading, or skidding operations. (7-1-97)
89. **Tail Hold.** Any anchor used for making fast any line. (7-1-97)
90. **Tell Tale.** A device used to serve as a warning for overhead hazards. (7-1-97)
91. **Tight Line.** When power is exerted on both mainline and haul back at the same time. (7-1-97)
92. **Tongs.** A hooking device used to lift or skid logs. (7-1-97)
93. **Transfer.** Changing of a load of logs in a unit from one means of transportation to another. (7-1-97)
94. **Tree Plates.** Steel protectors spiked around a tree to prevent the lines from cutting into the trees. (7-1-97)
95. **Undercut.** A notch cut in the tree to guide and control the tree in falling. (7-1-97)
96. **Windfall.** A tree felled by the wind or other natural causes. (7-1-97)
97. **Widow Maker.** A loose limb, top, or piece of bark which may fall on a logger working beneath it. (7-1-97)
98. **Yarding.** Movement of logs or trees from the place they are felled (bucked) to a central loading or shipping point. (7-1-97)
011. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.08.16 - IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING - RECOMMENDED SAFETY PROGRAM

DOCKET NO. 07-0816-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-2601A(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the Division of Building Safety. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained therein the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations, or replace outdated or unclear provisions related to common logging practices. Additionally, as authorized in statute, rules are established related to the process for the administrator to issue and enforce safety orders when inspection of logging operations reveals an unsafe condition or threat of serious bodily harm or loss of life. Through the negotiated rulemaking process, the logging industry indicated support for the proposed amendments set forth in the rulemaking.

This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the Division related to logging safety matters. It also provides various amendments to clarify and update provisions related to the scope of the rules, fire and safety policies, and the proper reporting of logging injuries and fatalities to appropriate authorities. Finally, the rulemaking establishes the administrative procedures related to the issuance of safety orders by the administrator, as well as the procedural rights afforded to responsible logging parties who may object to a safety order and seek to contest the matter.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 2, 2015 Idaho Administrative Bulletin under Docket No. 07-0800-1501, [Vol. 15-12, pages 1-2](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 07-0816-1601
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

Pursuant to the provisions of Section 67-2601A, Idaho Code, the Division of Building Safety has the authority to promulgate and adopt *reasonable* rules for affecting the purposes *of the Workers' Compensation Act* therein.
(7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~There are no provisions for administrative appeal of these rules.~~ The procedure for appeals in logging safety matters is prescribed by IDAPA 07.08.16, "Idaho Minimum Safety Standards and Practices for Logging – Recommended Safety Program," and Title 67, Chapter 52, Idaho Code.
(7-1-97)()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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

The principal place of business of the Division of Building Safety, Logging Safety Program, is at the Division office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Logging Safety Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

~~004.—~~007. (RESERVED)

008. DEFINITIONS.

For definitions refer to IDAPA 07.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007, and IDAPA 07.08.15, "Idaho Minimum Safety Standards and Practices for Logging – Commonly Used Logging Terms."
(7-1-97)()

009. ~~ABBREVIATIONS.~~(RESERVED)

For abbreviations, refer to IDAPA 07-08-01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions." (3-29-10)

010. INTRODUCTION.

01. Scope. (7-1-97)

a. ~~This Standard is a~~ **These rules are** part of the accident prevention program of the Sstate of Idaho. This ~~book~~ **program** is dedicated to the safety and well-being of all workers in Idaho's logging industry. It has been ~~prepared and adopted~~ **established** according to the processes prescribed by law. ~~We make this book available to all persons concerned with the maintenance of safe working conditions in the logging industry.~~ (7-1-97)()

b. ~~This Standard~~ **These rules** contains the primary safety rules for the logging industry. However, other Idaho Safety Standards promulgated and adopted by the Industrial Commission shall be applicable to this industry where not inconsistent with the provisions herein, or where any particular activity which is being carried on is not specifically covered or regulated herein. (7-1-97)()

02. Enforcement. The enforcement of ~~the Standard becomes~~ **these rules is** the responsibility of the Division of Building Safety. ~~This Standard~~ **These rules** will not serve ~~its entire~~ **their** purpose if ~~its~~ **their** requirements are considered anything but a minimum for safe operation. So much variation exists in the logging industry that each operation should be judged, not by its compliance to the letter of this Standard, but according to a higher standard -- that of absolute safety under all conditions. (7-1-97)()

03. Accident Prevention. Accident prevention is **often** a problem of organization and education. It does not ~~rest upon involved theory or~~ **succeed solely on** detailed safety codes but consists largely of the desire to institute a common sense safety program and determination to carry out the program effectively. Effective accident prevention embodies the following five (5) principles: management leadership; employee cooperation; effective organization; thorough training; and good supervision. (7-1-97)()

011. FIRE AND SAFETY POLICY.

01. Elements. The basic elements or management responsibility for fire and safety policy are enumerated in this section. (7-1-97)

02. Management Leadership. The ~~declaration~~ **establishment** of the safety policy should be made clear to all levels of supervision, purchasing, engineering, industrial and construction; and **communicated** to all employees that top management has approved the operation's safety program. (7-1-97)()

03. Planning. The program should be based on the following: accounting record of safety cost, accident recording system, accident investigation recommendations, operation inspection recommended corrections, employee suggestions, and job analysis to determine the work hazards. The hazard appraisal can be summarized as follows: mechanical and physical hazards; environmental hazards; and work procedure and practices. (7-1-97)

04. Management Discharge of Duty. (7-1-97)

a. If management is to discharge its duty in proper directing of the fire and safety program, it must organized a definite planned program of continuous supervision and leadership by all facets of the management organization. The very fact that safety must be woven into all operations and activities ~~with~~ **should** not require extra managerial time beyond the ordinary to operate a business successfully, i.e., if the entire management team will assume their safety responsibility. (7-1-97)()

b. The first ~~problem~~ **task** of management is to determine the operational hazards. Once these are ascertained and appraised, suitable corrective action can be initiated. If the working unit is operating, the following specific activities should be carried out to find the hazards. These are: job inspection; job analysis; accident investigation (near accident, non-disabling injuries) to determine necessary remedial action to prevent recurrence of the accident. (7-1-97)()

05. Hazard Appraisal. The partial list of terms covered by appraisals are summarized briefly as follows: mechanical and physical hazards; adequacy of mechanical guarding of machines and equipment; preventing the use of inferior manufactured and unsafe supplies, equipment, chain, cables, sheaves, tires, power saws, tractor canopy guards, approved head protection, fire extinguishers, solvents, mill saws, etc.; and physical exhaustion such as may be caused by excessive work hours by truck drivers and mill maintenance employees. (7-1-97)()

06. Environmental Hazards Inherent to the Operation. (7-1-97)

a. Personal protection devices (approved head protection, ear plugs, knee pads, proper eye protection, respirators, etc.) (7-1-97)

b. Storage and use of flammable liquids and gases (gasoline, diesel, acetone, acetylene, acids, etc.) (7-1-97)

c. All employees should be familiar with proper work signals (falling, blasting, high lead signals, loading, mill signals, operation fire signal, etc.) (7-1-97)

d. Noise and fatigue hazards that are inherent to the industry (planers, cutoff saws, jack hammers, etc.). (7-1-97)

07. Work Procedures and Practices. (7-1-97)

a. Hazards directly related to work practices should be carefully observed and evaluated. (7-1-97)

b. A few of the important wWork practices which that should be investigated are include, but are not necessarily limited to: use, care and maintenance of hand and portable power tools; degree of supervision given the worker; the extent of job training provided; the safety indoctrination and training of new or transferred employees; the proper use of fire extinguishers; the use of personal protective devices (approved head protection, shoes, etc.); and the repair and maintenance of equipment with respect to machines, mechanical handling equipment, log loaders, yarding equipment, tractors, fork lifts, overhead cranes, headrigs, etc.; (7-1-97)()

08. Reporting of Injuries. (7-1-97)

a. The employer shall instruct all employees to report all job injuries before the shift ends, to the supervisor at the time injuries occur. The employer shall ~~checks~~ specifications for new machines, processes and equipment for compliance with existing safety standards, laws and safety requirements, and shall have such equipment fully inspected before it is placed in used. (7-1-97)()

b. The employer is responsible for reporting all industrial lost time injuries to the Industrial Commission within forty-eight (48) hours. (3-29-10)

c. The employer is responsible for reporting all in-patient hospitalization, amputation, or the loss of an eye for any employee to the Occupational Safety and Health Administration (OSHA) and the Division of Building Safety Logging Safety Program within twenty-four (24) hours. ()

09. Fatalities. All work fatalities should be immediately reported to the County Sheriff or Coroner, the Division of Building Safety Logging Safety Program, and OSHA in accordance with the Code of Federal Regulations, 29 CFR 1904.39. (3-29-10)()

10. Management of Personnel. (3-29-10)

a. The recruiting and placing of a new worker on the job is a major responsibility of the management organization. Every effort should be made to match the qualifications of the worker with the demands of the job. (3-29-10)

b. The furnishing of first aid services, treatment of injuries, and inspection of working conditions is the employer's responsibility. (3-29-10)

11. Assignment of Responsibilities. (3-29-10)

a. Supervisors, purchasing agents, engineering personnel, safety directors, personnel directors, and employees have ~~certain~~ responsibilities ~~in~~ to ensure conformance with the organization's fire and safety objectives in every operation. ~~(3-29-10)()~~

b. Management must accept the normal obligation for preventing accidents. In many operations it is a practice to delegate the actual administration of the safety program to a person who can devote full-time to it. In ~~the~~ smaller operations, safety administration may be a collateral duty carried on in conjunction with some other duties. The safety ~~administrator or safety man~~ director should function in a staff capacity. Because the safety director operates in a consultant capacity, ultimate responsibility for accident prevention rests with the workers' supervisor, the foreman and line production organization. There is no doubt that the foreman is the key person in every safety program. Safety is not something separate and apart from production. If the job is done right, it is done safely. ~~(3-29-10)()~~

c. Safety is an integral and important part of production, just as is quality and quantity, or meeting production schedules. (3-29-10)

d. All these duties are foreman or project superintendent duties, and the most important part of the line production organization. This obligation cannot be delegated. As the person in charge of production, the foreman is responsible for the safety of his people. This fact must be made clear and should be included in the statement of policy. (3-29-10)

12. Safety Director (Part-Time or Full-Time): (3-29-10)

a. Makes periodic inspections of the operations and suggests corrective measures to eliminate hazards. (3-29-10)

b. Should assist in investigation of all types of accidents to determine the cause, so as to prevent like accidents in the future. (3-29-10)

c. Aids foremen in developing safe work procedures and practices and assists foremen in training their workers. (3-29-10)

d. Keeps accident records and makes periodic reports to the proper official on the progress being made. Reports and records; report of accidents; accident investigation report; performance report (injury frequency ~~&~~ and severity); accident cost report; safety committee reports; report on degree of corrective action taken on different recommendations. ~~(3-29-10)()~~

e. Conducts or initiates safety training courses including first aid and fire fighting, where appropriate, and any other course inherent to the job (truck driver courses, power saw courses, welding, grinder usage, fork lift truck operator, etc.). (3-29-10)

f. Establishes safety committee. (3-29-10)

g. Sees Ensures that recommendations are promptly and properly implemented. ~~(3-29-10)()~~

h. Checks specifications for new machines, processes and equipment for compliance with existing safety standards, laws and safety requirements, and shall have such equipment fully inspected before it is placed in use. (3-29-10)

i. He shall assist the safety committee in developing agendas for their meetings. (3-29-10)

13. Foreman Responsibilities. ~~No theorem~~ It is ~~more thoroughly proven and~~ widely accepted ~~than-~~ that the foreman is the key man in attaining proper work habits in any operation. It is the obligation of management to give the most careful attention to the selection, education, and training of foremen and train ~~him~~ them in the proper

way to train employees in correct and safe work methods to attain the best production in the safest way.

(7-1-97)()

14. First Aid Training. It shall be the responsibility of management to arrange to have all employees take a full course in first aid training. It is ~~a must~~ **required** that supervisory personnel shall take an approved ~~F~~**first Aid** ~~C~~course, and have a current ~~F~~**first Aid** card. (3-29-10)()

15. ~~Accident~~ **Injury Record and Reporting System.** (7-1-97)()

a. ~~If an employer had ten (10) or fewer employees at all times during the last calendar year, it does not need to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs the employer in writing that it must keep records under OSHA regulations. However, as required by such regulations, all employers covered by the OSH Act must report to OSHA and the Division of Building Safety Logging Safety Program any workplace incident that results in a fatality or the hospitalization, the amputation of a limb, or the loss of an eye for any employee.~~ ()

#b. ~~For those employers subject to the injury and illness recording requirements under OSHA, the employer shall establish, in the its main Idaho office of the employer, of an ~~accident injury~~ record and reporting system which will definitely tie into nationally uniform is consistent with reporting, record, and statistical requirements United States American Standard Method of Recording and Measuring Work Injury Experiences (Z 16.1) of the Occupational Safety and Health Administration (OSHA).~~ (7-1-97)()

b. Injury frequency rates shall be calculated annually ~~on a calendar basis~~ commencing the first of January each year. These rates shall be kept on file in the office of the employer for at least four (4) years after the date of entry thereof, and shall be made available to the Division of Building Safety, upon request. (7-1-97)()

c. The injury frequency rate shall be the number of lost time injuries to all employees per one million (1,000,000) man hours of exposure. The frequency rate is computed by multiplying the number of lost time injuries by one million (1,000,000) (the standard of measurement) and dividing the product by the total number of man hours worked during the period. The formula is expressed as follows: Frequency equals the number of lost time injuries times one million (1,000,000) total man hours of exposure. (7-1-97)()

d. A lost time injury shall be the term applied to any injury, arising out of, and in the course of employment which makes it impossible for the injured person to return to an established regular job at the beginning of the next regular shift following the shift during which the injury occurred, or some future shift. (7-1-97)

e. Man hours of exposure shall be the total number of man hours actually worked by all personnel in the industrial unit during the period for which the rate is being computed. (7-1-97)

f. ~~Translating the number of injuries in a plant or organization, into frequency rates serves as a standard measure which enables anyone to compare the industrial injury record of the plant with that of other industrial organizations or with national and state frequency rates for the same industry. The standards that shall be used are the United States American Standard Method of Recording and Measuring Work Injury Experiences (Z 16.1).~~ (7-1-97)

16. Training and Education. (7-1-97)

a. **Training and education includes:** ()

ai. Establishment of effective job training methods and safety education. (7-1-97)

bii. First ~~A~~**a**id courses, proper work signals and job hazard warnings. (7-1-97)()

ciii. Pamphlets, bulletin boards, safety meetings, posters, etc. (7-1-97)

#b. The employer shall establish an adequate job training and safety education program. The relationship of safety to job quality and modern quantity production methods should be clearly understood. Good

work production is governed by careful planning and accurate control of all phases of the operation. Accidents are the result of inadequate planning of faulty operation. (7-1-97)

ec. Safety must be made an essential and integral part of every operation and integrated into the activity if the most successful quantity production is to be attained. The soundness of this statement has been proven many times by comparing the accident cost with the day by day curve of production. (7-1-97)

fl. It is the responsibility of management to train employees in all phases of the work ~~he is~~ they are assigned. The worker training should begin at the time of employment with a careful presentation of the general safety information ~~he~~ the employee must have to work on and in logging and lumbering or wood working operations. When the worker is placed on the job, the worker must be given detailed training on proper work methods for accomplishment of the job. The correct way is the safe way. Telling is not training. (7-1-97)()

ge. People learn to do things primarily through doing action. The employee's job training should be given ~~by using~~ the five (5) step job training method: (7-1-97)()

- i. Tell the employee; (7-1-97)
- ii. Show the employee; (7-1-97)
- iii. Have the employee do it; (7-1-97)
- iv. Correct until the employee does it right; and (7-1-97)()
- v. Supervise to see that the employee keeps doing it right. (7-1-97)

hf. Education and promotion are a supplemental means of reducing injuries. This device employs any number of methods to accomplish results. A good program may use but will not overemphasize emotional appeal to the workers using such devices as scholarships, stamps, posters, safety meetings, contests, and awards. ~~It is~~ is management's responsibility to integrate education and training program and balance its effectiveness to employee training. Unsafe acts or unsafe work practices are the result of failure to train workers in safe work procedures. In establishing or operating a safe and quality work program, an appraisal of unsafe work procedures and poor quality of work is called for, and job training methods initiated to correct these practices. (7-1-97)()

17. Employer, Employee, and Labor Representative Cooperation. (7-1-97)

a. The workers have a responsibility to obey the units safety rules, smoking rules, report unsafe conditions, to serve on the different safety committees, perform their work in a safe way, and to help fellow workers by showing them how to do their job safely. (7-1-97)

b. Many safety programs fail because the worker has not been made to feel that it is their program; or that they can contribute as well as benefit from the program. It often ~~fails~~ because it lacks employee participation and interest. The fact that employees are given the opportunity to participate and to contribute to the program not only opens a reservoir of valuable information on practical experience in accident prevention, it also gives the employee a feeling of being a part of the organization. (7-1-97)()

c. The committee on safety should be made up of personnel selected from management and workers. Management members are supervisors and worker members may be selected by the union or by the employees. (7-1-97)

d. The labor unions should help develop a safe behavior among the workers. (7-1-97)

18. Maintenance of Safe Working Conditions. (7-1-97)

a. The employer shall provide a safe and healthy work area in which to work, including purchasing of safe equipment and tools and provide proper maintenance of such equipment. (7-1-97)()

b. Since a safe and health~~ful~~^{ful} place to work is the very foundation of the safety program, the mechanical, physical, and environmental conditions ~~will~~ should be given first consideration. (7-1-97)()

c. For almost every accident there are typically two (2) contributing causes - an unsafe condition and an unsafe act. A safe and health~~ful~~^{ful} place to work will diminish or eliminate the first cause, the unsafe condition; but unless the unsafe act is corrected, accidents will continue to occur. Unsafe acts may stem from a number of factors, such as improper selection of the worker for the job, lack of job training, physical or mental limitations or inadequate supervision. When a safety program is first established or a new project with a new crew is started, this may necessitate a thorough periodic survey of the entire operation to determine hazards. (7-1-97)()

19. Remedial Measures of Corrective Action. (7-1-97)

a. The employees shall support and correct the findings of job analysis, inspections, accident investigations, employee suggestions, etc. (7-1-97)

b. The assumption of responsibility for fire and accident prevention by management carries with it the continuing responsibility to assess the progress being made on the program, and where progress is unsatisfactory to take what necessary steps ~~are necessary~~ to bring about improvement. Inspection alone is primarily a means of finding and eliminating fire and physical hazards, particularly in connection with enforcement. All educational and promotional activities should be integrated with inspection activities, and should be based on the specific needs of the establishment or operation. Inspection and educational and promotional programs are sometimes looked upon as entirely unrelated activities rather than a single integrated program. (7-1-97)()

c. None of the foregoing activities are of value unless followed by effective corrective action. The responsible executive of within top management must establish specific procedures to effect proper and complete corrective action in each area for problems that occur. In well-managed establishments organizations the areas of responsibility are clearly defined. The activities are well coordinated, supervision is good adequate and proactive, employees' safety behavior is excellent, and policies are well-defined to permit smooth organization. This is not difficult; the corrective measures are applied as part of the day by to day operating procedure. (7-1-97)()

20. Safety Order By the Administrator. In accordance with the provisions of section 67-2601A (3), Idaho Code, the administrator may issue a safety order requiring an owner, operator or other party responsible for ensuring safe logging operations to immediately stop work or close any work site, or portion thereof where an inspection has revealed evidence of a condition that poses an immediate threat of bodily harm or loss of life to any person. The process governing the issuance of a safety order is contained herein this section. ()

a. Upon receiving information evidencing an unsafe condition or unsafe practices at any logging workplace or place of employment, the administrator shall inspect or cause to be inspected such place of employment unless such information was obtained by previous inspection of the Division. If upon such inspection the administrator determines that an unsafe condition or unsafe practice exists which may pose an immediate threat of bodily harm or loss of life, the administrator may issue a safety order requiring the employer to immediately stop work or close any work site, or portion thereof. Any safety order issued by the administrator shall specifically identify the unsafe condition or practice, as well as the safety risks associated therewith. Written notice of such order shall immediately be provided by the administrator to the owner or operator of the business, or any other appropriate party responsible for abating the unsafe condition or practice. ()

b. Upon receiving such notice from the administrator, such owner, operator or responsible party shall immediately comply with such, and may notify the administrator in writing of their objection to the notice and request to contest such at a hearing. The owner, operator or responsible party shall provide the administrator with information, documentation, or other evidence supporting their objection. ()

c. Upon receipt and review of such information from the owner, operator, or responsible party, the administrator may reconsider the matter and issue appropriate findings to the owner, operator, or party responsible for abating the unsafe condition or practice, including rescission of the order. ()

d. If after review it is the determination of the administrator to keep the safety order in place, he shall so notify the owner, operator or responsible party and designate a time and place for hearing, and may assign the

matter for hearing by a hearing officer. The hearing shall be afforded at such time not to exceed five (5) business days from the date the administrator received the notice of objection unless additional time is requested by the owner, operator, or responsible party. The hearing proceedings shall be governed by the provisions of Title 67, Chapter 52, Idaho Code. The hearing officer shall issue an order in accordance with Section 67-5243, Idaho Code. The hearing may be held at such location or by such means as the administrator determines most convenient for the parties. ()

e. The safety order shall remain in effect, and shall not be rescinded until the administrator has determined that the safety threat has been corrected or removed from the workplace. Upon verification by the administrator that the safety threat has been corrected or otherwise removed from the worksite, the administrator shall immediately notify the owner, operator or responsible party of the rescission of the safety order. Any party aggrieved by the final order of the administrator shall be entitled to judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. ()

f. Any person who knowingly fails or refuses to comply with the provisions of a safety order issued by the administrator shall be guilty of a misdemeanor, and the administrator may seek criminal prosecution of any such violations. ()

012. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.02 - RULES GOVERNING THE POSTSECONDARY CREDIT SCHOLARSHIP PROGRAM

DOCKET NO. 08-0102-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

The proposed rule will create a new section of administrative code establishing the administrative procedures for applying for the Postsecondary Credit Scholarship and provide clarification around the required business or industry matching scholarship.

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:

HB 477a (2016) created a new section of code, Section 33-4605, Idaho Code, which created a new state administered scholarship titled the Postsecondary Credit Scholarship. The temporary rule is necessary to come into compliance with the new statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 48](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
Phone: (208) 332-1582
Fax: (208) 334-2632

650 W State St.
PO Box 83720
Boise, ID 83720-0037

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0102-1601**

IDAPA 08
TITLE 01
CHAPTER 02

08.01.02 - RULES GOVERNING THE POSTSECONDARY CREDIT SCHOLARSHIP PROGRAM

000. LEGAL AUTHORITY.

In accordance with Sections 33-105, 33-4601A, and 33-4605, Idaho Code the State Board of Education (Board) shall promulgate rules implementing the provisions of Title 33, Chapter 46, Idaho Code. (8-11-16)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.01.02, "Rules Governing the Postsecondary Credit Scholarship Program." (8-11-16)T

02. Scope. These rules constitute the requirements for the Postsecondary Credit Scholarship Program. (8-11-16)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, written interpretations, if any, of the rules of this chapter are available at the Office of the State Board of Education. (8-11-16)T

003. ADMINISTRATIVE APPEALS.

Unless otherwise provided for in the rules of the Board or in the Board Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (8-11-16)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (8-11-16)T

005. OFFICE INFORMATION.

01. Office Hours. The offices of the Board are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. (8-11-16)T

02. Street Address. The offices of the Board are located at 650 W. State Street, Boise, Idaho. (8-11-16)T

03. Mailing Address. The mailing address of the Board is P.O. Box 83720, Boise, Idaho 83720-0037. (8-11-16)T

04. Telephone Number. The telephone number of the Board is (208) 334-2270. (8-11-16)T

05. Facsimile. The facsimile number of the Board is (208) 334-2632. (8-11-16)T

06. Electronic Address. The electronic address of the Board of Education is at www.boardofed.idaho.gov. (8-11-16)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (8-11-16)T

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this section the following definitions shall apply: (8-11-16)T

01. Board. Idaho State Board of Education. (8-11-16)T

02. Business Scholarship. A competitive scholarship awarded from a business entity registered with the Idaho Secretary of State or other state or federal entity that registers businesses and whose purpose is not postsecondary education nor is the entity affiliated with a postsecondary educational institution; or an association representing businesses as described herein. (8-11-16)T

03. Executive Director. Executive Director for the Idaho State Board of Education. (8-11-16)T

04. Grade Point Average (GPA). Average secondary grade earned by a student, figured by dividing the grade points earned by the number of credits attempted. (8-11-16)T

05. Industry Scholarship. A competitive scholarship in which the recipient must enter into a program of study for a specific occupational area. (8-11-16)T

06. Merit Based Scholarship. A scholarship in which a minimum academic standard must be met to be eligible for the scholarship. (8-11-16)T

011. -- 100. (RESERVED)

101. APPLICATION PROCESS.

01. Initial Applications. An eligible student must complete and submit the scholarship program application to the Board electronically on or before the date specified in the application, but not later than March 1 for guaranteed consideration of an award during the proceeding fall academic term. An applicant without electronic capabilities may submit an application on the form established by the Executive Director through the United States Postal Service, which must be postmarked no later than March 1. Applications received after March 1 of each year must be received at least 60 days prior to the start of the term for which the applicant has enrolled for consideration during the next academic term. (8-11-16)T

02. Communication with State Officials. 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 Executive Director or designee. (8-11-16)T

102. -- 299. (RESERVED)

300. SCHOLARSHIP AWARDS.

01. Selection Process. Scholarship awards will be based on the availability of scholarship program funds. In the event more eligible applications are received than funds are available, those applications received by March 1 of each year will be awarded based on their GPA ranking. Applications received after March 1 of each year will only be considered after all initial applications have been processed and awardees have accepted or rejected their awards, and will be based on their GPA ranking. (8-11-16)T

02. Monetary Value of the Opportunity Scholarship. The monetary value of the award will be based

on the maximum amount the applicant is eligible to receive based on the number of postsecondary credits accepted by the institution they attend and the amount of the matching scholarship for each year they are eligible. The award amount shall not be more than the matching merit based business or industry scholarship received by the applicant within the limits of the maximum eligible amount. (8-11-16)T

03. Payment. Payment of scholarship award will be made in the name of the recipient and will be sent to the designated official at the eligible Idaho postsecondary educational institution in which the recipient is enrolled. The official must transmit the payment to the recipient student's account within a reasonable time following receipt of the payment. (8-11-16)T

04. Duration. Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship is valid for up to four (4) educational years from the date the recipient graduated from high school. Awards are contingent on annual appropriations by the legislature and continued eligibility of the student. (8-11-16)T

05. Eligibility. If a student receives a scholarship payment and it is later determined that the student did not meet all of the scholarship program eligibility requirements, then the student is considered in overpayment status, and the remaining program funds must be returned to the Office of the State Board of Education. (8-11-16)T

302. CONTINUING ELIGIBILITY.

To remain eligible for the scholarship, the recipient must comply with all of the provisions of the scholarship program and these rules, in addition to the following requirements. (8-11-16)T

01. Interruption of Continuous Enrollment. A student may request an interruption of continuous enrollment for eligible students due to military service in the United States armed forces, medical circumstances, or extenuating circumstances approved by the Executive Director. 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. In addition, the individual must file a statement with the Board declaring his intent to re-enroll as a full-time student in an academic or career-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 and 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. All requests for extension must be made sixty (60) days prior to the start of the succeeding academic year. At no time may the extension extend beyond the expiration period of the scholarship. (8-11-16)T

303. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.04 - RESIDENCY

DOCKET NO. 08-0104-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-3717B, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

Legislative changes to Section 33-3717B, Idaho Code, streamlined the residency requirements for tuition purposes, making many of the existing provisions in administrative rule unnecessary. Amendments are being proposed to IDAPA 08.01.04 to bring it into compliance with the provisions of Section 33-3717B, Idaho Code. The proposed rule includes the following amendments:

- Deletes unnecessary definitions of terms that are either no longer used or are defined within the statute itself;
- Adds a definition of accredited secondary school and armed forces. These terms were previously undefined;
- Sets out timelines for submitting requests for reclassification of residency determinations;
- Simplifies the factors for determining domicile and specifies which items can be used as factor and which items must be used in conjunction with other factors;
- Simplifies the appeals procedure; and
- Deletes sections that are no longer applicable and makes additional technical changes.

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:

During the 2016 legislative session changes were made to Section 33-3717B, Idaho Code, residency requirements for tuition purposes. The temporary rule amendments are necessary to come into compliance with the changes made to Section 33-3717B, 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 49](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016.

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

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0104-1601
(Only Those Sections With Amendments Are Shown.)**

001. TITLE AND SCOPE.

01. Title. The title of this chapter is Residency. (8-11-16)T

02. Scope. This chapter ~~has the following scope:~~ governs residency classification for tuition purposes for the four-year institutions and Eastern Idaho Technical College under the supervision governance of the State Board of Education and the Regents of the University of Idaho, the University of Idaho, Boise State University, Idaho State University, and Lewis Clark State College are required to make residency determinations pursuant to Section 33-3717B, Idaho Code, and these rules. (5-8-09)(8-11-16)T

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

~~Provisions for appeal of a residency determination are set forth in Section 103 of this chapter.~~ Unless otherwise provided for in the rules of the State Board of Education or in the State Board of Education Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (1-1-94)(8-11-16)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (8-11-16)T

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

The principal place of business of the State Board of Education is in Boise, Idaho. (8-11-16)T

01. Mailing Address. The mailing address is PO Box 83720, Boise, Idaho 83720-0037. (8-11-16)T

02. Street Address. The State Board of Education's street address is 650 West State Street, Room 307, Boise, Idaho 83702. (8-11-16)T

03. Office Hours. The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal

holidays.

(8-11-16)T

0046. PUBLIC RECORDS ACT COMPLIANCE.

All rules required to be adopted by this chapter are public records. This rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. (1-1-94)(8-11-16)T

007. -- 009. (RESERVED)

00510. DEFINITIONS.

~~01. Resident Student. For any public institution of higher education in Idaho, resident student is defined in Section 33-3717B, Idaho Code, and specifically includes: (3-29-10)~~

~~a. Any student who has one (1) or more parent or parents or court appointed guardians who are domiciled in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates, and the parent or parents or guardians provide at least fifty percent (50%) of the student's support. (5-8-09)~~

~~b. Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians and who has continuously resided and maintained a bona fide domicile in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend primarily for purposes other than educational. (5-8-09)~~

~~c. Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation. (1-1-94)~~

~~d. The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant. (1-1-94)~~

~~e. A member of the armed forces of the United States stationed in the state on military orders. (1-1-94)~~

~~f. An officer or an enlisted member of the Idaho national guard. (5-8-09)~~

~~g. A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders. (1-1-94)~~

~~h. A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation. (1-1-94)~~

~~i. Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717B, Idaho Code, and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere, provided a twelve-month (12) period of continuous residence has been established immediately prior to departure. However, time spent away from the state while enrolled in a postsecondary education program shall not be included in the thirty (30) months. Such time spent away from the state while enrolled shall include normal academic year breaks, such as summer breaks or breaks between semesters or quarters, that occur prior to the receipt of the postsecondary degree. (3-29-10)~~

~~j. A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal~~

~~boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho:~~ (5-8-09)

- ~~i. Coeur d'Alene tribe;~~ (5-8-09)
- ~~ii. Shoshone-Paiute tribes;~~ (5-8-09)
- ~~iii. Nez Perce tribe;~~ (5-8-09)
- ~~iv. Shoshone-Bannock tribes;~~ (5-8-09)
- ~~v. Kootenai tribe.~~ (5-8-09)

~~02. Nonresident Student. Nonresident student is defined in Section 33-3717B, Idaho Code, and includes:~~ (5-8-09)

- ~~a. A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94)~~
- ~~b. A student attending an institution in this state with financial assistance provided by another state or governmental entity thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided. (1-1-94)~~
- ~~e. A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or who does not hold "refugee parolee" or "conditional entrant" status with the United States Immigration and Naturalization Service, or is not otherwise permanently residing in the United States under color of law, and who does not also comply with and meet all applicable sections of Section 33-3717B, Idaho Code, and this chapter. (5-8-09)~~

051. Accredited Secondary School. ~~"Accredited secondary school" means a~~ **An** Idaho secondary school accredited by **a body recognized by** the State Board of Education. (1-1-94)(8-11-16)T

072. Armed Forces. ~~"Armed forces" means~~ **The** United States Army, Navy, Air Force, Marine Corps, and United States Coast Guard, **and their reserve forces.** It does not include the National Guard or **any** other reserve force. (3-30-01)(8-11-16)T

03. Continuously Resided. ~~The term "continuously resided" as used in this chapter means~~ **p**Physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions ~~totaling not more than thirty (30) days~~ during the twelve (12) month qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual. (1-1-94)(8-11-16)T

~~04. Continuous Attendance. For purposes of Subsection 005.01.g, "continuous attendance" means attendance at a college or university for continuing and succeeding semesters or terms excluding summer semesters or terms. (5-8-09)~~

~~06. Term Immediately Following Graduation. For purposes of Subsection 005.01.e., "the term immediately following graduation" does not include the summer semester or term of a college or university. (1-1-94)~~

~~08. Domicile. "Domicile" means an individual's true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. (1-1-94)~~

04. Full-time Employment. Employment consisting on average of at least thirty (30) hours of service per week, or one hundred twenty (120) hours of service per month. (8-11-16)T

~~05.~~ **Full-time Student.** A student taking the number of credits set by the State Board of Education to constitute a full course load. (8-11-16)T

~~096.~~ **Support.** "Support" means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested, but shall not include educational scholarships or grants provided to the student to attend a postsecondary educational institution. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that he is not claimed as a dependent by a parent or guardian for income tax purposes or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc. (5-8-09)

~~00611.~~ -- 099. (RESERVED)

100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.

Any student classified as a resident student for purposes of higher education tuition by one of the institutions or Eastern Idaho Technical College must shall be considered a resident by all other institutions. "Institutions" means the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College. (5-8-09)(8-11-16)T

101. RESIDENCY CLASSIFICATION PROCESS.

All requests for residency reclassification must be submitted by the student to the institution by the 10th day of the term in which reclassification is sought. Each institution ~~is to~~ shall develop its own procedures to determine the residency status of applicants, disseminate information about the classification process, and determine the documentation required of each applicant to the institution. The institution may require whatever records, documents, or affidavits it deems necessary to classify each applicant correctly. It is the responsibility of the institution to notify the student in a timely manner of the documentation required for the classification process, and it is the responsibility of the student to provide the documentation by the deadline established by the institution. Each student must shall be notified in writing of the residency classification decision made by the institutional personnel responsible for determining residency status within fifteen (15) days of such determination being made. (7-1-93)(8-11-16)T

102. FACTORS FOR DETERMINING DOMICILE.

~~Pursuant to Section 33-3717B, Idaho Code, the overriding factor for determining whether a student is a "resident student" is domicile. For these purposes, the establishment of~~ The following, if supported by documentation, support a claim of domicile in Idaho, ~~occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. In determining whether a student is domiciled in Idaho primarily for purposes other than educational, the institutions shall consider the following:~~ (5-8-09)(8-11-16)T

01. ~~Domicile Established~~ Tax Returns and Employment. Any Both of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll ~~as a resident student,~~ proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (5-8-09)(8-11-16)T

a. Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student: ~~and~~ (5-8-09)(8-11-16)T

b. ~~Permanent~~ Full-time employment or the hourly equivalent ~~thereof~~ in the state of Idaho. (5-8-09)(8-11-16)T

c. ~~Ownership by the student of the student's living quarters.~~ (5-8-09)

~~02.~~ **Rebuttable Presumption.** ~~A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in the state unless the student proves, in fact, establishment of a bona fide domicile in the state primarily for purposes other than educational. A student who establishes at least five (5) of the seven (7) factors listed in Subsection 102.03 of these~~

~~rules, if done for a least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational.~~ (5-8-09)

~~032. Additional Multiple Factors to Determine Domiciliary Intent. A student who establishes at least five (5) of the seven (7) following factors, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational.~~ (5-8-09)(8-11-16)T

~~a. Ownership or leasing of a residence in Idaho. (8-11-16)T~~

~~b. Registration and payment of Idaho taxes or fees. Registration, other than sales or income tax, including registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. (5-8-09)(8-11-16)T~~

~~b.c. Registration to vote for state elected officials in Idaho at a general election. (1-1-94)~~

~~d. Holding of an Idaho driver's license. An Idaho or state-issued ID identification card may be used in lieu of an Idaho driver's license. (5-8-09)(8-11-16)T~~

~~e. Evidence of the abandonment of a previous domicile. (1-1-94)~~

~~e. The presence of household goods in Idaho. (1-1-94)~~

~~f. The establishment of accounts with Idaho financial institutions in Idaho. (5-8-09)(8-11-16)T~~

~~g. And Other similar factors indicating intent to be domiciled in Idaho and the maintenance of such domicile. Factors may include, but are not limited to, enrollment of dependent children in Idaho primary elementary or secondary schools, establishment of acceptance of an offer of permanent employment for self in Idaho, or documented need to care for a relative in Idaho, utility statements, or employment documentation. (5-8-09)(8-11-16)T~~

~~04. Idaho Elementary and Secondary Students. If a student meets the requirements set forth under Idaho Code, Section 33-3717B(1)(c), that student shall not be required to meet the twelve (12) month requirement for establishing domicile. (8-11-16)T~~

103. APPEALS PROCEDURE.

Any student who contests the residency classification decision made pursuant to IDAPA 08-01-04-101 by the institution may appeal the decision. The student must shall be informed of his right to appeal; by the institution at the time the student is notified of the residency classification decision. The student must request the appeal in writing and agree to the release of information provided to determine residency to the review body, and must comply with deadlines established by the institution for requesting such appeal. (1-1-94)(8-11-16)T

01. Internal Institution Appeal. The chief executive officer of each institution or his designee must shall appoint or cause to be appointed a committee of no less than three (3) to no more than five (5) members who represent faculty and administration and who will constitute a residency review committee. The individual responsible for the initial determination of residency of any student is ineligible for membership on the review committee. The committee will elect a chairman, secretary, or other position as may be deemed necessary to carry out the work of the committee. Within thirty (30) days following receipt of the student's written request to appeal the residency classification decision made pursuant to IDAPA 08-01-04-101, the committee must meet and review the ruling. The student appealing is responsible for presenting such evidence as the committee may request and such other evidence as the student may deem pertinent to his residency status. The individual who made responsible for the initial residency classification decision pursuant to IDAPA 08-01-04-101 may be present to submit such information as he may desire for each case being appealed, if requested by the committee, to answer questions from the committee. The student must be notified in writing of the review committee's decision. The decision of the committee is final unless the student elects to appeal further the decision to the State Board of Education. (7-1-93)(8-11-16)T

02. **Board Appeal.** Any student who contests the decision of the residency review committee may appeal to the State Board of Education. In such case, the student must advise the chief executive officer of the institution, in writing, of his request to submit an appeal. The chief executive officer ~~must arrange for a~~ will submit the request to the Office of the State Board of Education for review by the Board or the Board's designated representatives. The decision of the State Board of Education is the final determination and is binding on all parties concerned, subject to the student's statutory right to appeal the final determination to district court.

(7-1-93)(8-11-16)T

~~104. INTERPRETATIONS RELATING TO RESIDENCY CLASSIFICATION.~~

~~01. **Common Law Marriage.** Any student who wants to establish residency on the basis of a common law marriage must complete an Affidavit of Common Law Marriage as approved by the Board. (7-1-93)~~

~~02. **Nonresident Aliens — Marital Privilege.** Nonresident aliens who marry Idaho residents become eligible for residency classification for purposes of higher education, as provided in Section 33-3717B, Idaho Code, upon filing proof of marriage in the admissions office. However, the institutions remain responsible for complying with requirements set forth in regulations of the U.S. Immigration and Naturalization Service relating to non-immigrant alien students until such time as the alien is granted lawful resident alien status by the U.S. Immigration and Naturalization Service. (5-8-09)~~

~~105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS.~~

~~01. **RESIDENCY REQUIREMENT.** As provided in Section 33-3717B, Idaho Code, a residency requirement of at least one (1) calendar year is in effect for certain special graduate and professional programs. (3-29-12)~~

~~a. Those programs include, but are not limited to, the WAMI Regional Medical Program, the WICHE Professional Student Exchange Program, the Idaho Dental Education Program, the Creighton Dental Education Program, the WOI Regional Veterinary Program, and the University of Utah Medical Program. (3-29-12)~~

~~b. For purposes of this section, the requirement of "at least one (1) calendar year" means a period of twelve (12) consecutive months of continuous residency consistent with the requirements of Section 33-3717B, Idaho Code, immediately prior to the date of application. (3-29-12)~~

~~02. **Appeal to the State Board of Education.** Applicants for the special graduate and professional programs, upon institutional denial of residency status, may petition the Board for a hearing on the denial. The decision to grant such a hearing is discretionary with the Board and will be granted for errors in determination of residency pursuant to Section 33-3717B, Idaho Code. (5-8-09)~~

1064. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.09 - RULES GOVERNING THE GEAR UP IDAHO SCHOLARSHIP PROGRAM

DOCKET NO. 08-0109-1601 (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 33-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 original scholarship was available to students who had attended a school participating in the GEAR UP Idaho program and who had participated in the programs early intervention component in grades seven (7) through ten (10). To be eligible for participation in the GEAR UP 1 scholarship, the student must have graduated in 2012, 2013, or 2014. Idaho received a second GEAR UP grant, referred to as GEAR UP 2. The scholarship component of GEAR UP 2 is available to students who will graduate from high school in 2017 and 2018. The student eligibility requirements for the GEAR UP 2 program are slightly different than those of GEAR UP 1.

Due to the changes in federal requirements for this program, it will no longer be necessary to have administrative rules governing the scholarship program. Participation and award amounts will be based on the federal program requirements. Due to these changes the existing language in administrative code is no longer necessary. The proposed amendments repeal the section in its entirety.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, 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: N/A

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

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W State St., PO Box 83720

Boise, ID 83720-0037
Phone: (208) 332-1582
Fax: (208) 334-2632

IDAPA 08.01.09 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-320, 33-1212A, and 33-1616 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) or more persons, a political subdivision, or an agency, not later than October 19, 2016.

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

During the 2016 legislative session amendments were made to the Continuous Improvement Plan requirements, Literacy Intervention Plan requirements, and College and Career Advising Plan requirements. These amendments set minimum reporting requirements for the Continuous Improvement Plans and tied the Literacy Improvement Plans and College and Career Advising Plan reporting to the Continuous Improvement Plans. The proposed amendments set out the statewide readiness and improvement metrics, literacy intervention plan requirements and reporting metrics, and college and career advising plan requirements and minimum metrics.

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 temporary rule is necessary to come into compliance with amendments to Sections 33-320, 33-1212A, and 33-1616, 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 50](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W State St.
PO Box 83720
Boise, ID 83720-0037
Phone: (208) 332-1582
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0201-1602
(Only Those Sections With Amendments Are Shown.)**

801. CONTINUOUS IMPROVEMENT PLANNING AND TRAINING.

In accordance with Section 33-320, Idaho Code, every local education agency (LEA) shall develop and maintain a strategic plan that includes a continuous improvement process focused on improving student performance of the LEA. (3-25-16)

01. Definitions. (4-11-15)

a. Administrator. As used in this section administrator means the superintendent of the school district or administrator of a charter school. (4-11-15)

b. Board. Board means the Idaho State Board of Education. (4-11-15)

c. Executive Director. Executive Director means the Executive Director of the Idaho State Board of Education. (4-11-15)

d. Local Education Agency Board. As used in this section local education agency or LEA Board means the board of trustees of a school district or board of directors of a charter school. (4-11-15)

e. Local Education Agency. As used in this section local education agency (LEA) means public school district or charter school.. (4-11-15)

f. Continuous Improvement Plan. As used in this section, a continuous improvement plan focuses on annual measurable outcomes and the analysis of data to assess and prioritize needs and measure outcomes. (3-25-16)

02. Reimbursement Eligibility. LEA's may request reimbursement for training conducted pursuant to Section 33-320, Idaho Code. To be eligible for reimbursement the training and trainer must meet the following criteria: (4-11-15)

a. Training. The training must cover one (1) or more the follow subjects: (4-11-15)

i. Continuous improvement planning training. Continuous improvement planning training must include, but is not limited to, training on continuous process improvement, use and analysis of data, and methods for setting measurable targets based on student outcomes; (3-25-16)

ii. School finance; (4-11-15)

iii. Administrator evaluations, including, but not limited to, specifics on the Idaho state evaluation requirements and framework; (4-11-15)

iv. Ethics; or (4-11-15)

- v. Governance. (4-11-15)
- b.** Documentation of Training. Training records shall be kept by the LEA showing: (4-11-15)
 - i. The length of the training in hours; (4-11-15)
 - ii. The subject(s) covered by the training; (4-11-15)
 - iii. The participants included in the training or validation of attendance of specific participants as applicable; and (4-11-15)
 - iv. The curriculum, agenda, or other documentation detailing the content of the training. (4-11-15)
- c.** Training Format. A majority of the LEA board and the administrator must collaborate on the continuous improvement plan and engage students, parents, educators and the community, as applicable to the training subject and format. The training facilitator must be physically present or have the ability to interact directly with all training participants. Sufficient time must be provided during the sessions to give the participants an opportunity to discuss issues specific to the LEA. (3-25-16)
- d.** Trainer Qualifications. The trainer must meet the following qualifications: (4-11-15)
 - i. May not be a current employee of the LEA; (4-11-15)
 - ii. Must have two (2) years of documented training experience in the area of training being provided for the LEA; and (4-11-15)
 - iii. Must provide at least three (3) recommendations from individuals who participated in past training sessions conducted by the trainer. These recommendations must be included with the application to determine the trainer's qualifications. (4-11-15)
- e.** Qualified Trainers. Trainer qualifications will be determined by the Office of the State Board of Education. The State Board of Education will maintain a list of qualified trainers and the subject areas in which they are qualified. (4-11-15)
 - i. An individual or company may submit an application for consideration to be placed on the list of qualified trainers or the LEA may submit the application on behalf of the individual or company. (4-11-15)
 - ii. Applications must be submitted to the Executive Director in a format established by the Executive Director. (4-11-15)
 - iii. Trainer qualifications must be determined prior to the LEA's request for reimbursement of training costs. (4-11-15)
- ~~**03.** **Reimbursement.** Up to two thousand dollars (\$2,000) per state fiscal year will be reimbursed to the LEA for training costs. Reimbursement will be based on actual expenditures related to the training delivered. (4-11-15)~~
- 043.** **Audit.** If requested, LEA's must provide training documentation or other information to verify eligibility prior to reimbursement. (4-11-15)
- 04.** **Statewide Continuous Improvement Measures.** Multiple measures must be used to fully determine student readiness and improvement. At a minimum each continuous improvement plan shall include the following statewide student readiness and improvement metrics. The benchmark for each metric shall be set by the LEA. (8-11-16)T
- a.** The career and college readiness metric shall be the number and percentage of students meeting the

college ready benchmark in mathematics and English Language Arts on a state recognized college entrance exam. Improvement shall be measured by year over year growth in the percentage of students meeting the college readiness benchmark. (8-11-16)T

b. The high school readiness metric shall be the number and percentage of students meeting proficient or advanced on the grade eight (8) Idaho standards achievement test in mathematics and English language usage. Improvement shall be measured by year over year growth in the percentage of students scoring proficient or advanced. (8-11-16)T

c. The grade seven (7) readiness metric shall be the number and percentage of students meeting proficient or advanced on the grade six (6) Idaho standards achievement test in mathematics and English language usage. Improvement shall be measured by year over year growth in the percentage of students scoring proficient or advanced. (8-11-16)T

d. The grade four (4) reading readiness metric shall be the number and percentage of students reading at grade level on the spring grade three (3) statewide reading assessment. Improvement shall be measured by year over year growth in the percentage of students scoring at grade level. (8-11-16)T

e. The grade three (3) reading readiness metric shall be the number and percentage of students reading at grade level on the spring grade two (2) statewide reading assessment. Improvement shall be measured by year over year growth in the percentage of students scoring at grade level. (8-11-16)T

f. The grade two (2) reading readiness metric shall be the number and percentage of students reading at grade level on the spring grade one (1) statewide reading assessment. Improvement shall be measured by year over year growth in the percentage of students scoring at grade level. (8-11-16)T

g. The grade one (1) reading readiness metric shall be the number and percentage of students reading at grade level on the spring kindergarten statewide reading assessment. Improvement shall be measured by year over year growth in the percentage of students scoring at grade level. (8-11-16)T

05. **Annual Literacy Intervention Plan.** Annually each LEA will report on the effectiveness of the LEA's literacy intervention plan. Plans and reports are due by October 1 of each year. Plans shall include at a minimum: (8-11-16)T

a. Summary of literacy interventions used at each grade level; (8-11-16)T

b. Previous year literacy intervention expenditures; (8-11-16)T

c. Projected literacy plan budget for the current school year; (8-11-16)T

d. Metrics chosen by the LEA to determine effectiveness of the literacy plan and annual performance benchmarks; and (8-11-16)T

e. Performance on metrics chosen to show program effectiveness for at a minimum the previous academic year. (8-11-16)T

06. **College and Career Advising and Mentoring Plans.** Annually each LEA shall submit their college and career advising and mentoring plan to the State Board of Education by October 1. (8-11-16)T

a. Plans shall include: (8-11-16)T

i. Description of the college and career advising or mentoring model used by the LEA; (8-11-16)T

ii. Summary of college and career advising and mentoring used at each grade level, grade eight (8) through grade twelve (12), as applicable to the grade ranges enrolled at the LEA; (8-11-16)T

iii. Previous year college and career advising and mentoring plan expenditures. College and career

advising and mentoring plans submitted for the 2016-2017 school year must show how the additional funds received will be used to expand previous college and career advising and mentoring in the schools. New funding shall not be used to supplant current efforts: (8-11-16)T

- iv. Projected college and career advising and mentoring plan budget for current school year: and (8-11-16)T
- v. Required metrics and metrics chosen by the LEA to determine effectiveness of the college and career advising and mentoring plan, baseline data and annual benchmarks. (8-11-16)T
- b.** Performance on all effectiveness metrics shall be reported annually in the LEA's Continuous Improvement Plan annual report. (8-11-16)T
- c.** At a minimum effectiveness metrics must include: (8-11-16)T
 - i. Number of learning plans developed during grade eight (8); (8-11-16)T
 - ii. Number of learning plans reviewed annually by grade level, in grade nine (9) through grade twelve (12); (8-11-16)T
 - iii. Number of students served annually by grade level; (8-11-16)T
 - iv. Number and percent of students who go on to some form of postsecondary education one (1) and two (2) years after graduation; and (8-11-16)T
 - v. Number of students graduating high school with a career technical certificate or associates degree. (8-11-16)T

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1603

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1616, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

Pursuant to amendments to Section 33-1616, Idaho Code, the proposed rule creates statewide growth targets for improving student literacy proficiency.

Year 1 and 2:

Grade	KG	1	2	3
% Growth	1.0%	1.0%	1.0%	1.0%

Years 3 through 6:

Grade	KG	1	2	3
% Growth	1.8%	2.0%	1.6%	1.2%

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:

HB 526 (2016) amended Section 33-1616, Idaho Code, requiring the Board set student trajectory growth to proficiency benchmarks and timelines for Kindergarten through grade 3. The proposed amendments add a new Section 821 to IDAPA 08.02.01 that sets trajectory growth targets at the statewide level in compliance with Idaho Code.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 51](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief

synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

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 26th, 2016.

DATED this 26th day of August, 2016.

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
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0201-1603
(Only Those Sections With Amendments Are Shown.)**

802. LITERACY GROWTH TARGETS.

01. Statewide Trajectory Growth Targets. Statewide trajectory annual growth targets are based on aggregated student performance on the spring administration of the statewide reading assessments. Local growth targets are set by the LEA based on the LEA's available resources and student demographics. Statewide trajectory growth targets indicated the statewide goal for year over year increases in the percentage of students reading at grade level. (8-11-16)T

a. Year one (1) and two (2): (8-11-16)T

i. Kindergarten -- one percent (1%). (8-11-16)T

ii. Grade one (1) -- one percent (1%). (8-11-16)T

iii. Grade two (2) -- one percent (1%). (8-11-16)T

iv. Grade three (3) -- one percent (1%). (8-11-16)T

b. Year three (3), four (4), five (5), and six (6): (8-11-16)T

i. Kindergarten -- one point eight percent (1.8%). (8-11-16)T

ii. Grade one (1) -- two percent (2%). (8-11-16)T

iii. Grade two (2) -- one point six percent (1.6%). (8-11-16)T

iv. Grade three (3) -- one point two percent (1.2%). (8-11-16)T

02. Annual Review. The State Board of Education will review the statewide student proficiency levels and the statewide trajectory growth targets annually. (8-11-16)T

8023. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1604

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1004, 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 19, 2016.

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

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

The proposed rule will establish multiple measures for determining peer groups for school districts based on school district size, geographical location and pupil populations. The rule will also determine how the measures are combined to group school districts for determining the statewide average class size for each peer group. The proposed rule amendments would add a new section to IDAPA 08.02.01, Rules Governing Administration setting out the provisions for determining the statewide average class size based on the divisors specified in Section 33-1002, Idaho Code. The proposed breakdown would be as follows:

- Group 1 shall consist of school districts with an elementary divisor, pursuant to Section 33-1004, Idaho Code, of twenty (20) for grades 1 through 3 and twenty-three (23) for grades 4 through 6, and a secondary divisor of eighteen point five (18.5).
- Group 2 will consist of school districts with an elementary divisor, pursuant to Section 33-1004, Idaho Code, of twenty (20) for grades 1 through 3 and twenty-three (23) for grades 4 through 6, and a secondary divisor less than 18.5.
- Group 3 will consist of school districts with elementary divisors, pursuant to Section 33-1004, Idaho Code, of nineteen (19) or twenty (20) for grades 1 through 6, and a secondary divisor of less than eighteen point five (18.5).
- Group 4 will consist on school districts with elementary divisors, pursuant to Section 33-1004, Idaho Code, of less than nineteen (19) for grades 1 through 6, and a secondary divisor of less than eighteen point five (18.5).

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:

HB 476 (2016) amended Section 33-1004, Idaho Code setting additional provisions for determining the statewide average class size that is used in calculations related to school district staff allowances. The proposed amendments are necessary to come into compliance with the amendments made to Section 33-1004, 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, 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: N/A

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

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 26, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W State St.
PO Box 83720
Boise, ID 83720-0037
Phone: (208) 332-1582
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0201-1604
(Only Those Sections With Amendments Are Shown.)**

803. STATEWIDE AVERAGE CLASS SIZE.

For the purpose of determining the statewide average class sized used in school district staff allowance calculations, school districts shall be grouped as follows: (8-11-16)T

01. Group 1. Group 1 shall consist of school districts with an elementary divisor, pursuant to Section 33-1004, Idaho Code, of twenty (20) for grades one (1) through three (3) and twenty-three (23) for grades four (4) through six (6), and a secondary divisor of eighteen point five (18.5.) (8-11-16)T

02. Group 2. Group 2 will consist of school districts with an elementary divisor, pursuant to Section 33-1004, Idaho Code, of twenty (20) for grades one (1) through three (3) and twenty-three (23) for grades four (4) through six (6), and a secondary divisor less than eighteen point five (18.5.) (8-11-16)T

03. Group 3. Group 3 will consist of school districts with elementary divisors, pursuant to Section 33-1004, Idaho Code, of nineteen (19) or twenty (20) for grades one (1) through six (6), and a secondary divisor of less than eighteen point five (18.5.) (8-11-16)T

04. Group 4. Group 4 will consist of school districts with elementary divisors, pursuant to Section 33-1004, Idaho Code, of less than nineteen (19) for grades one (1) through six (6), and a secondary divisor of less than eighteen point five (18.5.) (8-11-16)T

~~803~~4. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1607

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-107, 33-1004A, 33-1201, 33-1201A, 33-1204, 33-1612, and 33-2211 Idaho Code, and Article IX, Section 2 of the Idaho Constitution.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

In 2014 errors were identified in current practices and administrative rule requirements regarding elementary and secondary certificates and the eligible grade ranges in which these certificate holders could teach. Since that time Board staff and various stakeholder groups have met to discuss amendments to address this issue, current certification requirements and improvements, and possible changes to address some of the difficulties some districts experience in filling position with teachers holding a standard certificate. Through this process agreement was reached that the current non-traditional and alternate routes to certification allow districts the flexibility in hiring in these situations. Administrators and teachers agreed there was not a desire to weaken the current certification requirements, however, some changes were identified that would provide more flexibility for school districts and teachers alike.

The proposed changes address the issue of assigning teachers to classrooms that are outside of the grade ranges their certificates make them eligible to teach. Proposed changes will also make it easier for teachers to earn multiple endorsements by creating a single standard (teaching) certificate that does not limit the grade ranges. This change would allow grade ranges and subject areas to be governed by the endorsements earned. Overall the groups felt this change could result in increasing the pool of available teachers by removing the requirement of earning an additional certificate because, technically, they are qualified to teach the subject areas and grade ranges if they met the endorsement requirements. The proposed changes also include the creation of additional grade ranges on some endorsements allowing teachers to earn endorsements in those grade ranges they feel comfortable teaching in. At the same time, mechanisms remain in place for teachers to earn additional endorsements for their certificates similar to the current process for earning additional certificates, however, the focus is on the new subject areas.

Additional amendments to IDAPA 08.02.02 include the following: amending the administrator evaluation submittal timeline to align it with legislative changes made during the 2016 Legislative session; aligning the certificated staff evaluations regarding student achievement with the student achievement requirements that are part of the career ladder; creating middle school/grades endorsement grade ranges; and updating the occupational specialist certificates. The middle school/grades endorsements address the issue of individuals who have already obtained endorsements for grades 6 through 9 that did not previously exist and aligns to the single instructional certificate model.

Finally, amendments also incorporate changes recommended by the Professional Standards Commission to update endorsements to align them with current/best practices. This is part of the standard annual review of endorsement requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, page 22](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1607
(Only Those Sections With Amendments Are Shown.)

007. DEFINITIONS.

01. Active Teacher. K-12 teacher with a valid Idaho certificate who is currently teaching in an Idaho K-12 classroom ~~or school~~, either in person or online. (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~~ paraprofessional 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. (3-25-16)

07. 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 or growth and the

ability to create student learning objectives, and is now being recommended for state certification. (3-25-16)

08. Local Education Agency (LEA). An Idaho public school district or charter school pursuant to Section 33-5203(~~7~~8), Idaho Code. (~~3-25-16~~)()

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

10. ~~Para-Educator. Aides and assistants employed by school districts to supplement instruction and provide additional assistance to students.~~ Paraprofessional. A noncertificated individual who is employed by a school district or charter school to support educational programming. Paraprofessionals must work under the direct supervision of a properly certificated staff member for the areas they are providing support. Paraprofessionals cannot serve as the teacher of record and may not provide direct instruction to a student unless the paraprofessional is working under the direct supervision of a teacher. To qualify as a paraprofessional the individual must have completed at least two (2) years of study at an accredited postsecondary educational institution, obtained an associate degree or higher level degree; demonstrate through a state approved academic assessment knowledge of and the ability to assist in instructing or preparing students to be instructed as applicable to the academic areas they are providing support in. Individuals who do not meet these requirements will be considered classroom. (~~3-16-04~~)()

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. (3-25-16)

13. Teacher Leader. A teacher who facilitates the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

014. CERTIFICATES ISSUED TO APPLICANTS FROM REGIONALLY ACCREDITED INSTITUTIONS.

01. The Department of Education. The department of education is authorized to issue Idaho Certificates to applicants from regionally accredited institutions meeting requirements for certification or equivalent (i.e., those based on a ~~bachelor's~~ baccalaureate degree) in other states when they substantially meet the requirements for the Idaho Certificate. (Sections 33-1203; 33-2203 Idaho Code) (~~3-16-04~~)()

02. The ~~State~~ Division of Career-Technical Education. The ~~state~~ division of career-technical education is authorized to determine whether applicants meet the requirements for instructing or administering career-technical programs at the secondary and postsecondary levels. (Section 33-2203, Idaho Code)(~~3-16-04~~)()

015. 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. (3-25-16)

01. Standard ~~Elementary~~ Instructional Certificate. A Standard ~~Elementary~~ Instructional Certificate makes an individual eligible to teach ~~grades Kindergarten (K) through eight (8), and all grades, subject to the grade ranges and subject areas of the valid endorsement(s) attached to the certificate. A standard instructional certificate~~ may be issued to any person who has a ~~bachelor's~~ baccalaureate degree from an accredited college or university and who meets the following requirements: The Standard Instructional Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (~~3-25-16~~)()

~~α. Completion of the general education requirements at an accredited college or university is~~

~~required.~~

~~(3-25-16)~~

~~b.a.~~ Meets the following ~~p~~Professional education requirements: ~~(3-25-16)()~~

i. ~~A~~ Earned 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~~ three (6) semester credit hours, or ~~nine~~ four (9) quarter credit hours, in ~~developmental~~ reading and its application to the content area: ~~(3-25-16)()~~

ii. The required minimum credit hours must include at least six (6) semester credit hours, or nine (9) quarter credit hours, of ~~either~~ student teaching in ~~grades kindergarten through eight (K-8), or two (2) years of satisfactory experience as a teacher in grades kindergarten through eight (K-8)~~. the grade range and subject areas as applicable to the endorsement; and ~~(3-25-16)()~~

~~eb.~~ Completed an approved teacher preparation program and have 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)~~. specifying the grade ranges and subjects for which they are eligible to receive an endorsement in; or ~~(3-25-16)()~~

~~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.~~ ~~(3-25-16)~~

c. Individuals seeking endorsement in a secondary grade range must complete preparation in at least two (2) fields of secondary teaching. One (1) of the teaching fields must consist of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours and a second field of teaching consisting 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 two (2) teaching field requirements; and ~~()~~

ed. 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 the state board approved ~~elementary or secondary~~ content area and pedagogy assessments. ~~(3-25-16)()~~

~~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:~~ ~~(3-25-16)~~

~~a.~~ ~~Completion of the general education requirements at an accredited college or university is required.~~ ~~(3-25-16)~~

~~b.~~ ~~Professional Education Requirements:~~ ~~(3-25-16)~~

~~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.~~ ~~(3-25-16)~~

~~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).~~ ~~(3-25-16)~~

~~e.~~ ~~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. (3-25-16)~~

~~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). (3-25-16)~~

~~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. (3-25-16)~~

~~**03. Blended Early Childhood Education / Early Childhood Special Education 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: (3-25-16)~~

~~a. Completion of the general education requirements at an accredited college or university is required. (3-25-16)~~

~~b. Meets the following professional education requirements: (3-25-16)~~

~~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 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. (3-25-16)~~

~~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. (3-25-16)~~

~~e. An institutional recommendation from an accredited college or university. (3-25-16)~~

~~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. (3-25-16)~~

~~**04. Exceptional Child Certificate.** Holders of this certificate are authorized to work with children who have been identified as having an educational impairment. (3-25-16)~~

~~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. (3-25-16)~~

~~b. Exceptional Child Generalist Endorsement (K-12). The Exceptional Child Generalist K-12 endorsement is non-categorical and allows one 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: (3-25-16)~~

~~i. Completion of a baccalaureate degree from an accredited college or university; (3-25-16)~~

~~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;~~ (3-25-16)

~~iii. Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program; and~~ (3-25-16)

~~iv. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested.~~ (3-25-16)

~~e. 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:~~ (3-25-16)

~~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.~~ (3-25-16)

~~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:~~ (3-25-16)

~~i. Completion of a baccalaureate degree from an accredited college or university;~~ (3-25-16)

~~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~~ (3-25-16)

~~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; and~~ (3-25-16)

~~iv. Completion of a program of a minimum of thirty-three (33) semester credit hours in the area of Deaf/Hard of Hearing and must receive an institutional recommendation specific to this endorsement from an accredited college or university.~~ (3-25-16)

~~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:~~ (3-25-16)

~~i. Completion of a baccalaureate degree from an accredited college or university;~~ (3-25-16)

~~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;~~ (3-25-16)

~~iii. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment and must receive an institutional recommendation specific to this endorsement from an accredited college or university; and (3-25-16)~~

~~iv. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (3-25-16)~~

052. 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. (3-25-16)

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. (3-25-16)

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; and (3-25-16)

ii. An institutional recommendation is required for a Counselor K-12 Endorsement. (3-25-16)

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: (3-25-16)

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; (3-25-16)

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; (3-25-16)

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; and (3-25-16)

iv. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-25-16)

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 015.042.c.i. or 015.042.c.ii. in addition to the requirement of Subsection 015.042.c.iii. (3-25-16)()

i. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a ~~bachelor's~~ baccalaureate degree in nursing, education, or a health-related field from an accredited institution. (3-25-16)()

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: (3-25-16)

- (1) Health program management; (3-25-16)
- (2) Child and adolescent health issues; (3-25-16)
- (3) Counseling, psychology, or social work; or (3-25-16)
- (4) Methods of instruction. (3-25-16)

iii. Additionally, each candidate must have two (2) years of full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (3-25-16)

d. Interim Endorsement - School Nurse. This certificate endorsement 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 Endorsement~~ School Nurse Endorsement will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-25-16)()

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. The 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. (3-25-16)

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. The 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. (3-25-16)

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 shall~~ 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~~ by meeting the requirements of Subsections 015.02.g.i. through iii., or by meeting the requirement in Subsection 015.02.g.iv.: (3-25-16)()

i. A master's degree in social work (MSW) 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; ~~or~~ and (3-25-16)()

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.~~ An institution recommendation from an Idaho State Board of Education approved program; and (3-25-16)()

iii. The successful completion of a school social work practicum in a kindergarten through grade

twelve 12 (K-12) setting. Post-MSW extensive experience working with children and families may be substituted for the completion of a school social work practicum in a K-12 setting. ()

iv. A current master's degree or higher social work license pursuant to chapter 32, title 54 and the rules of the State Board of Social Work Examiners. ()

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 baccalaureate 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. (3-25-16)()

063. 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. The Administrator Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (3-25-16)()

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: (3-25-16)

i. Hold a master's degree from an accredited college or university. (3-25-16)

ii. Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in an accredited school setting. (3-25-16)

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. (3-25-16)

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. (3-25-16)

v. An institutional recommendation is required for a School Principal Pre-K-12 Endorsement. (3-25-16)

b. Superintendent Endorsement. To be eligible for an Administrator Certificate with a Superintendent endorsement, a candidate must have satisfied the following requirements: (3-25-16)

i. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

v. An institutional recommendation is required for a School Superintendent Endorsement. (3-25-16)

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: (3-25-16)

i. Hold a master's degree from an accredited college or university; (3-25-16)

ii. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting; (3-25-16)

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; (3-25-16)

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; (3-25-16)

v. Have completed an administrative internship/practicum in the area of administration of special education and related services; and (3-25-16)

vi. An institutional recommendation is required for Director of Special Education and Related Services Pre-K-12 Endorsement. (3-25-16)

074. **Certification Standards For Career-Technical Educators.** Teachers of career-technical ~~classes~~ courses 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~~ Standard Instructional eCertificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Career-Technical Education, and application processes are managed by the Division of Career-Technical Education. (~~3-25-16~~)()

085. **Degree Based Career-Technical Certification.** (3-25-16)

a. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural ~~Science and Technology~~ and Natural Resources; Business Technology Education; Family and Consumer Sciences; Marketing Technology Education; and Engineering 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 a ~~an~~ Division of Career-Technical Education approved practicum in their respective field of specialization. (3-25-16)()

b. The Career-Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of career-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Career-Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Career-Technical Education. (3-25-16)()

i. Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on a secondary teaching certificate; (3-25-16)

ii. Provide evidence of a minimum of ~~three~~ four (34) years' teaching, three (3) of which must be in an ~~occupational~~ career-technical discipline; (3-25-16)()

iii. Hold a master's degree; and (3-25-16)

iv. Complete at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of career-technical education; administration of personnel; and legal aspects of career-technical education, and statewide framework for teacher evaluations that includes a laboratory component. 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. (3-25-16)()

v. To renew the Career-Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for career-technical ~~teachers~~ instructional staff. (3-25-16)()

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~~ Standard Instructional Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. (3-25-16)()

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 career technical requirement: Career Pathways and Career Technical Guidance; Principles/Foundations of Career-Technical Education; and Theories of Occupational Choice. (3-25-16)

096. Occupational Specialist Certificate. The Occupational Specialist Certificate ~~is an~~ are industry based career-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 career technical teacher education programs do not exist; and postsecondary career-technical educators who teach courses with nine (9) to twelve (12) students per class.~~ issued in lieu of a degree based career-technical certificate. Certificate holders must meet the following eligibility requirements: (3-25-16)()

a. ~~Applicants must: b~~ 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: (3-25-16)()

i. Have eight (8) years or 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 or up to eight

~~thousand (8,000) hours~~ can be counted toward the eight (8) years on a month-to-month basis for journeyman training ~~and/or completed~~ postsecondary training ~~successfully completed as a full time student in an approved/approvable, postsecondary, in a~~ career-technical education program; ~~or~~ (3-25-16)()

ii. Have a ~~bachelor's~~ baccalaureate degree in the specific occupation or related area, plus ~~three (3) years or~~ six-thousand (6,000) hours of ~~full-time, successful,~~ recent, gainful employment in the occupation; ~~and or~~ (3-25-16)()

iii. Meet one (1) of the following: (3-25-16)

(1) ~~Have at least~~ Be a journeyman ~~level plus~~ with two (2) years of recent, full-time, gainful, related work experience. ~~A person who has, or have~~ 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; (3-25-16)()

(2) Pass an 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 (3-25-16)()

(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. (3-25-16)()

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; (3-25-16)()

i. Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Career-Technical Education and an approved course in career technical methods and student assessment; (3-25-16)()

ii. Complete a new-teacher induction workshop at the state or district level; (3-25-16)

~~iii. File a professional development plan with the State Division of Career-Technical Education; and~~ (3-25-16)

~~iv.ii.~~ Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily ~~complete course work which includes~~ demonstrate competencies in ~~four (4) of the following: Principles/Foundations of Occupational Education; and Methods of Teaching Occupational Education. Additionally, the instructor must satisfactorily demonstrate competencies in two (2) of the following areas: Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; and Measurement and Evaluation; and Methods of Teaching Occupational Education.~~ (3-25-16)()

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.;~~ ()

i. Completed the pre-service workshop sponsored by the Division of Career-Technical Education and an approved course in career-technical methods and student assessment; and ()

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

iii. Can satisfactorily demonstrate competencies in Principles/Foundations of Occupational Education and Methods of Teaching Occupational Education; and ()

iv. Can demonstrate competencies in two (2) of the following areas: Career Pathways and Guidance;

Analysis, Integration, and Curriculum Development; and Measurement and Evaluation; and ()

v. The Standard Occupational Specialist eCertificate ~~must be renewed every~~ is valid for five (5) years; ~~which shall include completion of six (6) semester credit hours of approved course work or~~ and must be renewed pursuant to Section 060 of these rules. Credit equivalencies will be based on verification of ~~two hundred forty~~ one hundred twenty (240/120) hours of approved related work experience or ~~ninety forty-five (90/45)~~ hours of attendance participation at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a professional development plan for the next certification period. Work experience may be prorated at the rate of forty (40) hours per credit. Technical conference, institutes, or workshop participation may be prorated at the rate of fifteen (15) hours per credit. (3-25-16)()

d. Advanced Occupational Specialist Certificate. This certificate is issued to individuals who ~~meet all the requirements outlined below~~ have: (3-25-16)()

i. Meet the requirements for the Standard Occupational Specialist Certificate; and (3-25-16)()

ii. Can provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved education related course work, such as educational methodology in the content area, in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and (3-25-16)()

iii. File a new professional development plan for the next certification period; and (3-25-16)

iv. ~~This~~ The Advanced Occupational eCertificate ~~must be renewed every~~ is valid for five (5) years; ~~which shall include completion of six (6) semester credit hours of approved course work or submit~~ and must be renewed pursuant to Section 060. At least three (3) educationally focused semester credits must be taken for university or college credit. Verification will be based on an official transcript. In addition to the minimum of three (3) semester credits, in-service activities or related work experience may be used. Credit equivalencies will be based on verification of ~~two hundred forty~~ one hundred twenty (240/120) hours of approved related work experience or ~~ninety forty-five (90/45)~~ hours of attendance participation at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new professional development plan for the next certification period. Work experience may be prorated at the rate of forty (40) hours per credit. Technical conference, institutes, or workshop participation may be prorated at the rate of fifteen (15) hours per credit. (3-25-16)()

~~407.~~ **Postsecondary Specialist.** A Postsecondary Specialist certificate will be granted to a current academic 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. (3-25-16)()

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). (3-25-16)

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. (3-25-16)

c. The candidate must meet the following qualifications: (3-25-16)

i. Hold a master's degree or higher in the content area being taught; (3-25-16)

ii. Be currently employed by the postsecondary institution in the content area to be taught; and (3-25-16)

iii. Complete and pass a criminal history background check as required according to Section 33-130, Idaho Code. (3-25-16)

~~#~~**08. 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. (3-25-16)

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. (3-25-16)

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 fee for undergoing a criminal history check pursuant to Section 33-130, Idaho Code. (3-25-16)

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. (3-25-16)

~~#~~**09. Junior Reserved Officer Training Corps (Junior ROTC) Instructors.** (3-25-16)

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. (3-25-16)

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. (3-25-16)

c. Authorization Letter. Upon receiving the items identified in Subsections 015.~~#~~**09.a.** and b., the State Department of Education shall issue a letter authorizing these individuals as Junior ROTC instructors. ~~(3-25-16)~~()

~~#~~**10. Additional Renewal Requirements.** In addition to specific certificate or endorsement renewal requirements, applicants must meet the following renewal requirements as applicable: (3-25-16)

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 060.032.c. of this rule, ~~regardless of whether such course is part of any official transcript~~ as long as said course is part of an official transcript or completed before September 1, 2013, and verified by the State Department of Education. 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 or another State Department of Education approved alternative course in order to recertify: ~~(3-25-16)~~()

i. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate endorsement (Birth - Grade 3) who is employed by a school district or charter school as a K-3 multi-subject or special education teacher; ~~(3-25-16)~~()

ii. Each teacher holding a Standard Elementary Instructional Certificate (K-8) who is employed by a school district or charter school as a K-6 multi-subject teacher; ~~(3-25-16)~~()

iii. Each teacher holding a Standard Secondary Instructional Certificate (6-12) teaching in a

mathematics content classroom (grade six (6) through grade twelve (12)) including Title I who is employed by a school district or charter school; ~~and~~ (3-25-16)(____)

iv. Each teacher holding a Standard Exceptional Child ~~Certificate (K-12)~~ Generalist Endorsement who is employed by a school district or charter school; ~~and as a special education teacher.~~ (3-25-16)(____)

~~v. Each school administrator holding an Administrator Certificate (Pre K-12) who is employed by a school district or charter school.~~ (3-25-16)

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. (3-25-16)

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: (3-25-16)

i. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate Endorsement (Birth - Grade 3) who is employed by a school district or charter school; (3-25-16)(____)

ii. Each teacher holding a Standard Elementary Instructional Certificate (K-8) who is employed by a school district or charter school; and (3-25-16)(____)

iii. Each teacher holding a Standard Exceptional Child ~~Certificate (K-12)~~ Generalist Endorsement who is employed by a school district or charter school. (3-25-16)(____)

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. The laboratory component must include in-person or video observation and scoring of teacher performance using the statewide framework for teacher's evaluation. (3-25-16)(____)

016. IDAHO INTERIM CERTIFICATE.

The State Department of Education or the Division of Career-Technical Education, as applicable to the certificate, 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 pursuant to Section 33-4104, Idaho Code, or engaged in an alternate route to authorization certification as prescribed herein. ~~An interim certificate is nonrenewable except under extenuating circumstances approved by the State Department of Education.~~ (3-25-16)(____)

01. Interim Certificate Not Renewable. Interim certification is only available on a one-time basis per individual except under extenuating circumstances approved by the State Department of Education. 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 term of the interim certificate. (3-25-16)(____)

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 Idaho Comprehensive Literacy course shall be a one-time requirement for full certification. (3-25-16)

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. (3-25-16)

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.~~ For all Idaho teachers working on interim certificates (alternate authorizations, nontraditional routes, or coming from out of the state), with an All Subjects K-8 endorsement or any mathematics endorsement must complete a state approved Mathematical Thinking for Instruction, or another State Department of Education approved alternative course, as a one-time requirement to receive a standard instructional, standard occupational, or advanced occupational certificate. (3-25-16)()

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)

05. 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)

06. 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)

(BREAK IN CONTINUITY OF SECTIONS)

021. ENDORSEMENTS.

Holders of a ~~Secondary Certificate or a~~ Standard Elementary Instructional Certificate, Exceptional Child Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. Instructional staff are eligible to teach in the grades and content areas of their endorsements. 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. Alternative Authorization Preparation Program to Endorsement. Candidates shall meet all requirements for the endorsement as provided herein. (3-25-16)()

a. Option I -- An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching field 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. ()

#b. Option II -- National Board. By earning National Board Certification in content specific areas, teachers may gain endorsement in a corresponding subject area. (3-25-16)()

~~bc.~~ Option III -- 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. (3-25-16)()

~~ed.~~ Option ~~III~~IV -- Testing and/or Assessment. Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. (3-25-16)()

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. (3-25-16)

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. (3-25-16)

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: ~~or~~ (3-16-04)()

b. Occupational teacher preparation ~~coursework that relates to the appropriate area(s) as provided in Sections 034 through 038~~ pursuant to Section 015.04 through 015.06. (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. All Subjects (K-8). Allows one to teach in any educational setting (K-8). Twenty (20) semester credit hours, or thirty (30) quarter credit hours in the philosophical, psychological, methodological foundations, instructional technology, and professional subject matter must be in elementary education.~~ (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 (~~5-9 or~~ 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 including coursework in each of the following areas: molecular and organismal biology, heredity, ecology and biological adaptation.~~ (3-16-04)()

06. Blended Early Childhood Education Birth through Grade Three (3). The Birth through Grade Three (3) endorsement allows one to teach in any educational setting birth through grade three (3). To be eligible, a candidate must have satisfied the following requirements. ()

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 shall include course work specific to the 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. ()

b. The required credit hours here in, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching (K-3) and field experiences birth to age three (3) programs, and age three (3) to age five (5) programs, and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading. ()

c. Proficiency in areas noted above is measured by one (1) of the following options: ()

i. Option I -- Demonstration of competency within the Idaho Standards for Blended Early Childhood Education/Early Childhood Special Education Teachers. Additionally, each candidate shall meet or exceed the state qualifying score on approved early-childhood assessments. ()

ii. Option II -- Completion of a CAEP accredited program in blended early childhood education/early childhood special education birth through grade three (3). Additionally, each candidate shall meet or exceed the state qualifying score on approved early-childhood assessments. ()

067. 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; Career-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. or (4-4-13)()

b. Occupational teacher preparation *that relates to the appropriate area(s) as provided in Sections 034 through 038* pursuant to Section 015.04 through 015.06. (4-4-13)()

078. Chemistry (5-9 or 6-12). Twenty (20) semester credit hours in the area of chemistry, to include coursework in each of the following areas: inorganic and organic chemistry. (3-16-04)()

089. Communication (5-9 or 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; Journalism/Mass Communications; 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, Journalism/Mass Communications, and Methods of Teaching Speech/Communication. (3-16-04)()

0910. Computer Science (5-9 or 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. (3-25-16)()

~~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). (3-25-16)~~

~~α. 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: (3-25-16)~~

~~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: (3-25-16)~~

- ~~(1) Assessment of learning behaviors; (3-25-16)~~
- ~~(2) Individualization of instructional programs based on educational diagnosis; (3-25-16)~~
- ~~(3) Behavioral and/or classroom management techniques; (3-25-16)~~
- ~~(4) Program implementation and supervision; (3-25-16)~~
- ~~(5) Knowledge in use of current methods, materials and resources available and management and operation of media centers; (3-25-16)~~
- ~~(6) Ability in identifying and utilizing community or agency resources and support services; and (3-25-16)~~
- ~~(7) Counseling skills and guidance of professional staff. (3-25-16)~~

~~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. (3-25-16)~~

~~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: (3-25-16)~~

- ~~(1) Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and (3-25-16)~~
- ~~(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: (3-25-16)~~
 - ~~(a) Understanding Adults As Learners to Support Professional Learning Communities; (3-25-16)~~
 - ~~(b) Accessing and Using Research to Improve Practice and Student Achievement; (3-25-16)~~
 - ~~(c) Promoting Professional Learning for Continuous Improvement; (3-25-16)~~
 - ~~(d) Facilitating Improvements in Instruction and Student Learning; (3-25-16)~~

- ~~(e) Using Assessments and Data for School and District Improvement; (3-25-16)~~
- ~~(f) Improving Outreach and Collaboration with Families and Community; and (3-25-16)~~
- ~~(g) Advocating for Student Learning and the Profession. (3-25-16)~~
- ~~iv. Not less than one (1) semester of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools. (3-25-16)~~
- ~~**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: (3-25-16)**~~
 - ~~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: (3-25-16)~~
 - ~~(1) Structural Components of Mathematics; (3-25-16)~~
 - ~~(2) Modeling, Justification, Proof and Generalization; (3-25-16)~~
 - ~~(3) Mathematical Knowledge for Teaching (Ball, Thames, & Phelps, 2008). (3-25-16)~~
 - ~~ii. Experience. Completion of a minimum of three (3) years' teaching experience. (3-25-16)~~
 - ~~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: (3-25-16)~~
 - ~~(1) Ninety (90) contact hours to include a combination of face to face and field based professional development activities; and (3-25-16)~~
 - ~~(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: (3-25-16)~~
 - ~~(a) Understanding Adults As Learners to Support Professional Learning Communities; (3-25-16)~~
 - ~~(b) Accessing and Using Research to Improve Practice and Student Achievement; (3-25-16)~~
 - ~~(c) Promoting Professional Learning for Continuous Improvement; (3-25-16)~~
 - ~~(d) Facilitating Improvements in Instruction and Student Learning; (3-25-16)~~
 - ~~(e) Using Assessments and Data for School and District Improvement; (3-25-16)~~
 - ~~(f) Improving Outreach and Collaboration with Families and Community; and (3-25-16)~~
 - ~~(g) Advocating for Student Learning and the Profession. (3-25-16)~~
 - ~~iv. Not less than one (1) semester of successful experience as a mathematics teacher working with classroom teachers in elementary or secondary schools. (3-25-16)~~

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

11. Deaf/Hard of Hearing (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 a Deaf/Hard of Hearing endorsement, a candidate must have satisfied the following requirements: ()

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

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 ()

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; and ()

d. Completion of a program of a minimum of thirty-three (33) semester credit hours in the area of Deaf/Hard of Hearing and must receive an institutional recommendation specific to this endorsement from an accredited college or university. ()

023. ENDORSEMENTS E - L.

01. Early Childhood Special Education (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. To be eligible a candidate must have satisfied the following requirements: ()

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 student teaching at the Pre-K - 3 grades. ()

~~02.~~ **Earth and Space Science (5-9 or 6-12).** Twenty (20) semester credit hours including course work in each of the following areas: earth science, astronomy, and geology. (4-11-06)()

~~03.~~ **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 business, economics, and or 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)()

~~04.~~ **Engineering (5-9 or 6-12).** ()

a. Twenty (20) semester credit hours of engineering course work; or (3-25-16)()

b. Occupational teacher preparation pursuant to Section 015.04 through 015.06. ()

~~05.~~ **English (5-9 or 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)~~()

~~056.~~ **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)

~~07.~~ **Exceptional Child Generalist (K-8, 6-12, or K-12).** The Exceptional Child Generalist endorsement is non-categorical and allows one to teach in any special education setting, applicable to the grade range of the endorsement. 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, a candidate must have satisfied the following requirements: ()

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

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

~~068.~~ **Family and Consumer Sciences (5-9 or 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; Career-Technical Student Organization ~~(PTSO)~~ leadership; and Integration of Family Consumer Sciences or Family Consumer Science Methods: or ~~(4-4-13)~~()

b. Occupational teacher preparation ~~that relates to the appropriate area(s) as provided in Sections 034 through 038 pursuant to Section 015.04 through 015.06.~~ ~~(4-4-13)~~()

~~079.~~ **Geography (5-9 or 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. The Remaining semester credit hours must be selected from Geography. ~~(4-11-06)~~()

~~0810.~~ **Geology (5-9 or 6-12).** Twenty (20) semester credit hours in the area of Geology. ~~(3-16-04)~~()

~~0911.~~ **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)

~~1012.~~ **Health (5-9, 6-12, or K-12).** Twenty (20) semester credit hours to include course work in each of the following areas: Organization/Administration/Planning of a School Health Program; Health, ~~and~~ Wellness, and Behavior Change; Secondary Methods of Teaching Health, to include field experience in a traditional classroom; 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)~~()

~~#13.~~ **History (5-9 or 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)~~(____)

~~#14.~~ **Humanities (5-9 or 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)~~(____)

~~#15.~~ **Journalism (5-9 or 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 ~~six~~fourteen (16) semester credit hours in Journalism and ~~four~~ six (6) semester credit hours in English and/or Mass Communication. ~~(3-16-04)~~(____)

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

~~#16.~~ **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 Career-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~~ pursuant to Section 015.04 through 015.06. ~~(4-4-13)~~(____)

02. **Mathematics - Basic (5-9 or 6-12).** Twenty (20) semester credit hours in Mathematics including content course work in Algebra, Geometry, and Trigonometry; algebraic thinking, functional reasoning, Euclidean and transformation geometry and statistical modeling and probabilistic reasoning. A minimum of two (2) of these twenty (20) credits must be focused on secondary mathematics pedagogy. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics content. ~~(3-16-04)~~(____)

03. **Mathematics (5-9 or 6-12).** Twenty (20) semester credit hours including course work in each of the following areas: Euclidean and transformational geometry, linear algebra, discrete mathematics, ~~Probability and Statistics~~ statistical modeling and probabilistic reasoning, and ~~a minimum of three (3) semester credit hours of Calculus~~ the first two (2) courses in a standard calculus sequence. A minimum of two (2) of these twenty (20) credits must be focused on secondary mathematics pedagogy. Statistics course work may be taken from a department other than the mathematics department. ~~(4-11-06)~~(____)

04. **Music (5-9 or 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 (5-9 or 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 e~~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 e~~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 e~~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 e~~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-~~four~~ (2~~0~~4) semester credit hours with at least ~~four~~ six (4~~6~~) 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: (3-25-16)
- a.** Meets the states' professional teaching and/or licensure standards and is qualified to teach in his/her field of study. (3-25-16)
- b.** Provides evidence of online experience or course time both as a student and as a learner, and demonstrates online learning and teaching proficiency. (3-25-16)
- 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. (3-25-16)
- 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. (3-25-16)
- e.** Demonstrates proficiency in the Idaho Standards for Online Teachers including the following competencies: (3-25-16)
- i. Knowledge of Online Education and Human Development; (3-25-16)
- ii. Facilitate and Inspire Student Learning and Creativity; (3-25-16)
- iii. Design and Develop Digital-Age Learning Experiences and Assessments Standards; (3-25-16)
- iv. Model Digital-Age Work and Learning; Promote and Model Digital Citizenship and Responsibility Standards; and (3-25-16)
- v. Engage in Professional Growth and Leadership. (3-25-16)
- 07. Physics (6-12).** Twenty (20) semester credit hours in the area of Physics. (3-16-04)
- 08. Physical Education (PE) (5-9 or 6-12 or K-12).** Twenty (20) semester credit hours to include

course work in each of the following areas: personal and teaching competence in Sport, Movement, physical activity, and Outdoor Skills; Secondary PE Methods; administration and curriculum to include field experiences in physical education; 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)()

~~09. Physical Education/Health. Must have an endorsement in both physical education and health. (3-30-07)~~

~~10. Physical Science (5-9 or 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)()~~

~~11. Psychology (5-9 or 6-12). Twenty (20) semester credit hours in the area of Psychology. (3-16-04)()~~

11. Early Childhood Special Education Pre-K through Grade Six (6) Endorsement. The Pre-K through Grade Six (6) endorsement allows one to teach in any Pre-K through grade six (6) education setting, except in a middle school setting. This endorsement may only be added to the Blended Early Childhood Education/Early Childhood Special Education Certificate in conjunction with the Birth through Grade Three (3) endorsement. To be eligible for a Blended Early Childhood Education/Early Childhood Special Education Certificate with an Early Pre-K through Grade Six (6) endorsement, a candidate must have satisfied the following requirements: ()

a. Completion of a program of a minimum of twenty (20) semester credit hours in the area of Elementary Education to include coursework in each of the following areas: methodology (literacy, mathematics, science, physical education, art); content knowledge (mathematics, literacy, science, health, art); technology; assessment; and, field experiences in grades four (4) through six (6). ()

12. Social Studies (5-9 or 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)()

13. Sociology (5-9 or 6-12). Twenty (20) semester credit hours in the area of Sociology. (3-16-04)()

14. Sociology/Anthropology (5-9 or 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)()

15. 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)

16. Technology Education (5-9 or 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 pursuant to Subsections 015.074 through 015.096. (3-25-16)()

17. Theater Arts (5-9 or 6-12). Twenty (20) semester credit hours leading toward competency as

defined by Idaho Standards for Theater Arts Teacher, including coursework in each of the following areas: acting and directing, and a minimum of six (6) semester credits in technical theater/stagecraft. To obtain a Theater Arts (6-12) endorsement, applicants must complete a comprehensive methods course including the pedagogy of acting, directing and technical theater. ()

18. Visual Arts (5-9, 6-12, or K-12). Twenty (20) Semester credit hours leading toward competency as defined by Idaho Standards for Visual Arts Teachers to include a minimum of nine (9) semester credit hours in: foundation art and design. Additional course work must include secondary arts methods, 2-dimensional and 3-dimensional studio areas. To obtain a Visual Arts (K-12) endorsement, applicants must complete an elementary art methods course. ()

19. 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 a Visually Impaired endorsement, a candidate must have satisfied the following requirements: ()

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

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; ()

c. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment and must receive an institutional recommendation specific to this endorsement from an accredited college or university; and ()

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

~~1720.~~ **World Language (5-9, 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. -- 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, and Paraprofessionals.~~ 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 an emergency certification endorsement in another area may obtain an endorsement through an alternate route as described in subsection 021.02 of these rules. (~~3-25-16~~)()

01. 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 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. (~~3-25-16~~)()

a. Prior to application, a candidate must hold a Bachelor's baccalaureate degree, and a valid Idaho teacher instructional 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. (3-25-16)()

b. A candidate must participate in an approved alternative route preparation program. (3-25-16)

i. The candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. The candidate must complete a minimum of nine (9) semester credits annually to maintain eligibility for renewal; and (3-25-16)

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

02. 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 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. (3-25-16)

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

i. A candidate must hold a Bachelor's baccalaureate degree or have completed all of the requirements of a Bachelor's baccalaureate degree except the student teaching or practicum portion; and (3-25-16)()

ii. The hiring district shall ensure the candidate is 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. (3-25-16)

b. Alternative Route Preparation Program -- College/University Preparation or Other State Board Approved Certification Program. (3-25-16)

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 plan must include mentoring and a minimum of one (1) classroom observation by the mentor per month, which will include feedback and reflection, while teaching under the alternative authorization. The plan must include annual progress goals that must be met for annual renewal; (3-25-16)()

ii. The candidate must complete ~~eight (8) to sixteen (16) weeks~~ a minimum of nine (9) semester credit hours or its equivalent of accelerated study in education pedagogy prior to the end of the first year of authorization. The number of required ~~weeks~~ credits will be specified in the consortium developed plan; (3-25-16)()

iii. At the time of authorization the candidate 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; (3-25-16)

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; and (3-25-16)

v. 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)

03. Non-Traditional Route to Teacher Certification. An individual may acquire interim certification as found in Section 016 of these rules through an approved non-traditional route certification program. (3-25-16)

a. Individuals who possess a *Bachelor's baccalaureate* degree or higher from an accredited institution of higher education may utilize this non-traditional route to an interim Idaho Teacher Certification. ~~(3-25-16)~~()

b. To complete this non-traditional route, the individual must: (3-25-16)

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)

c. 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 *Department*. During the term of the interim certificate, teaching by the individual must be done in conjunction with a two (2) year 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. ~~(3-25-16)~~()

d. 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 valid renewable Idaho Educator Credential during the three (3) year interim certification term. (3-25-16)

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

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 defined in Subsection 015.04~~2~~ 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. ~~(3-25-16)~~()

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

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 (3-25-16)

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

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

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. (3-25-16)

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)

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)

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

05. Alternate Authorization Renewal. Annual renewal will be based on the school year and satisfactory progress toward completion of the applicable alternate authorization requirements. (3-25-16)

043. -- 059. (RESERVED)

060. APPLICATION PROCEDURES / PROFESSIONAL DEVELOPMENT.

~~**01. Application for Idaho Certificate.** To obtain a new, renew, or reinstate an Idaho *certificate* **Educator Credential**, the applicant ~~will~~ **must** submit an application on a form supplied by the State Department of Education or the *State* Division of Career-Technical Education **as applicable to the type certificate. All applications for new, renewed, or reinstated occupational specialist certificates must be submitted to the Division of Career-Technical Education. The following requirements must be met to renew or reinstate an Idaho Educator Credential.** (3-16-04)()~~

021. State Board of Education Requirements for Professional Growth. (4-1-97)

a. Credits taken for recertification must be educationally related to the professional development of the applicant. (4-1-97)

i. Credits must be specifically tied to content areas and/or an area of any other endorsement; or (5-8-09)

ii. Credits must be specific to pedagogical best practices or for administrative/teacher leadership; or (4-2-08)

iii. Credits must be tied to a specific area of need designated by district administration. (4-2-08)

b. Graduate or undergraduate credit will be accepted for recertification. Credit must be college transferable and completed through an accredited college or university. (4-1-97)

c. All requests for equivalent in-service training to apply toward recertification, **except occupational specialist certificates**, must be made through the State Department of Education upon recommendation of the board of trustees consistent with the State Department of Education guidelines. Individuals holding *Career-Technical Occupational Specialist Certificates* must ~~receive State~~ **be made through the** Division of Career-Technical Education. **Applicants must receive prior** approval of in-service training and course work prior to applying for renewal. (3-16-04)()

d. At least fifteen (15) hours of formal instruction must be given for each hour of in-service credit granted. (4-1-97)

e. Recertification credits may not be carried over from one (1) recertification period to the next. (4-1-97)

f. Certificated personnel teaching in subjects outside their major area of preparation will be encouraged to complete the courses required for major certification endorsement. (4-1-97)

g. All credits gained through coursework taken during the validity period of the certificate and commencing prior to September 1, 2008 shall be accepted toward recertification. (5-8-09)

h. An appeals process, developed by the State Department of Education in conjunction with the

Professional Standards Commission or the Division of Career Technical Education, as applicable to the certificate type, shall be available to applicants whose credits submitted for recertification, in part or as a whole, are rejected for any reason if such denial prevents an applicant from renewing an Idaho certificate. An applicant whose credits submitted for recertification are rejected, in part or as a whole, within six (6) months of the expiration of the applicant's current certification shall be granted an automatic appeal and a temporary certification extension during the appeal or for one (1) year, whichever is greater. ~~(5-8-09)~~(_____)

- ~~032.~~ State Board of Education Professional Development Requirements.** (4-1-97)
- a.** Districts will have professional development plans. (4-1-97)
 - b.** All certificated personnel will be required to complete at least six (6) semester hours or the equivalent within the five (5) year period of validity of the certificate being renewed. (4-1-97)
 - c.** At least three (3) semester credits will be taken for university or college credit. Verification will be by official transcript. (4-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

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

Each school district board of trustees will develop and adopt policies for teacher performance evaluation using multiple measures in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers, and parents. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written. (3-20-14)

- 01. Standards.** Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)
- a.** Domain 1 - Planning and Preparation: (3-29-10)
 - i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)
 - ii. Demonstrating Knowledge of Students; (3-29-10)
 - iii. Setting Instructional Outcomes; (3-20-14)
 - iv. Demonstrating Knowledge of Resources; (3-29-10)
 - v. Designing Coherent Instruction; and (3-29-10)
 - vi. Designing Student Assessments. (3-29-12)
 - b.** Domain 2 - The Classroom Environment: (3-29-12)
 - i. Creating an Environment of Respect and Rapport; (3-29-10)
 - ii. Establishing a Culture for Learning; (3-29-10)
 - iii. Managing Classroom Procedures; (3-29-10)
 - iv. Managing Student Behavior; and (3-29-10)

- v. Organizing Physical Space. (3-29-10)
- c. Domain 3 - Instruction and Use of Assessment: (3-29-10)
 - i. Communicating with Students; (3-29-12)
 - ii. Using Questioning and Discussion Techniques; (3-29-10)
 - iii. Engaging Students in Learning; (3-29-10)
 - iv. Using Assessment in Instruction; and (3-29-12)
 - v. Demonstrating Flexibility and Responsiveness. (3-29-12)
- d. Domain 4 - Professional Responsibilities: (3-29-10)
 - i. Reflecting on Teaching; (3-29-10)
 - ii. Maintaining Accurate Records; (3-29-10)
 - iii. Communicating with Families; (3-29-10)
 - iv. Participating in a Professional Community; (3-29-12)
 - v. Growing and Developing Professionally; and (3-29-10)
 - vi. Showing Professionalism. (3-29-10)

02. Professional Practice. For evaluations conducted on or after July 1, 2013, all certificated instructional employees must receive an evaluation in which at least sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Charlotte Danielson Framework for Teaching Second Edition. The measures included within the Professional Practice portion of the evaluation shall include a minimum of two (2) documented observations annually, with at least one (1) observation being completed by January 1 of each year. In situations where certificated personnel are unavailable for two (2) documented classroom observations, due to situations such as long-term illness, late year hire, etc., one (1) documented classroom observation is acceptable. District evaluation models shall also include at least one (1) of the following as a measure to inform the Professional Practice portion of all certificated instructional employee evaluations: (4-11-15)

- a. Parent/guardian input; (3-20-14)
- b. Student input; and/or (3-20-14)
- c. Portfolios. (3-20-14)

03. Student Achievement. ~~For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in~~ **Instructional staff evaluation results must include measurable** student achievement ~~as measured by Idaho's statewide assessment for Federal accountability purposes must be included, as defined in Section 33-1001, Idaho Code, as applicable to the subjects and grade ranges taught by the instructional staff. All other certificated staff evaluations must include measurable student achievement or student success indicators, as defined in Section 33-1001, Idaho Code, as applicable to the position.~~ This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees.

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

04. Participants. Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 16. Evaluations shall be differentiated for certificated non-instructional employees and pupil personnel certificate holders in a way that aligns with the Charlotte Danielson Framework for Teaching Second Edition to the extent possible. Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for nonrenewable contract personnel and renewable contract personnel. (3-20-14)

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

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

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

c. Evaluator -- identification of the individuals responsible for appraising or evaluating certificated instructional staff and pupil personnel performance. The individuals assigned this responsibility shall have received training in evaluation and prior to September 1, 2018, shall demonstrate proof of proficiency in conducting observations and evaluating effective teacher performance by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement. (3-20-14)

d. Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. For certificated instructional staff, a minimum of two (2) documented classroom observations shall be included as one (1) source of data. At least one (1) of those observations must be completed prior to January 1 of each year. In situations where certificated personnel are unavailable for two (2) documented classroom observations, due to situations such as long-term illness, late year hire, etc., one (1) documented classroom observation is acceptable. Parent/guardian input, student input and/or portfolios shall be considered as sources of data to support professional practice. (4-11-15)

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

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

g. Personnel actions -- the action available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate, school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. (3-20-14)

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

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

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

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

l. Funding -- a plan for funding ongoing training and professional development for administrators in

evaluation. (3-29-10)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Aggregate data shall be considered as part of the district and individual schools Needs Assessment in determining professional development offerings. (3-20-14)

n. Individualizing teacher evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2013, districts shall have established an individualized teacher evaluation rating system with a minimum of three (3) rankings used to differentiate performance of teachers and pupil personnel certificate holders including: (3-20-14)

i. Unsatisfactory being equal to “1”; (3-20-14)

ii. Basic being equal to “2”; and (3-20-14)

iii. Proficient being equal to “3”. (3-20-14)

o. A plan for including all stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their teacher evaluation plan. (3-20-14)

06. Evaluation Policy - Frequency of Evaluation. The evaluation policy shall include a provision for evaluating all certificated personnel on a fair and consistent basis. (3-20-14)

07. Evaluation Policy - Personnel Records. Permanent records of each certificated personnel evaluation will be maintained in the employee’s personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. (3-20-14)

08. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for teacher and pupil personnel certificated performance evaluation in which criteria and procedures for the evaluation are research based and aligned with the Charlotte Danielson Framework for Teaching Second Edition. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (3-20-14)

121. LOCAL DISTRICT EVALUATION POLICY - SCHOOL PRINCIPAL.

For principal evaluations conducted on or after July 1, 2014, each school district board of trustees will develop and adopt policies for principal performance evaluation using multiple measures in which criteria and procedures for the evaluation of administratively certificated personnel serving as school principal are research based and aligned to the standards and requirements outlined in Subsections 121.01 through 121.07 of this rule. Districts must, at a minimum, pilot such an evaluation during the 2013-2014 school year and report the results of that pilot to the State Department of Education no later than July 1, 2014, in a format determined by the Department. The process of developing criteria and procedures for principal evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers and parents. The evaluation policy will be a matter of public record and communicated to the principal for whom it is written. (3-20-14)

01. Standards. Each district principal evaluation model shall be aligned to state minimum standards based on the Interstate School Leaders Licensure Consortium (ISLLC) standards and include proof of proficiency in conducting teacher evaluations using the state’s adopted model, the Charlotte Danielson Framework for Teaching Second Edition. Proof of proficiency in evaluating teacher performance shall be required of all individuals assigned the responsibility for appraising, observing, or evaluating certificated personnel performance. Those responsible for measuring teacher performance are district leadership such as principals, assistant principals, special education directors, and superintendents. Proof of proficiency in evaluating performance shall be demonstrated by passing a

proficiency assessment approved by the State Department of Education as a onetime recertification requirement prior to September 1, 2018. Principal evaluation standards shall additionally address the following domains and components: (4-11-15)

a. Domain 1: School Climate - An educational leader promotes the success of all students by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development. An educational leader articulates and promotes high expectations for teaching and learning while responding to diverse community interest and needs. (3-20-14)

i. School Culture - Principal establishes a safe, collaborative, and supportive culture ensuring all students are successfully prepared to meet the requirements for tomorrow's careers and life endeavors. (3-20-14)

ii. Communication - Principal is proactive in communicating the vision and goals of the school or district, the plans for the future, and the successes and challenges to all stakeholders. (3-20-14)

iii. Advocacy - Principal advocates for education, the district and school, teachers, parents, and students that engenders school support and involvement. (3-20-14)

b. Domain 2: Collaborative Leadership - An educational leader promotes the success of all students by ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs. The educational leader uses research and/or best practices in improving the education program. (3-20-14)

i. Shared Leadership - Principal fosters shared leadership that takes advantage of individual expertise, strengths, and talents, and cultivates professional growth. (3-20-14)

ii. Priority Management - Principal organizes time and delegates responsibilities to balance administrative/managerial, educational, and community leadership priorities. (3-20-14)

iii. Transparency - Principal seeks input from stakeholders and takes all perspectives into consideration when making decisions. (3-20-14)

iv. Leadership Renewal - Principal strives to continuously improve leadership skills through, professional development, self-reflection, and utilization of input from others. (3-20-14)

v. Accountability - Principal establishes high standards for professional, legal, ethical, and fiscal accountability for self and others. (3-20-14)

c. Domain 3: Instructional Leadership - An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The educational leader provides leadership for major initiatives and change efforts and uses research and/or best practices in improving the education program. (3-20-14)

i. Innovation - Principal seeks and implements innovative and effective solutions that comply with general and special education law. (3-20-14)

ii. Instructional Vision - Principal insures that instruction is guided by a shared, research-based instructional vision that articulates what students do to effectively learn. (3-20-14)

iii. High Expectations - Principal sets high expectation for all students academically, behaviorally, and in all aspects of student well-being. (3-20-14)

iv. Continuous Improvement of Instruction - Principal has proof of proficiency in assessing teacher performance based upon the Charlotte Danielson Framework for Teaching Second Edition. Aligns resources, policies, and procedures toward continuous improvement of instructional practice guided by the instructional vision. (3-20-14)

v. Evaluation - Principal uses teacher/principal evaluation and other formative feedback mechanisms to continuously improve teacher/principal effectiveness. (3-20-14)

vi. Recruitment and Retention -Principal recruits and maintains a high quality staff. (3-20-14)

02. Professional Practice. For evaluations conducted on or after July 1, 2014, all principals must receive an evaluation in which sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Domains and Components listed in Subsection 121.01.a. through 121.01.c. of this rule. As a measure to inform the Professional Practice portion of all principal evaluations, district evaluation models shall also include at least one (1) of the following: (3-20-14)

a. Parent/guardian input; (3-20-14)

b. Teacher input; (3-20-14)

c. Student input; and/or (3-20-14)

d. Portfolios. (3-20-14)

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (3-20-14)

04. Evaluation Policy - Content. For evaluations conducted on or after July 1, 2014, local school district policies will include, at a minimum, the following information: (3-20-14)

a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional leadership, personnel decisions. (3-20-14)

b. Evaluation criteria -- statements of the general criteria upon which principals be evaluated. (3-20-14)

c. Evaluator -- identification of the individuals responsible for appraising or evaluating principal performance. The individuals assigned this responsibility shall have received training in evaluation. (3-20-14)

d. Sources of data -- description of the sources of data used in conducting principal evaluations. Proficiency in conducting observations and evaluating effective teacher performance shall be included as one (1) source of data. (3-20-14)

e. Procedure -- description of the procedure used in the conduct of principal evaluations. (3-20-14)

f. Communication of results -- the method by which principals are informed of the results of evaluation. (3-20-14)

g. Personnel actions -- the action, available to the school district as a result of the evaluation, and the procedures for implementing these actions; e.g., job status change. (3-20-14)

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of an evaluations. (3-20-14)

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (3-20-14)

j. Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's principal evaluation system. (3-20-14)

k. Professional development and training -- a plan for ongoing training and professional learning based upon the district's evaluation standards and process. (3-20-14)

l. Funding -- a plan for funding ongoing training and professional development for evaluators of principals. (3-20-14)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development for principals. (3-20-14)

n. Individualizing principal evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2014, districts shall have established an individualized principal evaluation rating system with a minimum of three rankings used to differentiate performance of principals including: (3-20-14)

i. Unsatisfactory being equal to "1"; (3-20-14)

ii. Basic being equal to "2"; and (3-20-14)

iii. Proficient being equal to "3". (3-20-14)

o. A plan for including stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their principal evaluation plan. (3-20-14)

05. Evaluation Policy - Frequency of Evaluation. The evaluation policy should include a provision for evaluating all principals on a fair and consistent basis. All principals shall be evaluated at least once annually no later than ~~May~~ June 1 of each year. ~~(3-20-14)()~~

06. Evaluation Policy - Personnel Records. Permanent records of each principal evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts ~~with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district~~ in accordance with the approved policies of the Idaho State Board of Education Data Management Council. ~~(3-20-14)()~~

07. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for principal performance evaluation in which criteria and procedures for the evaluation are research based and aligned with state standards. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (3-20-14)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1601

NOTICE OF RULEMAKING - PROPOSED RULE

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

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

ALL MEETINGS START AT 6:00 pm LOCAL TIME

Thursday, October 13, 2016	Monday, October 17, 2016	Monday, October 24, 2016
Lewis & Clark State College Williams Conference Center Clearwater Room 500 8th Avenue Lewiston, ID 83501	College of Western Idaho Nampa Campus Aspen Building, Room 108 6002 Birch Lane Nampa, ID 83687	Marshall Public Library Minnie Howard Community Room 113 S. Garfield Avenue Pocatello, ID 83204

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

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

The Idaho Content Standards reflect statements of what students should know and do in various content disciplines and grades. Content standards are adopted statewide and reviewed every six (6) years by teams of educators and stakeholders. These standards provide a consistent foundational level of academic content needed to be successful at each grade level and to graduate from Idaho’s public schools.

During the 2016 review cycle, the Arts and Humanities, English Language Arts/Literacy, Health, Mathematics, Physical Education, and Social Studies Content Standards were reviewed. The revisions to these Content Standards are recommended based on public comment received and by recommendations by the committees who review the standards.

The Computer Science Content Standards are entirely new and build upon the 2016 draft standards put out by the Computer Science Teachers Association (CSTA). They outline what it means to be literate in computer science at various grade levels.

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:

Districts may experience some fiscal impact in the form of new curriculum to align with revised content standards. The cost would likely be cyclical.

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 6, 2016, Idaho Administrative Bulletin, [Volume 16-4, pages 23-24](#).

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:

Because of the number of pages within the document, the republication of the text would be unduly cumbersome and expensive. Complete copies of the Arts and Humanities, Computer Science, English Language Arts/Literacy, Health, Mathematics, Physical Education, and Social Studies Content Standards, the incorporated by reference documents, can be found on our website at sde.idaho.gov/topics/admin-rules/.

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 & Professional Development, at (208) 332-6927 or scook@sde.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 19th day of August, 2016.

Sherri Ybarra
Superintendent of Public Instruction
650 West State Street, 2nd Floor
PO Box 83720
Boise, ID 83720-0027
Office: (208) 332-6800
Fax: (208) 334-2228

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1601
(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. (3-29-10)

- ea.** Arts and Humanities Categories: (~~3-29-10~~)()
- ii.** Dance, as revised and adopted on ~~April 17, 2009~~ August 11, 2016; (~~3-29-10~~)()
- iv.** Interdisciplinary Humanities, as revised and adopted on ~~April 17, 2009~~ August 11, 2016; (~~3-29-10~~)()
- iii.** Media Arts, as adopted on August 11, 2016. ()
- iv.** Music, as revised and adopted on ~~April 17, 2009~~ August 11, 2016; (~~3-29-10~~)()
- iv.** Drama Theater, as revised and adopted on ~~April 17, 2009~~ August 11, 2016; (~~3-29-10~~)()
- vi.** Visual Arts, as revised and adopted on ~~April 17, 2009~~ August 11, 2016; (~~3-29-10~~)()

- vii. World languages, as revised and adopted on ~~April 17, 2009~~; August 11, 2016. ~~(3-29-10)~~()
- ~~b.~~ Computer Science, adopted on August 11, 2016. ()
- ~~c.~~ Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- d. English Language Arts/Literacy, as revised and adopted on ~~August 11, 2010~~ August 11, 2016. ~~(4-7-11)~~()
- ~~b.e.~~ Health, as revised and adopted on ~~April 17, 2009~~ August 11, 2016. ~~(3-29-10)~~()
- ~~f.i.~~ Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)
- ~~e.g.~~ Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- ~~f.h.~~ Mathematics, as revised and adopted on ~~August 11, 2010~~ August 11, 2016. ~~(4-7-11)~~()
- ~~g.i.~~ Physical Education, as revised and adopted on ~~April 17, 2009~~ August 11, 2016. ~~(3-29-10)~~()
- ~~h.j.~~ Science, as revised and adopted on April 17, 2009. (3-29-10)
- ~~i.k.~~ Social Studies, as revised and adopted on ~~April 17, 2009~~ August 11, 2016. ~~(3-29-10)~~()
- 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. (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. (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. (4-7-11)
- 05. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors.** Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (4-14-16)T
- 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. (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. (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. (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. (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 leaning 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, career-technical education (CTE), 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)

0910. 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)

112. 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. Careertechnical 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)

1921. 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)

202. 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 graduation requirements** 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 examinations before the end of the student's eleventh grade year: SAT or ACT. Students graduating prior to 2017 may also use the Compass to meet this requirement. 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: (3-25-16)

- 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 the requirements outlined in Subsections 105.05.a. through 105.05.c. of this rule are met. (3-25-16)

- 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 for the same course; and (3-25-16)
- c.** The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-25-16)

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. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade 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. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.05.a. through 105.05.b. of this rule. (3-25-16)

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 unless specifically exempted from doing so as contained herein. Students who will graduate in 2016 and who received a proficient or advanced score on the grade ten (10) ISAT while in grade nine (9) may bank the score for purposes of meeting this graduation requirement. A student who does not attain at least a proficient score prior to graduation will be given an opportunity to demonstrate proficiency of the content standards through a 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 ten (10) Idaho Standards Achievement Test prior to 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. Alternate plans that are not in conformance with the requirements of Subsection 105.06.b shall be returned to the LEA and must be resubmitted in conformance with the requirements contained herein prior to students attempting the alternate plan. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. The LEA must provide a descriptive summary of how each measure is aligned to the grade ten (10), or higher, state content standards and shows students proficiency. The Board may request plans to be submitted in a common format or request additional information as necessary to determine plans are in conformance with these rules. (3-25-16)

- a.** Before entering an alternate plan, the student must be: (3-25-16)
 - 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, if alternate paths are available to the student within the LEA's alternate plan, each path must contain multiple measures; (3-25-16)
 - 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; (3-25-16)
 - v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance; (3-25-16)
 - vi. At least one (1) measure must utilize an externally reviewed, validated assessment as the evaluation tool; and (3-25-16)
 - vii. Measures may not be duplicative of the State graduation requirements. (3-25-16)
- 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 be 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)

v. The student will graduate in 2017 and completed the grade ten (10) ISAT in math, reading and language usage in 2015. (3-25-16)

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. 08-0203-1603

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

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(s) 33-105 and 33-4602, Idaho Code.

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

ALL MEETINGS START AT 6:00 pm LOCAL TIME

Thursday, October 13, 2016	Monday, October 17, 2016	Monday, October 24, 2016
Lewis & Clark State College Williams Conference Center Clearwater Room 500 8th Avenue Lewiston, ID 83501	College of Western Idaho Nampa Campus Aspen Building, Room 108 6002 Birch Lane Nampa, ID 83687	Marshall Public Library Minnie Howard Community Room 113 S. Garfield Avenue Pocatello, ID 83204

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 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 rulemaking rule addresses changes made to the Advanced Opportunities funded by the state authorized in Section 33-4602, Idaho Code. Separate sections of the rule previously authorized programs known as the “8 in 6” Program and the Master Advancement Program. The new provisions in Section 33-4602, Idaho Code, merge some of the opportunities from these programs with the program known as the Fast Forward Program. The rulemaking repeals Section 117, the rule specific to the Master Advancement Pilot Program, and adds provisions and clarity to the Advanced Opportunities section on the administration of the new Early Graduation Scholarship.

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

This temporary rule is written to comply with the changes set forth by the passage of House Bill 458 and will confer a benefit on those students who participate in the Advanced Opportunities Programs for the 2016-2017 school year.

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

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

There is no known fiscal impact beyond what has already been identified in House Bill 458.

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 6, 2016 Idaho Administrative Bulletin, [Volume 16-4, pages 27-28](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Matt McCarter, Director of Student Engagement/Career and Technical Readiness, at (208) 332-6961 or mamccarter@sde.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 19th day of August, 2016.

Sherri Ybarra
Superintendent of Public Instruction
650 West State Street, 2nd Floor
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0203-1603
(Only Those Sections With Amendments Are Shown.)**

106. ADVANCED OPPORTUNITIES ~~(EFFECTIVE JULY 1, 2008).~~

01. Advanced Opportunities Requirement. All high schools in Idaho shall be required to provide Advanced Opportunities, as defined in Subsection 007-~~01~~, or provide opportunities for students to take courses at the postsecondary campus. ~~(3-29-12)~~(8-11-16)T

~~**02. Dual Credit.** A student participating in the Dual Credit for Early Completers program (33-1626, Idaho Code) need not have completed a senior project prior to being eligible. However, a student must still complete a senior project by the end of grade twelve (12) or the student's final year of high school. ~~(3-29-12)~~~~

02. Advanced Opportunities Early Graduation Scholarship Funding (Effective July 1, 2016). (8-11-16)T

a. Scholarship Calculation. (8-11-16)T

i. The statewide average daily attendance-driven funding per enrolled pupil shall be calculated by adding the previous fiscal year's statewide distributions for salary-based apportionment, benefit apportionment and discretionary funds, and dividing the total by the previous year's statewide public school enrollment for all grades. (8-11-16)T

ii. The statewide average daily attendance-driven funding per enrolled pupil shall be recalculated each fiscal year. (8-11-16)T

iii. All benefits paid for scholarships and to public schools shall be based on the statewide average daily attendance-driven funding per enrolled pupil figure for the fiscal year in which the benefit is paid. (8-11-16)T

- b.** Payments to Idaho Colleges and Universities. (8-11-16)T
- i.** Annual scholarship payments will be made in one installment during the first semester in which the student is enrolled, regardless of the number of years early the student graduated. Proof of enrollment in an Idaho public college or university must be obtained before any scholarship payment is made. (8-11-16)T
- ii.** The State Department of Education will be responsible for making payments to the Idaho public colleges and universities attended by eligible students. The payments must be made no later than August 30 for the fall semester and January 30 for the spring semester. (8-11-16)T
- c.** Payments to Public Schools. (8-11-16)T
- i.** Public schools shall report to the State Department of Education, no later than June 15 of each school year, students who have graduated early. (8-11-16)T
- ii.** The State Department of Education will make a single annual payment to public schools no later than October 1 of each year for all early graduates who are not attending the public school that school year as a result of early graduation. (8-11-16)T

(BREAK IN CONTINUITY OF SECTIONS)

117. ~~MASTER ADVANCEMENT PILOT PROGRAM (MAPP).~~ **(RESERVED)**

- ~~**01. Definitions.** The following definitions apply only to Section 117 of these rules. (4-7-11)~~
- ~~**a.** Challenge Exam. A test that is rigorous and covers the full depth and breadth of knowledge of a specific course. A challenge exam is more difficult than an End of Course exam which typically is counted only for a portion of a student's final grade and covers only a sampling of the course content. (4-7-11)~~
- ~~**b.** Elementary. School grades K-6 (4-7-11)~~
- ~~**c.** Local Education Agency (LEA). A school district or a charter school that operates independently of any district and reports to the Idaho Public Charter School Commission. (4-7-11)~~
- ~~**d.** Secondary. School grades 7-12 (4-7-11)~~
- ~~**f.** Alternate pathways. An alternate method for a student to receive a high school diploma early. The methods may include but are not limited to: portfolios, accelerated classes, online and independent study. (4-7-11)~~
- ~~**02. LEA Participation.** (4-7-11)~~
- ~~**a.** LEAs must apply for the MAPP program no later than September 2010. LEAs will not be allowed to participate in the program after the initial sign up period. (4-7-11)~~
- ~~**b.** LEAs may request from the State Department of Education in writing of the intent to opt out of the program during the six (6) year pilot. (4-7-11)~~
- ~~**c.** The State Department of Education will create and review LEA application submissions. (4-7-11)~~
- ~~**d.** LEAs may choose to include all or as few as one (1) school within the district. (4-7-11)~~
- ~~**e.** LEAs may participate in the secondary pilot or the elementary pilot or both. (4-7-11)~~
- ~~**f.** LEAs must include in the application a plan for public involvement and parental notification of the~~

- ~~program (4-7-11)~~
- ~~**03. Secondary Pilot Program.** (4-7-11)~~
- ~~**a.** To be eligible for the secondary pilot program LEAs must meet the following criteria: (4-7-11)~~
- ~~**i.** LEAs will provide a detailed plan for implementing the program. This plan will include at a minimum: a process for students to request a Challenge Exam, review of the exam scores and providing advice on course or grade advancement. (4-7-11)~~
- ~~**ii.** Participating districts shall use and apply the "Standards for Educational and Psychological Testing" (AERA, 1999) if creating district challenge exams. (4-7-11)~~
- ~~**iii.** LEAs may choose to incorporate scores from national standardized test approved by the State Department of Education. The State Department of Education shall create and make public a list of approved tests. (4-7-11)~~
- ~~**b.** The State Department of Education, in cooperation with the vendors of the national standardized tests, will provide a list recommending the course of mastery and the standard (score) at which students would be successful in the next course. (4-7-11)~~
- ~~**c.** LEAs may require students to reimburse the LEA for any of the assessments administered. Costs could include the standardized test fee or the administration costs incurred by the district. Requests for reimbursement may not exceed the actual costs incurred by the district. (4-7-11)~~
- ~~**d.** LEAs may provide alternate pathways to students for early graduation. (4-7-11)~~
- ~~**04. Elementary Pilot Program.** (4-7-11)~~
- ~~**a.** To be eligible for the elementary pilot program LEAs must meet the following criteria: (4-7-11)~~
- ~~**i.** Elementary school participation in MAPP allows for schools to use measures other than assessments. LEAs must submit a plan including how students will be measured and advanced either to the next grade or class. (4-7-11)~~
- ~~**ii.** The State Department of Education will review the plans and provide direction or suggestions. (4-7-11)~~
- ~~**iii.** The State Department of Education will provide information on two research-based advancement programs for elementary schools as suggested models. LEAs may submit a plan that is different from the suggested models. (4-7-11)~~
- ~~**b.** LEAs may require students to reimburse the LEA for any of the assessments administered. Costs could include the standardized test fee or the administration costs incurred by the district. Requests for reimbursement may not exceed the actual costs incurred by the district. (4-7-11)~~
- ~~**05. Reporting.** LEAs are required to submit to the State Department of Education, no later than June 10, the following data for all schools within the district regardless of whether the school is a site for MAPP: (4-7-11)~~
- ~~**a.** Comprehensive list of all students who participated in MAPP, including the students who graduated early and the number of years that each student graduated early. (4-7-11)~~
- ~~**b.** Detailed information on the performance of participating students on Challenge Exams or other measures used. (4-7-11)~~
- ~~**c.** The number of requests for Challenge Exams or advancement and the requests granted. (4-7-11)~~

- ~~d. School and District disciplinary and/or behavioral incidents. (4-7-11)~~
- ~~e. School and District graduation and dropout rates. (4-7-11)~~
- ~~f. Number of students in each school and for the LEA participating in advanced placement concurrent enrollment, or college courses while still students in the LEA. (4-7-11)~~
- ~~06. **Early Graduation Eligibility.** (4-7-11)~~
- ~~a. Students must have attended an Idaho public school for four full school years, as defined in IDAPA 08.02.01, "Rules Governing Administration, State Board of Education Rules, Subsection 250.01, immediately prior to graduation to be eligible for a Mastery Scholarship. (4-7-11)~~
- ~~b. Students must have completed all LEA and State graduation requirements within eleven (11) full school years or nine thousand nine hundred (9,900) hours to be eligible for a one (1) year mastery scholarship, within ten (10) full school years or eight thousand nine hundred ten (8,910) hours to be eligible for a two (2) year mastery scholarship or within nine (9) full school years or seven thousand nine hundred twenty (7,920) hours to be eligible for a three (3) year mastery scholarship. (4-7-11)~~
- ~~e. Students must attend an Idaho public college or university for the entirety of the scholarship period in order to receive the scholarship payment. (4-7-11)~~
- ~~d. Students are eligible for a maximum of three (3) years of mastery scholarship. (4-7-11)~~
- ~~e. Students must enroll at an Idaho public college or university immediately within two (2) years following early graduation in order to receive scholarship funds. (4-7-11)~~
- ~~07. **ADA and Scholarship Funding.** (4-7-11)~~
- ~~a. Guidelines: (4-7-11)~~
- ~~i. The statewide average daily attendance driven funding per enrolled pupil shall be calculated by adding the previous fiscal year's statewide distributions for salary based apportionment, benefit apportionment and discretionary funds, and dividing the total by the previous year's statewide public school enrollment for all grades. (4-7-11)~~
- ~~ii. The statewide average daily attendance driven funding per enrolled pupil shall be re-calculated each fiscal year. (4-7-11)~~
- ~~iii. All benefits paid for scholarships and to LEAs shall be based on the statewide average daily attendance driven funding per enrolled pupil figure for the fiscal year in which the benefit is paid. (4-7-11)~~
- ~~b. Payments to Idaho Colleges and Universities. (4-7-11)~~
- ~~i. Annual scholarship payments will be made in two (2) equal installments, one (1) each at the beginning of each semester. (4-7-11)~~
- ~~ii. Proof of enrollment in an Idaho public college or university must be obtained before any scholarship payments are made. This proof must be obtained for each semester in which scholarship payments are made. (4-7-11)~~
- ~~iii. Students may apply to the State Department of Education to receive a multi-year scholarship over fewer years if the student will graduate from an Idaho public college or university in less than the number of scholarship years. (4-7-11)~~
- ~~iv. The State Department of Education will be responsible for making payments to the Idaho public colleges and universities attended by eligible students. The payments must be made no later than August 15 for the~~

- ~~first semester and January 15 for the second semester. (4-7-11)~~
- ~~e. Payments to LEAs (4-7-11)~~
 - ~~i. The State Department of Education will make a single annual payment to eligible LEAs by no later than October 1 of each year for all early graduates who are not attending the LEA that school year as a result of early graduation. (4-7-11)~~
 - ~~ii. Payments will not be made to LEAs who fail to meet the reporting requirements. (4-7-11)~~

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1504

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Sections 33-101, 33-116, 33-118, and 33-1612, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for vacating this rulemaking:

The original proposed rule changes in Docket No. [08-0203-1504](#) were combined with additional changes in Docket No. 08-0203-1507. Docket No. 08-0203-1504 was determined to be unnecessary and is being vacated.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of proposed rulemaking, contact Tracie Bent, Chief Planning and Policy Officer, at (208) 332-1582 or tracie.bent@osbe.idaho.gov.

DATED this 26th day of August, 2016.

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

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1608

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 33-105, 33-107, 33-116, 33-118, and 33-1612, Idaho Code, and Article IX, Section 2 of the Idaho Constitution.

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

MEETINGS ARE FROM 6:00 - 8:00 pm LOCAL TIME	
Tuesday, October 18, 2016	Thursday, October 20, 2016
Coeur d'Alene School District Midtown Meeting Room 1505 N. 5th Street Coeur d'Alene, ID	Lewis-Clark State College Sacajawea Hall, Room 115 Lewiston, 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 state public school accountability system is currently outlined in Idaho Code and Administrative Code. Since the creation of the accountability provisions in 1997 there have been many changes at both the state and federal level. The current changes at the federal level with the reauthorization of the Elementary Secondary Education Act through the Every Student Succeeds Act provide the state with the opportunity to develop a single accountability system that meets both the state and federal accountability needs.

In January 2016, the State Board of Education Accountability Oversight Committee was charged with bringing forward recommendations to the Board that were in alignment with the Task Force recommendations for a new state accountability system (Recommendation 5 – 2013) and would meet the federal accountability requirements.

The proposed amendments create a new public school accountability system that incorporates the work of the Accountability Oversight Committee establishing three categories for schools to be grouped for accountability purposes as well as specific indicators for each group of schools. The proposed changes establish the new accountability framework, including all federally required indicators, makes technical corrections, adds and amends defined terms and deletes unnecessary or outdated 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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, page 28](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1608
(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. (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. (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. (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. (4-7-11)~~

~~**054. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors.** Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (4-14-16)T~~

~~**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. (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. (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. (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. (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 one (1) through level six (6) on ~~the~~ Idaho’s 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, Technical Competency Credit, or International Baccalaureate programs. (3-25-16)
- 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)

008. DEFINITIONS H - S.

01. Idaho Standards Achievement Tests. Statewide assessments aligned to the state content standards

and used to measure a students a knowledge of the applicable content standards. ()

042. 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)

023. 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)

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, career-technical education (CTE), 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)

073. 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)

0910. 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)

145. 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)

156. Careertechnical Education. Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

167. Proficiency. Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

178. 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)

189. 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)

192. 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)

201. 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)

242. 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)

223. 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)

234. 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)

245. 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)

256. 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)

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-02)
- a.** Measure and improve student achievement; (3-15-02)
 - b.** Assist classroom teachers in designing lessons; (3-15-02)
 - c.** Identify areas needing intervention and remediation, and acceleration; (3-15-02)
 - d.** Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)
 - e.** Inform parents and guardians of their child's progress; (3-15-02)
 - f.** Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)
 - g.** Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)
 - h.** Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, the Idaho Standards Achievement Tests (ISAT), the Idaho Alternate Assessment, and a college entrance exam. (3-29-12)

04. Testing Population. All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education

and funded. (4-2-08)

a. All students who are eligible for special education shall participate in the statewide assessment program. (4-6-05)

b. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (4-6-05)

c. Limited English Proficient (LEP) students, as defined in Subsection 112.04.d.iv., may receive designated supports or accommodations, or both, for the ISAT assessment if need has been indicated by the LEP student's Educational Learning Plan (ELP) team. The team shall outline the designated supports or accommodations, or both, in an ELP prior to the assessment administration. Designated supports or accommodations, or both, shall be familiar to the student during previous instruction and for other assessments. LEP students who are enrolled in their first year of school in the United States may take the [LELA Idaho's English language assessment](#) in lieu of the English language ISAT, but will still be required to take the ISAT (Mathematics and Science). Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.04. However, such LEP students are not required to be counted for accountability purposes as described in Subsection 112.03. ~~(4-11-15)~~()

05. Scoring and Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (4-7-11)

a. Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (4-7-11)

b. Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state. (4-7-11)

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.f. Each assessment will be comprehensive of and aligned to the Idaho State Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program. ~~(4-2-08)~~()

a. Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

b. Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

c. Grade 2 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-11-15)

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests [in English language usage and mathematics](#), Idaho Alternate Assessment, Idaho English Language Assessment. ~~(4-2-08)~~()

e. Grade 4 - National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests [in English language usage and mathematics](#), Idaho Alternate Assessment, Idaho English Language Assessment. ~~(3-29-12)~~()

f. Grade 5 - Grade 5 Idaho Standards Achievement Tests [in English language usage, mathematics, and science](#), Idaho Alternate Assessment, Idaho English Language Assessment. ~~(3-29-12)~~()

- g. Grade 6 - Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment in English language usage and mathematics, Idaho English Language Assessment. (3-29-12)()
- h. Grade 7 - Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment in English language usage, mathematics, and science, Idaho English Language Assessment. (3-29-12)()
- i. Grade 8 - National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)()
- j. Grade 9 - ~~Grade 9~~ High School Idaho Standards Achievement Tests (optional at the discretion of the school district or charter school), Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)()
- k. Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)
- l. Grade 11 - ~~High School Idaho Standards Achievement Tests (as applicable)~~, Idaho English Language Assessment, college entrance exam. (4-11-15)()
- m. Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-2-08)
- n. Students are required to take an End of Course Assessment in science provided by the state and administered by the district as applicable to the course completed by the students. (4-11-15)()
- ~~o. Students who achieve a proficient or advanced score on a portion or portions of the ISAT, or the Idaho Alternate Assessment, offered in their tenth grade year or later are not required to continue taking that portion or portions. (5-8-09)~~
- 07. Comprehensive Assessment Program Schedule.** (5-3-03)
- a. The Idaho Reading Indicator will be administered in accordance with Section 33-1614~~5~~, Idaho Code. (3-15-02)()
- b. The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)
- c. The Idaho Standards Achievement Tests will be administered in the Spring in a time period specified by the State Board of Education. (4-11-15)
- d. The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)
- e. ~~The~~ Idaho's English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)()
- 08. Costs Paid by the State.** Costs for the following testing activities will be paid by the state: (4-1-97)
- a. All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)
- b. Statewide distribution of all assessment materials; and (3-29-12)
- c. Processing and scoring student response forms, distribution of prescribed reports for the statewide

comprehensive assessment program. (3-29-12)

09. Costs of Additional Services. Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)

10. Services. The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements. (3-15-02)

11. Test Security, Validity and Reliability. Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ security measures in protecting statewide assessment materials from compromise. Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel. (4-2-08)

~~**a.** All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window, as applicable. (4-11-15)~~

~~**ba.** Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (4-2-08)~~

12. Demographic Information. Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (4-2-08)

13. Dual Enrollment. For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-02)

a. The Idaho Standards Achievement Tests (grades 3-9~~8~~ and High School). (~~3-29-12~~)()

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (4-6-05)

i. Language Arts/Communications. (3-15-02)

ii. Math. (3-15-02)

iii. Science. (3-15-02)

iv. Social Studies. (3-15-02)

v. Health. (3-15-02)

vi. Humanities. (3-15-02)

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. School district, charter school district and public charter school accountability will be based on multiple measures aimed at providing meaningful data showing progress toward interim and long-term goals set by the State Board of Education for student achievement and school improvement. The state accountability framework will be used to meet both state and federal school accountability requirements and will be broken up by

school category and include measures of student academic achievement and school quality as determined by the State Board of Education. (3-20-04)()

01. School Category. ()

a. Kindergarten through grade eight (K-8). Schools in this category include elementary and middle schools as defined in Subsection 112.05.f. ()

b. High Schools, not designated as alternative high schools, as defined in Subsection 112.05.f. ()

c. Alternative high schools. ()

02. Academic Measures by School Category. ()

a. K-8. ()

i. Idaho Standards Achievement Tests (ISAT) Proficiency. ()

ii. ISAT growth. ()

iii. ISAT proficiency gap. ()

iv. Idaho statewide reading assessment proficiency. ()

v. English Learners achieving English language proficiency. ()

vi. English Learners achieving English language proficiency growth. ()

b. High school. ()

i. ISAT proficiency. ()

ii. English Learners achieving English language proficiency. ()

iii. English Learners achieving English language proficiency growth. ()

iv. Four (4) year cohort graduation rate. ()

c. Alternative high school. ()

i. ISAT proficiency. ()

ii. English Learners achieving English language proficiency. ()

iii. English Learners achieving English language proficiency growth. ()

iv. Four (4) year cohort graduation rate. ()

v. Extended year cohort graduation rate. ()

03. School Quality Measures by School Category. ()

a. K-8. ()

i. Next grade level readiness index. ()

ii. Chronic absenteeism. ()

iii. Teacher quality and engagement index. ()

b. High school. ()

i. College and career readiness index. ()

ii. Chronic absenteeism. ()

iii. Teacher quality and engagement index. ()

c. Alternative high school. ()

i. Credit recovery and accumulation. ()

ii. Chronic absenteeism. ()

iii. Teacher quality and engagement index. ()

iv. Student engagement index. ()

04. Reporting. Methodologies for reporting measures and determining indexes will be set by the State Board of Education. ()

05. Annual Measurable Progress Definitions. For purposes of calculating and reporting progress, the following definitions shall be applied. ()

~~01~~a. 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~~b. IELA Idaho's English Language Assessment Proficiency Levels. There are ~~five six (56)~~ levels of language proficiency for students testing on the Idaho English Language Assessment: ~~beginning, intermediate, early fluent, and fluent~~ beginning, advanced beginning, intermediate, early fluent, and fluent Level 1, Level 2, Level 3, Level 4, Level 5, and Level 6. Definitions for these levels of language proficiency are adopted by reference in Subsections 004.02 and 004.04. ~~(4-2-08)~~()

~~03~~c. Adequate Yearly Progress (AYP) Annual Measurable Progress. ~~(3-20-04)~~()

~~a~~i. ISAT Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. ~~(3-20-04)~~()

~~b~~ii. 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)~~()

~~e~~iii. The State Board of Education will set long-term goals and measurements of interim progress targets toward those goals. The baseline for AYP determining measurable student progress will be set by the State Board of Education 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~~d. 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 progress in any statewide assessment used for determining 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 progress in any statewide assessment used for determining proficiency. ~~(4-2-08)~~()

~~b.c.~~ 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 measurable progress in ISAT proficiency. 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)

~~e.f.~~ Schools. As used in this section schools refers to any school within a school district or charter school district and public charter 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. An alternative high school is any school that contains grade twelve (12) and meets the requirements of Section 110 of these rules. ()

~~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)

~~vi.~~ A “new school” for purposes of accountability is a wholly new entity receiving AYP annual measurable progress 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)~~()

~~iv.g.~~ 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)

eh. Graduation Rate. The graduation rate will be based on the rate of the cohort of students entering grade nine (9) during the same academic year and attending or exiting the school within four (4) years or five (5) years period as applicable to the measure being determined. In determining the graduation cohort the school year shall include the summer term immediately following the fall and spring term. School districts may only report students as having graduated if the student has met, at a minimum, the state graduation requirements and will not be returning to the school in following years to complete academic course work. 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 subgroups listed in Subsection 112.04.d. ~~in the event the "safe harbor" is invoked by the school/district.~~

(4-7-11)()

fi. Additional Academic Indicator. The State Board of Education will establish a target for ~~an~~ all additional academic indicator and school quality measures. All ~~elementary and middle~~ schools must maintain or make progress toward the additional academic indicator and school quality measure target each year. The additional academic indicator and school quality measure targets 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)()

056. **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 IELA~~ Idaho's English language assessment 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)

113. ~~REWARDS: (RESERVED)~~

~~01. Distinguished Schools. Distinguished School Awards are designed to recognize the highest performing schools. A school shall be recognized as a "Distinguished School" based on the following criteria: (3-20-14)~~

~~a. Achieved a Five-Star Rating for at least two (2) out of the last three (3) years; (3-20-14)~~

~~b. Received no less than a Four-Star Rating in the last three years; (3-20-14)~~

~~c. Meet the Annual Measurable Objectives (AMOs) in all subjects for overall students and all subgroups as outlined in Subsection 112.04.d. (3-20-14)~~

~~d. Be among the top five percent (5%) of schools in all students proficiency; and (3-20-14)~~

~~e. Be among the top ten percent (10%) of schools in the proficiency gaps between the highest and lowest achieving subgroups and between the at risk and not at risk subgroups. (3-20-14)~~

~~02. Determination by State Department of Education. The State Board of Education will determine the schools eligible for the Distinguished School award each year based upon the criteria outlined in Subsection 113.01. The State Department of Education will provide the list of schools meeting the specified criteria to the State Board of Education no later than August 30th of each year. The State Board of Education will recognize the schools no later than the annual October Board Meeting. (3-20-14)~~

114. FAILURE TO MEET ~~ADEQUATE YEARLY PROGRESS (AYP)~~ ANNUAL MEASURABLE PROGRESS.

01. **Compliance with Federal Law.** All schools and local educational agencies in this state shall comply with applicable federal laws governing specific federal grants. (4-6-05)

a. With respect to schools and local educational agencies in this state that receive federal grants under title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 Every Student Succeeds Act of 2015 (Title I schools), the State Department of Education shall develop procedures for approval by the State Board of Education, consistent with federal law, that describe actions to be taken by local educational agencies and schools in this state in regard to schools that fail to meet AYP interim and long-term progress goals. (4-6-05)()

b. With respect to schools and local educational agencies in this state that do not receive federal grants under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 Every Student Succeeds Act of 2015, such non-Title I schools and local educational agencies shall be required to comply with federal law and state requirements with the procedures relating to failure to meet AYP interim and long-term progress goals as provided in Subsection 114.01.a. of this rule, as if they were Title I schools, except that any provisions relating to the use of federal grants to pay for such expenses shall not be applicable to such non-Title I schools and local educational agencies. In such event, non-title I schools shall be required to fund such compliance costs from general operating funds. (4-6-05)()

02. **State Department of Education.** With respect to the implementation of duties responsibilities described under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 Every Student Succeeds Act of 2015, that are applicable to a state educational agency, the State Department of Education shall perform such duties and responsibilities, including, but not limited to, making technical assistance available to local educational agencies that fail to meet AYP as required under federal law interim and long-term goals, and for providing technical assistance, developing improvement plans, and providing for mandatory corrective actions to local educational agencies as required under federal law and state law. (4-6-05)()

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1609

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-107, 33-116, 33-118, 33-1612, Idaho Code, and Article IX, Section 2 of the Idaho Constitution.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 to IDAPA 08.02.03.105.06 eliminate proficiency on the Idaho Standards Achievement Test (ISAT) as a graduation requirement from Idaho's public schools and adds clarification to the current language allowing students to earn credits toward graduation through mastery of content.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, 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: N/A

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

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 26th, 2016.

DATED this 26th day of August, 2016

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. 08-0203-1609
(Only Those Sections With Amendments Are Shown.)

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. ~~4~~ Notwithstanding the credit definition of Subsection 105.01.a., 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. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter 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 examinations before the end of the student's eleventh grade year: SAT or ACT. Students graduating prior to 2017 may also use the Compass to meet this requirement. 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: (3-25-16)

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 the requirements outlined in Subsections 105.05.a. through 105.05.c. of this rule are met. (3-25-16)

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 for the same course; and (3-25-16)

c. The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-25-16)

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. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade 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. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.05.a. through 105.05.b. of this rule. (3-25-16)

~~**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 unless specifically exempted from doing so as contained herein. Students who will graduate in 2016 and who received a proficient or advanced score on the grade ten (10) ISAT while in grade nine (9) may bank the score for purposes of meeting this graduation requirement. A student who does not attain at least a proficient score prior to graduation will be given an opportunity to demonstrate proficiency of the content standards through a 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 ten (10) Idaho Standards Achievement Test prior to 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. Alternate plans that are not in conformance with the requirements of Subsection 105.06.b shall be returned to the LEA and must be resubmitted in conformance with the requirements contained herein prior to students attempting the alternate plan. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. The LEA must provide a descriptive summary of how each measure is aligned to the grade ten (10), or higher, state content standards and shows students proficiency. The Board may request plans to be submitted in a common format or request additional information as necessary to determine plans are in conformance with these rules. (3-25-16)~~

~~a. Before entering an alternate plan, the student must be: (3-25-16)~~

- ~~i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)~~
- ~~ii. Enrolled in a 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, if alternate paths are available to the student within the LEA's alternate plan, each path must contain multiple measures; (3-25-16)~~
 - ~~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; (3-25-16)~~
 - ~~v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance; (3-25-16)~~
 - ~~vi. At least one (1) measure must utilize an externally reviewed, validated assessment as the evaluation tool; and (3-25-16)~~
 - ~~vii. Measures may not be duplicative of the State graduation requirements. (3-25-16)~~
- ~~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 be 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)~~
 - ~~v. The student will graduate in 2017 and completed the grade ten (10) ISAT in math, reading and language usage in 2015. (3-25-16)~~
- ~~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)~~

~~076.~~ **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)

~~087.~~ **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 EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1610

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-107, 33-116, 33-1004A, 33-1201, 33-1201A, 33-1204, 33-1612, and 33-2211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 incorporate by reference the current Career Technical Education (CTE) content standards into administrative rule as part of the existing academic content standards. The standards being incorporated by reference are the existing CTE content standards that are currently being used by our secondary CTE programs, these standards had not been formally approved by the State Board of Education in the past. As part of the rulemaking process, these standards were approved by the Board at the June 2016 Board meeting.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 53](#).

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 standards being incorporated by reference are standards currently used by the Division of Career-Technical Education that have not previously been incorporated by reference.

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.

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W State St.
PO Box 83720
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Phone: (208) 332-1582
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1610
(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. (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)
- k. Career Technical Education Categories: ()**
- i. Agricultural and Natural Resources, as adopted on June 16, 2016. ()**
- ii. Business and Marketing Education, as adopted on June 16, 2016. ()**
- iii. Engineering and Technology Education, as adopted on June 16, 2016. ()**
- iv. Family and Consumer Sciences, as adopted on June 16, 2016. ()**

v. [Skilled and Technical Sciences, as adopted on June 16, 2016.](#) ()

vi. [Workplace Readiness, as adopted on June 16, 2016.](#) ()

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. (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. (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. (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. (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. (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. (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. (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. (4-2-08)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1611

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1602, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

The proposed rule amendments adds new Subsection 105.05 to the rule clarifying that in addition to the “civics test” defined in Section 33-1602, Idaho Code, a school district may choose an alternate path through single or multiple measures for a student to show they have met the state civics and government content standards.

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:

During the 2015 legislative session, changes were made to Section 33-1602, Idaho Code, requiring students to show they could meet the Idaho civics and government content standards either through the “civics test” or an alternate measure determined by the school district. During the 2016 legislative session it was discovered that districts did not understand what was allowed under the alternate measure. During the 2016 legislative session additional amendments were made to Section 33-1602, Idaho Code, specifying that the applicability of this subsection to a pupil who receives special education services is governed by the pupil's individualized education plan (IEP). While this language provided some additional clarification showing that the “alternate path determined by the school district” was different than provisions applied to student on an IEP, Board staff were asked to still provide additional clarification through administrative rule. The temporary rule provides that clarification in compliance with Section 33-1602, 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, 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: N/A

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

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 08-0203-1611
(Only Those Sections With Amendments Are Shown.)**

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

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter 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 examinations before the end of the student's eleventh grade year: SAT or ACT. Students graduating prior to 2017 may also use the Compass to meet this requirement. 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: (3-25-16)

- 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. Civics and Government Proficiency. Pursuant to Section 33-1602, Idaho Code, each LEA may establish an alternate path for determining if a student has met the state civics and government content standards. Alternate paths are open to all students in grades seven (7) through twelve (12.) Any student who has been determined proficient in the state civics and government content standards either through the completion of the civics test or an alternate path shall have it noted on the student's high school transcript. (8-11-16)T

056. Middle School. A student will have met the high school content and credit area requirement for any high school course if the requirements outlined in Subsections 105.05.a. through 105.05.c. of this rule are met. (3-25-16)

- 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 for the same course; and (3-25-16)
- c.** The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-25-16)

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. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade 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. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.05.a. through 105.05.b. of this rule. (3-25-16)

067. 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 unless specifically exempted from doing so as contained herein. Students who will graduate in 2016 and who received a proficient or advanced score on the grade ten (10) ISAT while in grade nine (9) may bank the score for purposes of meeting this graduation requirement. A student who does not attain at least a proficient score prior to graduation will be given an opportunity to demonstrate proficiency of the content standards through a 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 ten (10) Idaho Standards Achievement Test prior to 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. Alternate plans that are not in conformance with the requirements of Subsection 105.06.b shall be returned to the LEA and must be resubmitted in conformance with the requirements contained herein prior to students attempting the alternate plan. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. The LEA must provide a descriptive summary of how each measure is aligned to the grade ten (10), or higher, state content standards and shows students proficiency. The Board may request plans to be submitted in a common format or request additional information as necessary to determine plans are in conformance with these rules. (3-25-16)

- a.** Before entering an alternate plan, the student must be: (3-25-16)
 - i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)
 - ii. Enrolled in a 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, if alternate paths are available to the student within the LEA's alternate plan, each path must contain multiple measures; (3-25-16)
 - 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; (3-25-16)
 - v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance; (3-25-16)
 - vi. At least one (1) measure must utilize an externally reviewed, validated assessment as the evaluation tool; and (3-25-16)
 - vii. Measures may not be duplicative of the State graduation requirements. (3-25-16)
- 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 be 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)

v. The student will graduate in 2017 and completed the grade ten (10) ISAT in math, reading and language usage in 2015. (3-25-16)

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)

~~0-78.~~ **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)

~~0-89.~~ **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 EDUCATION
08.02.05 - RULES GOVERNING PAY FOR SUCCESS CONTRACTING
DOCKET NO. 08-0205-1601 (NEW CHAPTER)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-125B, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

Section 33-125B, Idaho Code, (enacted by HB 170 (2015)) is intended to provide for an alternative means of fostering innovation in Idaho's schools and to allow for the state to enter into an agreement with a private entity wherein the entity bears the sole burden of financing the cost of a program up front and the state pays based on outcomes that are negotiated prior to entering into the contract. Additionally, Section 33-125B, Idaho Code, establishes an oversight committee to review the proposal and determine whether or not the Department of Education should commence negotiations.

Based on the first year the Pay for Success Contracting was available, it has been determined that there was a need to outline the process and timelines for proposal reviews. The proposed rule would create a new section of Administrative Code outlining these processes.

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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, 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: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
Phone: (208) 332-1582
Fax: (208) 334-2632

650 W State St.
PO Box 83720
Boise, ID 83720-0037

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0205-1601

IDAPA 08
TITLE 02
CHAPTER 05

08.02.05 - RULES GOVERNING PAY FOR SUCCESS CONTRACTING

000. LEGAL AUTHORITY.

In accordance with Sections 33-125B(8), Idaho Code, the State Board of Education may promulgate rules implementing the provisions of Section 33-125B, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.02.05, "Rules Governing Pay for Success Contracting." ()

02. Scope. These rules constitute the requirements for Pay for Success Contracting. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, written interpretations, if any, of the rules of this chapter are available at the Board. ()

003. ADMINISTRATIVE APPEALS.

Unless otherwise provided for in the rules of the Board or in the Board Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

005. OFFICE INFORMATION.

01. State Department of Education Office Hours and Contact Information. The offices of the Department are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ()

a. Street Address. The offices of the Department are located at 650 W. State Street, Boise, Idaho. ()

b. Mailing Address. The mailing address of the Department is P.O. Box 83720, Boise, Idaho 83720-0027. ()

c. Electronic Address. The electronic address of the Department of Education is www.sde.idaho.gov. ()

d. Telephone Number. The telephone number of the Department is (208) 332-6800. ()

e. Facsimile. The facsimile number of the Department is (208) 334-2228. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The State Board of Education. ()

02. Department. The State Department of Education. ()

03. Oversight Committee. Committee formed pursuant to Section 33-125B(6), Idaho Code, to evaluate pay for success contracting proposals. ()

04. Pay for Success Contracting. Contracting for services with private entities whereby services are reimbursed based on the achievement of outcomes pursuant to Section 33-125B, Idaho Code. ()

011. -- 100. (RESERVED)

101. INITIATING CONTRACTING.

Contracting may be initiated through two (2) separate routes. ()

01. Initiated by Department. The Department may issues a request for information upon identification of a need for a service; or ()

02. Initiated by Interested Party. An interested party or service provider may identify a need for service and submit a proposal to the State Department of Education. Proposals must include a letter of intent to participate in a pay for success contract and must include the following information: ()

a. Special service(s) that the service provider will provide; ()

b. How the services will enhance student academic achievement; ()

c. Source of education funding from which savings will be realized; ()

d. Identity of one (1) or more qualified external evaluators; ()

e. Provide external evaluator's qualifications and expertise as required pursuant to Section 33-125B, Idaho Code; and ()

f. Identify local education agencies (LEA) that have expressed interest in participating in the service and documentation that LEA meets the requirements pursuant to Section 33-125B, Idaho Code. ()

03. Additional Information. As part of the review process, the oversight committee may request additional information. ()

04. Format. Proposals may be submitted in electronic or hard copy format. ()

102. PROPOSAL EVALUATION.

01. Timeline. ()

a. Within five (5) business days of receipt of the complete proposal, the proposal will be forwarded electronically to the oversight committee. ()

b. After receiving the proposal, the oversight committee will determine if additional information is needed to evaluate the proposal. The oversight committee will request additional information from the interested

party within thirty (30) days of receiving the initial proposal. ()

c. The interested party shall respond to a request for additional information within fifteen (15) days of receiving the request. ()

i. Requests for additional response time may be granted at the discretion of the oversight committee. ()

ii. If the interested party fails to respond or additional information is not received within the specified time, the oversight committee may reject the proposal without further consideration. ()

d. The oversight committee shall hold an initial meeting either in-person, telephonically, or by other means to consider the merits of the proposal within forty-five (45) days of receipt of the proposal. ()

e. The oversight committee chair shall inform the Department designated staff person, and the interested party, of its decision on a proposal within ninety (90) days of receipt of the complete proposal. ()

02. Oversight Committee Action. Following consideration of a proposal, the oversight committee shall take one (1) of the following actions: ()

a. Require the Department to start negotiations with the interested party; ()

b. Require the Department to start negotiations with the interested party, subject to conditions imposed by the oversight committee; ()

c. Reject the proposal with suggestions for improving the proposal prior to considering resubmittal, or; ()

d. Reject the proposal. ()

03. Proposal Resubmittal. Proposals that have been rejected may be resubmitted for consideration if amendments have been made to the proposal or additional information has been added for the oversight committee's consideration. ()

103. CONTRACT NEGOTIATIONS.

01. Negotiation Teams. Contract negotiations for accepted proposals shall involve the following individuals: ()

a. The Department chief budget officer or designee; ()

b. One (1) or more individuals with a background in complex financial instruments; ()

c. One (1) or more individuals with a background in complex financial instruments, at least one (1) of which will be from the state treasurer's office or the state endowment fund board; ()

d. One (1) or more financial officers from a local education agency. In the event a local education agency has already been identified to participate in the proposal, the chief financial officer for the local education agency shall participate. ()

e. One (1) or more individuals representing the interested party. ()

02. Negotiation Timeline. Negotiations shall be completed within ninety (90) days unless extended by the oversight committee. To be extended by the oversight committee, the committee must determine that all parties have made a best effort to negotiate the contract. ()

03. Negotiation Updates. The Department shall provide regular contract negotiation updates to the

oversight committee, not less than every thirty (30) days during contract negotiations. Failure to negotiate mutually agreeable terms within ninety (90) days shall be reported to the oversight committee. The committee may extend the timeline for negotiations, appoint a new negotiations team or terminate the negotiations. ()

04. Time Tracking. State employees' time spent on the evaluation or negotiation shall be tracked and recorded on a per proposal basis and be provided to the oversight committee, or to other interested parties upon request. ()

104. CONTRACT MONITORING.

Contract monitoring reports will be submitted to the oversight committee by the Department in a timeline and format established by the oversight committee. ()

105. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF EDUCATION
08.05.01 - RULES GOVERNING SEED AND PLANT CERTIFICATION
DOCKET NO. 08-0501-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Crop Improvement Association (ICIA) identified a need for the Idaho Rapeseed/Canola/Mustard certification standards to be updated. Through the ICIA's annual review process, the ICIA identified an amendment to the Rapeseed/Canola/ Mustard Certification Standards that would help to make these seeds produced in Idaho be more competitive. The amendment to the rule would update the currently incorporated version of the Idaho Rapeseed/Canola/Mustard certification standards with a new standard. The amendment to the standards adds a limit for allowable sclerotinia bodies where previously there was none.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was determined that it was not feasible. The proposed amendments to the standards were negotiated through the Idaho Crop Improvement Association's standards review committee and then reviewed by the Idaho Department of Agriculture. The process of negotiating the standards outside of this process would be a duplication of effort.

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.

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.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 26th day of August, 2016.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0501-1601
(Only Those Sections With Amendments Are Shown.)

004. 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. Prohibited Noxious Seed in Idaho Certified Seed. The standard Prohibited Noxious Seed in Idaho Certified Seed of the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

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. Idaho Alfalfa Certification Standards. The Idaho Alfalfa Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

04. Idaho Bean Certification Standards. The Idaho Bean Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

05. Idaho Red Clover Certification Standards. The Idaho Red Clover Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

06. Idaho Chickpea Certification Standards. The Idaho Chickpea Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

07. Idaho Grain Certification Standards. The Idaho Grain Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

08. Idaho Grass Certification Standards. The Idaho Grass Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

09. Idaho Rapeseed/Canola/Mustard Certification Standards. The Idaho Rapeseed/Canola/Mustard Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~March 17, 2015~~ April 26, 2016. (~~3-25-16~~) ()

10. Idaho Potato Certification Standards. The Idaho Potato Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

11. 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 March 17, 2015. (3-25-16)

12. Idaho Lentil Certification Standards. The Idaho Lentil Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

The amendments will update the education requirements for licensure as a professional land surveyor for applicants with unaccredited surveying or related programs. The update aligns Idaho's education requirements with those used in most states and broadens the course options for those with unaccredited or non-surveying 4-year degrees. It provides more educational choices for those seeking to enter the land surveying profession.

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 57-64](#).

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

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

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

DATED: August 31, 2016.

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

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

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

The amendments will provide a new section defining the process for applying for a Restricted PE License available to Ph.D. faculty teaching upper division engineering courses at an Idaho University.

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 65-66](#).

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

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

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

DATED: August 31, 2016.

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

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

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

The amendments will clarify the requirement to base opinions stated in reports, statements or testimony when founded on adequate knowledge of the facts, adequate competence and honest conviction of the accuracy and propriety of the information. The existing rule does not include this requirement for documents and testimony unless serving as an expert witness. The rule change clarifies the intent of the board.

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, page 67-68](#).

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

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

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

DATED: August 31, 2016.

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

IDAPA 11 - IDAHO STATE POLICE
11.04.02 - RULES GOVERNING SIMULCASTING
DOCKET NO. 11-0402-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-2506, 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 deletes the provisions from rule that were previously adopted to govern historical racing. The historical racing statute was repealed by the Idaho Legislature during the 2015 session and the Governor subsequently vetoed the bill. That resulted in the filing of a lawsuit regarding the validity of the veto. The Idaho Supreme Court decision, which was handed down in September 2015, held that the veto was not valid. This decision was made public after the deadline for submitting rulemakings that would be reviewed during the 2016 legislative session had already passed. Therefore, the rulemaking conforming the rule to state law is being completed this year.

FEE SUMMARY: No fees are imposed through this rulemaking.

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

There is no fiscal impact to the general fund that results from the deletion of these provisions from rule.

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 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 26, 2016.

DATED this 2nd day of September, 2016.

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. 11-0402-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Association Which Accepts the Wager. The guest association to which the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (4-9-09)

02. Authorized User. A person authorized by the Racing Commission to receive, decode, and use for legal purposes the encrypted simulcast signal of pari-mutuel events. (4-9-09)

03. Breakage. The odd cents rounded down to the lowest multiple of ten cents (\$.10) in a positive pool and down to the lowest multiple of five cents (\$.05) in a minus pool. (4-9-09)

04. Combined Pools. The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association. (4-9-09)

05. Decoder. A device or means to convert encrypted audio-visual signals or data into a form recognizable as the original content of the signals. (4-9-09)

06. Designated Area. An age controlled area approved by the Commission where Historical Horse Race Terminals are located. (3-20-14)

07. Downlink. A receiving antenna coupled with an audio-visual signal receiver that is compatible with and capable of receiving simultaneous audio-visual signals or data emanating from a host association. This includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (4-9-09)

08. Enclosure, Enclosure-Public. Includes all enclosed areas of the simulcast wagering facility. (4-9-09)

09. Encryption. The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (4-9-09)

10. Foreign Jurisdiction. A jurisdiction of a foreign country or political subdivision thereof. (4-9-09)

11. Guest, Guest Association or Simulcast Operator. A simulcast licensee authorized by the Racing Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (4-9-09)

12. Handle or Gross Handle. Total amount of money wagered on a race less refunds and cancels. (4-9-09)

~~**13. Historical Horse Race.** A race involving live horses that was conducted in the past and that is rebroadcast by electronic means and shown on a delayed or replayed basis for the purposes of wagering and that is conducted at a facility that is authorized to show simulcast or televised races, or both, (also known as "instant racing"). (3-20-14)~~

~~**143. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (4-9-09)~~

~~**154. Host or Host Association.** The racing association conducting a licensed horse racing meeting~~

when it is authorized by the Racing Commission to simulcast its racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (4-9-09)

165. Hub. A facility that acts as an intermediary between pari-mutuel wagering facilities for the transmission of wagering data and that is responsible for generating all reports necessary for the reconciliation of payments. (4-9-09)

176. Interstate Simulcast Wagering. (4-9-09)

a. Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association; or (4-9-09)

b. Wagering conducted by a betting system within the state of Idaho on the results of one (1) or more races being run at a host association outside the state of Idaho. (4-9-09)

187. Intrastate Simulcasting Wagering. Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (4-9-09)

198. Racing Association. Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (4-9-09)

209. Racing Commission. Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (4-9-09)

240. Simulcast. The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (4-9-09)

221. Simulcast Facility. The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events. Such facility must be a part of the license granted to the guest or host association. (4-9-09)

232. Simulcast Service Supplier. (4-9-09)

a. A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment. (4-9-09)

b. It does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (4-9-09)

243. Satellite Transponder, Transponder. Leased space segment time of an earth-orbit communication satellite. (4-9-09)

254. Take or Takeout. Money deducted from mutuel pools that is shared by the track and local and state governing bodies in the form of a tax. (4-9-09)

265. Terminal. The device connected to the pari-mutuel system used to place wagers. (3-20-14)

276. Totalizator. A computer that, directly or indirectly through one (1) or more other totalizators, receives pari-mutuel wagering information, calculates pay-offs for winning tickets and generates reports with respect to such information, and may refer to the linked computers of the hub and the track. (4-9-09)

287. Uplink. An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals or data on Federal Communication Commission-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the

uplink.

(4-9-09)

(BREAK IN CONTINUITY OF SECTIONS)

~~047. PARI-MUTUEL SYSTEM OF WAGERING REQUIRED FOR HISTORICAL RACING.~~

~~The only wagering permitted on a historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be subject to prosecution. (3-20-14)~~

~~048. TOTALIZATOR OR OTHER APPROVED EQUIPMENT REQUIRED.~~

~~Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the Commission. (3-20-14)~~

~~049. HISTORICAL HORSE RACE LICENSING.~~

~~01. **No Historical Horse Race Wagering Conducted Without a License.** Wagering on an historical horse race shall only be conducted by a licensee approved by the Commission. (3-20-14)~~

~~02. **Historical Horse Race Horse Breed.** A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets, if any, conducted by the licensee. (3-20-14)~~

~~03. **Approved Days and Hours.** A licensee may conduct wagering on historical races on any days and hours that is in conformity with local municipalities and approved by the Commission. (3-20-14)~~

~~04. **Cash or Cash Vouchers Only.** Historical horse racing terminals shall use cash or cash vouchers only. (3-20-14)~~

~~05. **License Must Hold Current Simuleast License.** A licensee may not apply for a license to conduct historical racing unless that licensee holds a current simuleast license and has conducted simulcasting of live racing for a period of at least one (1) year. (4-11-15)~~

~~050. REQUIRED ELEMENTS OF HISTORICAL HORSE RACE WAGERING.~~

~~01. **Approved Terminal.** A patron may only wager on an historical horse race that is on a terminal approved by the Commission. (3-20-14)~~

~~02. **Terminal Chooses Race.** Once a patron wagers an amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen by the historical racing system. (3-20-14)~~

~~03. **Historical Races Are Unidentified.** Prior to the patron making wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which the wager is being made. This includes: (3-20-14)~~

~~a. The location of the race; (3-20-14)~~

~~b. The date on which the race was run; (3-20-14)~~

~~c. The names of the horses in the race; or (3-20-14)~~

~~d. The names of the jockeys that rode the horses in the race. (3-20-14)~~

~~04. **Past Performance Information.** True and accurate past performance information on the historical horse race shall be made available to the patron prior to making wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on~~

~~the terminal in data or graphical form, or both. (3-20-14)~~

~~05. **Identity of Race Revealed After Wager Completion.** After a patron finalizes the wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron only after completion of the wager. (3-20-14)~~

~~051. **LOCATION OF HISTORICAL HORSE RACE TERMINALS AND ACCESS CONTROL.**~~

~~01. **Terminals Located Only at Idaho Live Simuleast Facilities.** Terminals offering wagering on historical horse races may be located at facilities located in Idaho where Live Simuleasting is authorized and approved by the Commission and the County Commission where such facilities are located, pursuant to Sections 54-2512(3)(4) and 54-2514A, Idaho Code. (3-20-14)~~

~~02. **Terminals Located Only In Designated Areas.** Terminals offering wagering on historical horse races shall be located within designated areas that have the prior written approval of the Commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any person who is under eighteen (18) years of age or is otherwise not permitted to place wagers. (3-20-14)~~

~~03. **Minors Not Permitted In Designated Areas.** Each licensee shall monitor persons entering and leaving the designated areas and shall prevent access to any person who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races. (3-20-14)~~

047. NOTICES -- POSTED.

041. **Notice To Minors Posted At Entrances.** Every licensee shall keep a sign conspicuously posted over or near each entrance to any place where persons under eighteen (18) years are prohibited entry and herein restricted, giving public notice of such fact. (3-20-14)

052. **ADA Access.** Access to the designated area shall comply with the Americans with Disabilities Act (ADA). (3-20-14)

063. **Contact Information In Designated Areas.** Contact information for a recognized problem-gambling organization shall be made available to all patrons and posted in the designated areas. (3-20-14)

~~052. 055. **(RESERVED)**~~

~~056. **HISTORICAL HORSE RACE LICENSEE RECORD KEEPING.**~~

~~01. **Complete Records.** Each licensee authorized to offer Live Simuleasting and Historical Horse Racing shall maintain complete paper or electronic records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminals. (3-20-14)~~

~~02. **Record Archive Period.** A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the Commission. (3-20-14)~~

~~057. **HISTORICAL HORSE RACE EQUIPMENT.**~~

~~01. **Equipment Approved By Commission.** All pari-mutuel equipment utilized in the offering and transmitting of historical racing shall be approved by the Commission prior to accepting a wager. (3-20-14)~~

~~02. **Terminal Breakdown and Patron Refund.** If there is a complete breakdown of a terminal offering wagering on an historical horse race, the licensee offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown, as verified by the historical racing system. (3-20-14)~~

~~03. **Proposed Designated Area Submitted To Commission.** A detailed description of the proposed~~

~~designated area and the placement of terminals on which the pari-mutuel wagers will be made shall be submitted to the Commission. This description shall include a drawing to scale of the proposed designated area that describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed. The licensee shall also submit to the Commission the following: (3-20-14)~~

~~a. The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal; (3-20-14)~~

~~b. The maintenance and repair procedures that will ensure the integrity of the terminals; and (3-20-14)~~

~~e. A complete list of individuals who are authorized to examine and repair the terminals for any reason. (3-20-14)~~

~~04. **Commission May Require Terminal Testing.** The Commission may require testing of each terminal used for wagering on historical horse races by an independent testing company to ensure its integrity and proper working order. The independent testing company shall be chosen by the Commission. (3-20-14)~~

~~05. **Information Required for Display on Each Pari-Mutuel Wagering Pool.** Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive (i.e. "will pays") for a winning wager on each pari-mutuel wagering pool. (3-20-14)~~

~~06. **No Changes Or Modifications by Licensee Allowed.** A licensee shall not implement any changes or modification to the practices, procedures, locations, or representations upon which the approval of the historical horse racing wagers was based without the prior written approval of the Commission. (3-20-14)~~

0548. -- 999. (RESERVED)

IDAPA 11 - IDAHO STATE POLICE

11.04.03 - RULES GOVERNING LICENSING AND FEES

DOCKET NO. 11-0403-1601 (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 54-2506 and 54-2508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 the rule language for the cost of fingerprinting and submission for review of fingerprint cards to collect the full cost of processing the fingerprint cards charged by the FBI, via the Idaho State Police Bureau of Criminal Identification, from the applicant.

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

Pursuant to Section 54-2508, Idaho Code, the Idaho State Racing Commission is responsible for the licensing of any person that participates, directly or indirectly, in any race meet in the State of Idaho. Part of the licensing process provided for in Section 54-2506, Idaho Code, is to obtain the criminal history of applicants for licensure by submitting fingerprints to Federal Bureau of Investigation via the Idaho State Police Bureau of Criminal Identification. Since 2012 the Commission has charged applicants \$15 per fingerprint card, but the fee charged to the Racing Commission by the FBI is currently set at \$25 per fingerprint card. Over the past four years the Commission has paid approximately \$22,700 more in fees than they have collected. Allowing the Commission to charge the full amount of the fee charged by the Federal Bureau of Investigation, via the Idaho State Police Bureau of Criminal Identification, to each applicant as it is charged by the FBI will eliminate future losses.

The fee for the fingerprinting of applicants for licensure, which is currently set at \$12.50 per fingerprint card, will be raised to the full amount charged to the Racing Commission. The fee as of September 2, 2016, is \$25 per fingerprint card.

This fee is being imposed pursuant to Section 54-2508, 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 is no fiscal impact to the general fund as the Racing Commission is a funded by dedicated funds. If the rule is adopted the Commission would be charging applicants the full fee for fingerprinting as they are charged by Federal Bureau of Investigation via the Idaho State Police Bureau of Criminal Identification for processing fingerprint cards. The fiscal impact to the Racing Commission's dedicated funding will be positive. Since 2012 the Commission has been charging \$15 per card as allowed by rule, but the cost of the submission to the Idaho State Police Bureau of Criminal is \$25. The Commission has lost over \$22,700.00 in the past four years and a change in the rule will eliminate future losses.

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 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 26, 2016.

DATED this 2nd day of September, 2016.

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 FEE DOCKET NO. 11-0403-1601
(Only Those Sections With Amendments Are Shown.)**

050. FINGERPRINTS.

All persons between the ages of eighteen (18) and sixty-nine (69) applying for licensing pursuant to this chapter ~~must submit to finger printing~~ are required to submit information and fingerprints necessary to obtain criminal history information from the Idaho State Police Bureau of Criminal Identification and the Federal Bureau of Investigation. The Idaho State Racing Commission (ISRC) may receive criminal history information from the Idaho State Police Bureau of Criminal Identification and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants pursuant to Section 54-2508, Idaho Code. Pursuant to state and federal law, further dissemination or other use of the criminal history information is prohibited. (4-9-09)()

021. New License Applicants. Any person that applies for a license from the Racing Commission ~~and is who has~~ not ~~currently licensed~~ been fingerprinted within the past five (5) years must be fingerprinted prior to a license being issued. Pursuant to Section 67-3008, Idaho Code, the ISRC shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police Bureau of Criminal Identification for a criminal records check of state and national databases. (4-9-09)()

042. Existing Licensees. Any person that currently holds a valid license from the ~~Racing Commission~~ ISRC must be re-fingerprinted at least every five (5) years in accordance with the procedures outlined in Subsection 050.01 of these rules. (4-9-09)()

03. Fees. ~~There is a five dollar (\$5) fee for the finger printing and a ten dollar (\$10) fee for processing the finger prints.~~ The cost of taking and processing such fingerprints shall be the responsibility of the applicant. Fees for taking and processing fingerprints are in accordance with the amount(s) charged by the Idaho State Police Bureau of Criminal Identification pursuant to Section 67-3010, Idaho Code. (4-9-09)()

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 010: Clarifies the definition of "Law Enforcement Profession" for the purpose of establishing and administering agreements to serve agreements with peace officers attending POST training programs.

Section 055: Establishes the minimum absolute prohibition of any marijuana use as one year, and the regular and confirmed use of marijuana as three years, prior to application for POST for training or certification.

Section 058: Simplifies the driver license status requirements for applicants for POST training or certification, with respect to suspensions which concluded within ten (10) years prior to application.

Section 081: Simplifies and clarifies the "Agreement to Serve" requirements of, exemptions from, and proration for reimbursement of training costs to POST for officers who do not remain in the Idaho law enforcement profession for a minimum of two (2) years.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature 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: N/A

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 26, 2016.

DATED this 2nd day of September, 2016.

Victor McCraw
POST Division Administrator
Idaho 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. 11-1101-1601
(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 must be under direct observation and control of the agency's full-time peace officer. (3-25-16)

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~~ the positions that fulfill the agreement are Peace Officer, County Detention Officer, Communications Specialist, Juvenile Detention Officer, Juvenile Probation Officer, Correction Officer, Adult Probation and Parole Officer, Idaho Department of Juvenile Corrections Direct Care Staff, and Misdemeanor Probation Officer. (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. (3-25-16)
- 34. Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)
- 35. 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 must be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (3-25-16)
- 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)

055. DRUG USE.

- 01. Marijuana.** An applicant must be rejected who has used marijuana: (4-11-15)
- a. Within the past ~~three (3)~~ years; ~~(3-20-14)~~()
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred; or (3-20-14)
- c. On a regular, confirmed basis within the past ~~five~~ ~~three (3)~~ years. ~~(3-20-14)~~()
- d. This prohibition includes use of cannabis, hashish, hash oil, and THC in both synthetic and natural forms. (4-11-15)
- 02. Other Controlled Substances.** An applicant must be rejected who has illegally used any Schedule I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: (4-11-15)

- a. Within the past five (5) years; (3-20-14)
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred; or (3-20-14)
- c. On more than a minimal and experimental basis during the applicant's lifetime. (3-20-14)
- 03. Prescription Drugs.** An applicant may be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years. (4-11-15)
- 04. Drug Trafficking, Manufacturing, and Related Offenses.** Subject to the rules above regarding use of controlled substances, an applicant must be rejected who has violated any provision of: (4-11-15)
- a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or (3-20-14)
- b. A comparable statute of another state or country. (3-20-14)
- c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. (4-11-15)
- 05. Juvenile Drug Offense Convictions.** Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

058. TRAFFIC RECORD INVESTIGATION.

- 01. Requirements.** (7-1-93)
- a. The applicant ~~shall~~ **must** possess a valid driving license from his state of residence and qualify for an Idaho driver's license. ~~(3-15-02)~~(____)
- b. An applicant ~~with a record of~~ **may be rejected who has** a driver's license suspension in any jurisdiction, ~~or a driving without privileges conviction or an equivalent conviction in any other jurisdiction,~~ **within the ten (10) years immediately preceding application. If the suspension concluded within the ten (10) years prior to application, the applicant** may be accepted upon approval of the POST Division Administrator provided the ~~suspension concluded or conviction occurred more than two (2) years prior to application and the~~ applicant's agency head, with knowledge of the facts and circumstances concerning the suspension ~~or conviction,~~ recommends approval. The Division Administrator ~~shall have~~ **has** the discretion to refer the application to the POST Council. ~~If the suspension concluded or conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. This rule is not a basis for rejection of an applicant if the suspension concluded ten (10) or more years prior to application.~~ ~~(3-15-02)~~(____)
- c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council ~~shall~~ **must** review the application and determine whether the individual ~~shall will~~ be certifiable ~~as a peace, detention, or juvenile detention~~

officer in the state of Idaho.

~~(3-15-02)~~()

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

~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

081. AGREEMENT TO SERVE.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any *peace* officer attending ~~such schools or programs or directly or indirectly receiving the aid authorized by Section 19-5109, Idaho Code, shall~~ **a POST-funded Basic Training Academy must** execute an agreement ~~whereby said officer promises~~ **promising** to remain within the law enforcement profession, as defined in Subsection 010.26, ~~on a full-time basis,~~ in the state of Idaho ~~in a position approved by the Council~~ for two (2) years following graduation from the POST Basic Training Academy. **Violation of the terms of the agreement will give rise to a civil action which may be commenced by the council for and on behalf of the state of Idaho for restitution of any and all sums paid by the council plus costs and reasonable attorney's fees.**

~~(3-30-07)~~()

02. Fulfillment of Agreement. **The agreement will be considered fulfilled if the officer remains within the law enforcement profession, as defined in Subsection 010.26, in the state of Idaho as follows:** ()

a. The officer serves on a full-time basis for two (2) years following graduation from the POST Basic Training Academy; or ()

b. The officer serves on a part-time basis and provides the Council with documentation substantiating service of 4,160 (four thousand one hundred sixty) hours following graduation from the POST Basic Training Academy. ()

03. Disqualifications. ()

a. An officer terminated by the appointing agency due to agency budget cutbacks or loss of funding for the position will not owe the Council the amount set forth in the agreement. The appointing agency must provide the Council with a letter stating the officer was terminated due to the agency's inability to fund the position. ()

b. An officer forced to resign due to his own or an immediate family member's terminal illness or prolonged debilitating condition will not owe the Council the amount set forth in the agreement. The officer must provide the Council with documentation from the attending physician substantiating the medical condition. ()

024. Pay Back Reimbursement. ~~Except as provided below, a~~ **Any** *peace* officer who ~~fails to remain within the law enforcement profession, as defined in Subsection 010.26, on a full-time basis, in the state of Idaho in a position approved by the Council for two (2) years following graduation~~ **graduates** from the POST Basic Training Academy, ~~shall be required to pay back to~~ **whose employment is terminated prior to their fulfillment of the agreement pursuant to Subsection 081.02 or does not qualify for disqualification pursuant to Subsection 081.03 must reimburse** the Council, ~~the full amount of money set forth in the agreement for their training expenses. For the purposes of this rule, an officer who leaves full-time employment in the law enforcement profession and has not worked four thousand one hundred sixty (4,160) or more hours during the two (2) years following graduation from the POST Basic Training Academy shall be deemed to have failed to remain within the law enforcement profession, on a full-time basis, for two (2) years following graduation from the POST Basic Training Academy. This includes, but is not limited to, any officer who resigns, does not pass his probationary period, resigns in lieu of termination, or is terminated for cause by the appointing agency.~~

~~(3-30-07)~~()

05. Proration. ()

a. If the officer remains within the law enforcement profession, as defined in Subsection 010.26, in

the state of Idaho on a full-time basis for less than twelve (12) complete months following graduation from the POST Basic Training Academy, he must reimburse the Council the full amount of money set forth in the agreement. ()

~~**a.b.** If the officer remains within the law enforcement profession, as defined in Subsection 010.26, in excess of the state of Idaho on a full-time basis for a minimum of twelve (12) complete months following graduation from the POST Basic Training Academy but less than twenty-four (24) complete months and the officer's work within the law enforcement profession during that period averaged at least one hundred sixty (160) hours per month, the amount owed to the Council under Subsection 081.02 shall be prorated monthly and shall will be reduced proportionately for each complete month worked from the date of graduation in which the officer was employed within the law enforcement profession for at least one hundred sixty (160) hours per month to the date of termination. (4-2-03)()~~

~~**b.** If the officer resigns or is terminated for cause by the appointing agency, he shall owe the Council the amount set forth in the agreement. (3-15-02)~~

~~**c.** If the officer is terminated through no fault of his own by the appointing agency, he shall not owe the Council the amount set forth in the agreement. The agency shall provide the Council a letter stating that the officer was terminated through no fault of his own remains within the law enforcement profession, as defined in Subsection 010.26, in the state of Idaho on a part-time basis, and provides the Council with documentation substantiating a minimum of 2,080 (two thousand eighty) hours service following graduation from the POST Basic Training Academy, but less than 4,160 (four thousand one hundred sixty) hours, the amount owed to the Council will be reduced proportionately for each one hundred seventy-three (173) hours worked from the date of graduation to the date of termination. (3-15-02)()~~

~~**03. Pay Back, Part Time Basic Certificate. Any peace officer who is awarded a part-time basic certificate who fails to remain employed within the law enforcement profession in a position approved by the Council for the same amount of hours required in Subsection 081.02, shall be required to pay back to the Council the full amount of money set forth in the agreement.** (4-2-03)~~

~~**04. Position. The Council shall approve or disapprove positions on a case-by-case basis, after affording officers the opportunity to present information as to the duties, nature, and scope of the position.** (3-15-02)~~

~~**06. Multiple POST Basic Training Academies. An officer who graduates from more than one (1) POST Basic Training Academy must fulfill a two-year agreement for each academy attended.** ()~~

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 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 19, 2016.

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

Establishes the requirement for a POST compliance review of each applicant to include a provision for inspection of the hiring agency's background investigation file for the purpose of fulfilling the requirements of Section 19-5109(1)(g), Idaho Code, which states: (1) It shall be the duty of and the council shall have the power: (g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state."

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

The temporary rule will accommodate the recent determination of the FBI that POST, and other entities similar to POST in other states, are not a "law enforcement" entity and, as such, do not have access to the National Criminal Information Center (NCIC) to perform criminal history checks of POST applicants. The revision enhances POST's ability to maintain agency accountability in the short term and will still be applicable when POST is eventually granted criminal history access again.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule 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: N/A

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 26, 2016.

DATED this 2nd day of September, 2016.

Victor McCraw
POST Division Administrator
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone (208) 884-7251 / Fax (208) 884-7295

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 11-1101-1602
(Only Those Sections With Amendments Are Shown.)**

059. BACKGROUND INVESTIGATION.

01. Requirements. (9-1-16)T

a. The applicant ~~shall~~ **must** have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. ~~(3-15-02)~~ **(9-1-16)T**

b. The appointing agency must collect and verify the necessary documents and compile and retain a comprehensive background investigation file establishing that the applicant meets all of the required minimum standards or provisions for employment as provided in Sections 050 through 065. **(9-1-16)T**

02. Procedures. (3-15-02)

a. The applicant ~~shall~~ **must** complete and submit to the appointing law enforcement agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement ~~shall~~ **must** contain questions which aid in determining whether the applicant is eligible for certified status as a peace, detention, juvenile detention, or juvenile probation officer. The background investigation ~~shall~~ **must** include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information ~~shall~~ **must** be recorded and retained by the appointing agency. ~~(4-2-08)~~ **(9-1-16)T**

b. The appointing agency ~~shall~~ **must** conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions ~~shall~~ **must** be asked about: ~~(3-15-02)~~ **(9-1-16)T**

- i. Use of intoxicants, narcotics and drugs; (3-15-02)
- ii. Physical, mental, and emotional history; (3-15-02)
- iii. Family problems; (3-15-02)
- iv. Moral outlook and habits; and (3-15-02)
- v. Financial transactions. (3-15-02)

c. The appointing agency ~~shall~~ **must** have a thorough investigation into the character and reputation of the applicant conducted by an experienced investigator. The applicant's morality, integrity, reputation, honesty,

dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty ~~shall~~ **must** be explored. ~~(3-15-02)~~(9-1-16)T

d. All results of the background investigation ~~shall~~ **must** be considered confidential and processed accordingly. ~~(3-15-02)~~(9-1-16)T

e. The results of the background investigation ~~shall ultimately~~ **must** be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable **prior to submission of the application to the POST Council for processing.** ~~(3-15-02)~~(9-1-16)T

f. The POST Council will perform a compliance review of the applicant, and may inspect the comprehensive background investigation file as it deems necessary to carry out the provisions of Section 19-5109(1)(g), Idaho Code, to certify peace officers as having completed all requirements established by the Council. (9-1-16)T

g. In the case the compliance review of the applicant reveals that information submitted to the POST Council may be falsified, inaccurate, or incomplete, the POST Division Administrator must inspect the comprehensive background investigation file. The applicant may be accepted upon approval of the POST Division Administrator, and the Division Administrator will have the discretion to refer the application to the POST Council. However, in the case of evident falsification, or of unresolved inaccuracies or omissions, the POST Council must review the application and determine whether the applicant will be certifiable in the State of Idaho. (9-1-16)T

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19-5109(6), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

Simplifies language and clarifies certification requirements for part-time juvenile detention officers, and eliminated the use of non-POST certified instructors for basic training.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature 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: N/A

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 26, 2016.

DATED this 2nd day of September, 2016.

Victor McCraw
POST Division Administrator
Idaho 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. 11-1102-1601
(Only Those Sections With Amendments Are Shown.)

034. THE PART-TIME JUVENILE DETENTION OFFICER CERTIFICATE.

The following requirements are necessary for award of the part-time juvenile detention officer certificate: (4-11-06)

01. Part-Time Juvenile Detention Officer Packet. Any part-time juvenile detention officer *desiring part-time juvenile detention officer certification* must submit a completed POST Part-Time Juvenile Detention Officer Certification Packet prior to attending any part-time juvenile detention officer training. (4-11-06)()

02. Employment. The applicant must have been employed by the agency at least six (6) months (may include part-time juvenile detention officer training time) prior to being awarded the part-time juvenile detention officer certification. Probationary period may be extended by the agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the department the officer is employed with when applying for certification. Probationary period may not extend over one (1) year for certification purposes. (4-11-06)

03. Basic Training. The applicant must have completed the POST Part-Time Juvenile Detention Officer Training and must have passed the POST part-time juvenile detention officer certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%). The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. (4-11-06)

a. Any part-time juvenile detention officer *desiring part-time juvenile detention officer certification* must successfully complete the POST Council-approved Part-Time Juvenile Detention Officer Training of no less than forty (40) hours, to include, but not be limited to, items outlined in IDAPA 05.01.02, "Rules of the Idaho Department of Juvenile Corrections, Secure Juvenile Detention Facilities," Subsection 212.05. (4-11-06)()

b. *Portions of the core curriculum may be taught by uncertified instructors. However, Legal and Liability for Juvenile Detention Officers, Verbal Judo, and Appropriate Use of Force must be taught by POST-certified instructors.* (4-11-06)

eb. The officer will be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%) or better. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. (4-11-06)

ec. The Council will accept written certification from the agency head as proof that a part-time juvenile detention officer has successfully completed the required core curriculum. (4-11-06)

04. Part-Time Juvenile Detention Orientation Training. Successful completion of supervised part-time juvenile detention orientation training in the employing department is required. Evidence of such training must be submitted by applicant's employer to POST Council. (4-11-06)

05. Applications for Certification. All applications for award of the Part-Time Juvenile Detention Officer Certificate must be completed on the prescribed form "Application for Certification" as provided by the POST Council. The Application for Certification form must be submitted by the officer/applicant to the applicant's department head, who will forward the application to the Council. Certificates will be issued to the department head for award to the applicant. (4-11-06)

06. Retaining Certification. A certified part-time juvenile detention officer must work sixty (60) hours annually in a juvenile detention officer capacity to retain certification. Documentation of hours worked must be kept on file at the appointing agency. Any part-time juvenile detention officer working less than sixty (60) hours annually must complete all requirements set forth in Section 033 to be recertified. (4-11-06)

07. Decertification. The Council may decertify any part-time juvenile detention officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (4-11-06)

08. Full-Time Juvenile Detention Officer Status. To be certified as a full-time juvenile detention officer, a certified part-time juvenile detention officer, upon appointment to full-time juvenile detention officer status, must comply with the requirements in Sections 030 and 031. (4-11-06)

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. 11-1104-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Minimum Standards for Employment for Correction Officers and Adult Probation and Parole Officers are now identical to all other disciplines governed by POST, so the duplicative language was removed and the applicant referred to the Minimum Standards for Employment found in IDAPA 11.11.01, Sections 050 through 065.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature 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: N/A

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 26, 2016.

DATED this 2nd day of September, 2016.

Victor McCraw
POST Division Administrator
Idaho 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. 11-1104-1601
(Only Those Sections With Amendments Are Shown.)

031. MINIMUM STANDARDS FOR EMPLOYMENT FOR CORRECTION OFFICERS.

Every correction officer must meet the ~~requirements in~~ minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections ~~03750~~ through ~~04466~~.
(4-2-08)()

032. CITIZENSHIP.

~~The applicant shall be a citizen of the United States.~~ (4-2-08)

~~01. Documentation. Proof of citizenship shall not have been mutilated, altered, or damaged, and shall be in the form of one (1) of the following:~~ (4-2-08)

~~a. Birth Certificate issued by the city, county, or state and filed within one (1) year of birth;~~ (4-2-08)

~~b. Naturalization Certificate;~~ (4-2-08)

~~c. U.S. Passport;~~ (4-2-08)

~~d. Consular Report of Birth Abroad or Certification of Birth; or~~ (4-2-08)

~~e. Certificate of Citizenship.~~ (4-2-08)

033. EDUCATION.

~~The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 052.~~ (4-11-15)

034. AGE.

~~The applicant shall be a minimum of twenty-one (21) years of age.~~ (4-7-11)

035. CHARACTER.

~~The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming correction officers, and to protect against acts or conduct which may endanger the safety and welfare of the public.~~ (4-11-06)

036. CRIMINAL RECORD.

~~01. Fingerprints. The applicant must be fingerprinted on the standard FBI Applicant fingerprint card, and a search made by the hiring agency 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 hiring agency. The hiring agency must verify the applicant's compliance with the minimum standards for employment outlined in this section to the POST Council upon submission of the appropriate notification of employment form designated by the Council.~~ (3-25-16)

~~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)~~

~~038. **BACKGROUND INVESTIGATION:**~~

~~01. **Requirements.** The applicant must have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the correction profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (4-11-06)~~

~~02. **Procedures.** (4-11-06)~~

~~a. The applicant must complete and submit to the appointing correction agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement must contain questions which aid in determining whether the applicant is eligible for certified status as a correction officer. The background investigation must include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information must be recorded and retained by the appointing agency. (4-11-06)~~

~~b. The appointing agency must conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the correction mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions may include, but not be limited to: (4-11-06)~~

- ~~i. Use of intoxicants, narcotics and drugs; (4-11-06)~~
 - ~~ii. Physical, mental, and emotional history; (4-11-06)~~
 - ~~iii. Family problems; (4-11-06)~~
 - ~~iv. Moral outlook and habits; and (4-11-06)~~
 - ~~v. Financial transactions. (4-11-06)~~
 - ~~e. The appointing agency must conduct a thorough investigation into the character and reputation of the applicant which may include, but not be limited to, the applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty. (4-11-06)~~
 - ~~d. All results of the background investigation must be considered confidential and processed accordingly. (4-11-06)~~
 - ~~e. The results of the background investigation must ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (4-11-06)~~
- ~~**039. PHYSICAL—MEDICAL.**~~
- ~~**01. Requirements.** The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 060. (4-11-15)~~
- ~~**040. MENTAL EXAMINATION.**~~
- ~~**01. Requirement.** The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 061. (4-11-15)~~
- ~~**041. APTITUDE.**~~
- ~~The applicant must be evaluated on the agency approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the correction function. (4-11-06)~~
- ~~**042. CODE OF CONDUCT/CODE OF ETHICS.**~~
- ~~Each applicant must attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.04 and the Law Enforcement Code of Ethics as found in Section 064. (4-2-08)~~
- ~~**043. PROBATIONARY PERIOD.**~~
- ~~**01. Probation.** Every officer appointed by an agency below the level of agency head must satisfactorily complete a probationary period of not less than six (6) months. This requirement must also apply to officers who transfer laterally into an agency. (4-11-06)~~
 - ~~**02. Supervisor/Mid Manager.** Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position must satisfactorily complete a probationary period of not less than six (6) months in that position. (4-11-06)~~
 - ~~**03. Extended.** No correction officer who lacks the training qualifications required by the Council will have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (4-11-06)~~
- ~~**044. SPECIAL PROVISIONS.**~~

~~01. **Minimum Standards.** It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (4-11-06)~~

~~02. **No Discrimination.** No agency will discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (4-11-06)~~

~~03. **Equal Opportunity Employer.** Every agency must be an equal opportunity employer. (4-11-06)~~

~~045~~**32.** -- 050. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

052. CORRECTION OFFICER CERTIFICATION.

01. Mandatory Certification. Every correction officer employed after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.11. (4-2-08)

02. Voluntary Certification. Correction officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 031 ~~through 044~~, and 053 of these rules. However, the requirement for successful completion of the POST Basic Correction Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts 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 must successfully complete the POST Basic Correction Academy to be certified. This option closes on June 30, 2010. (4-2-08)()

053. THE BASIC CERTIFICATE.

In addition to the requirements set forth in Sections 022 and 031 ~~through 044~~ of these rules, the requirements in Section 053 of these rules are necessary for award of the Basic Correction Officer certificate. (4-2-08)()

01. Probation. The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic correction 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 must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (4-11-06)

02. Basic Training. The applicant must have satisfactorily completed: (4-11-06)

a. The POST Basic Correction Academy; or (4-11-06)

b. Be a graduate of a private prison contractor's correction officer training program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Correction Academy, and must have passed the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts 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 must successfully complete the POST Basic Correction Academy to be certified. (4-11-06)

03. Correction Field Training Manual. The applicant must have satisfactorily completed forty (40) hours of POST-approved correction field training. (4-11-06)

04. Private Prison Contractor's Correction Officer Training Program. A graduate from an Idaho POST-certified private prison contractor's correction officer training program must also submit a completed POST Correction Officer Certification Packet. (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

11.13.01 - THE MOTOR CARRIER RULES

DOCKET NO. 11-1301-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 15, 2016.

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 19, 2016.

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

Idaho adopts the Federal Hazardous Material Regulations and Federal Motor Carrier Safety Regulations by reference. The Idaho Legislature approved the adoption of 49 CFR Part 386 during the 2015 session, but requested ISP reformat the rules and clarify how the rules are adopted.

During the 2016 Legislative Session, the committees observed the need to reference Section 49-2212, Idaho Code, in Rule 018, which adopts by statute changes to Federal Regulations regarding the transportation of hazardous materials, substances, and waste. Section 49-2212, Idaho Code, provides for the adoption of changes to the Federal Hazardous Materials Regulations as the changes occur.

This rule references Section 49-2212, Idaho Code, that provides for the adoption of the Federal Hazardous Materials Regulations as the changes to those regulations occur by operation of law and incorporates by reference the latest amendments to 49 CFR Parts 356, 365, 382, 383, 385, 386, 387, 388, 390 through 399, dated October 21, 2015.

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 amendment clarifies that Section 49-2212, Idaho Code, adopts the Federal Hazardous Materials Regulations by reference and adopts changes to those regulations as they occur by operation of law. The reference to the statute in the rule was requested by the Senate Transportation Committee during the 2016 legislative session.

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

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

Adoption of these rules will not affect general or dedicated funds. If the rule is not adopted, Idaho could sustain a reduction in federal grant funding as well as have a negative impact on dedicated funding.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration (FMCSA). The rules were adopted by FMCSA in compliance with the federal law and are published in the Federal Register and the Code of Federal Regulations.

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.

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 26, 2016.

DATED this 1st day of September, 2016.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
(208) 884-7003 / (208) 884-7090

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 11-1301-1601
(Only Those Sections With Amendments Are Shown.)**

004. INCORPORATION BY REFERENCE (RULE 4).

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: (3-25-16)

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. (3-25-16)

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. (3-25-16)

a. Version of Federal Regulations Adopted. [Per Section 49-2212, Idaho Code,](#) 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. ~~(3-25-16)~~(9-15-16)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. (3-25-16)

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~~ October 21, 2015. ~~(3-25-16)~~(9-15-16)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 or copies may be viewed at the office of the Idaho State Police. (3-25-16)

IDAPA 11 - IDAHO STATE POLICE
11.13.01 - THE MOTOR CARRIER RULES
DOCKET NO. 11-1301-1602
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Police adopts the Federal Motor Carrier Safety Regulations (FMCSR) by reference. ISP has not previously adopted 49 CFR Part 380, which identifies the necessary training for the safe operation of driver's operating long combination vehicles (LCV). An LCV is a combination of a tractor and two or three trailers that requires a more skilled driver for safe operation. Currently, other than completing a written exam, Idaho has no driver training requirements. Upon completion of the written exam, the Idaho CDL driver receives an endorsement and is allowed to begin driving LCV's with no behind-the-wheel training.

With the change in Idaho's over-legal weight permits of up to 129,000 pounds that are part of the Idaho Transportation Department's administrative rules, Idaho will see an increase in large LCV's. The adoption of Part 380, 49 CFR 380, will require LCV drivers and instructors to meet minimum qualification requirements. LCV drivers would be able to apply for a Grandfather Clause if they meet the requirements listed in Part 380.111, such as if they have been operating an LCV during the previous 2 years of the application. If the driver meets the Grandfather Clause requirements, he/she will not need to complete the LCV training.

The adoption of this rule will assist in the safe operation of LCV's on Idaho roadways by making sure drivers have sufficient training with a qualified instructor before being released to operate LCV's. This will affect most over-legal permits that will be issued by ITD. All interstate carriers have been required to comply with Part 380 for over a decade, so many carriers are already complying.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Captain Tim Horn, Idaho State Police Commercial Vehicle Safety at (208) 884-7220 or tim.horn@isp.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 26, 2016.

DATED this 1st day of September, 2016.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
(208) 884-7003 / (208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1301-1602
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

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: (3-25-16)

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 recom compilations are also adopted by reference, but subsequent amendments are not. (3-25-16)

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. (3-25-16)

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. (3-25-16)

03. Carrier Safety Requirements (See Rule 19). Adoption of Federal Regulations 49 CFR Parts 356, 365, ~~380~~, 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. ~~(3-25-16)~~ ()

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, ~~380~~, 382, 383, 385, 386, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated ~~March 31, 2014~~ October 21, 2015.

~~(3-25-16)~~ ()

04. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov or copies may be viewed at the office of the Idaho State Police. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

019. CARRIER SAFETY REQUIREMENTS (RULE 19).

01. Adoption of Federal Regulations - Exceptions. (3-25-16)

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 380. Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements. ()
- d.** Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- e.** Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- f.** Part 385. Safety Fitness Procedures. (3-29-10)
- g.** Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. (4-11-15)
- h.** Part 387. Minimum Levels of Financial Responsibility. (3-29-10)

- hi.** Part 388. Cooperative Agreements with States. (4-5-00)
- ij.** Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- jk.** Part 391. Qualifications of Drivers. (4-5-00)
- kl.** Part 392. Driving of Commercial Motor Vehicles. (3-29-10)
- lm.** Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- mn.** Part 395. Hours of Service of Drivers. (4-5-00)
- no.** Part 396. Inspection, Repair and Maintenance. (4-5-00)
- op.** Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- pq.** Part 398. Transportation of Migrant Workers. (4-5-00)
- qr.** 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. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov or copies may be viewed at the office of the Idaho State Police. (3-29-10)

IDAPA 11 - IDAHO STATE POLICE
11.13.01 - THE MOTOR CARRIER RULES
DOCKET NO. 11-1301-1603
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

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

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

With some exceptions all motor carriers and drivers, who are currently required to complete paper logs to document record of duty status (RODS) to comply with 49 CFR 395, will be required to use ELD's no later than December 18, 2017. However, the final federal rule exempts several sectors from the ELD requirement as follows:

- Drivers who use paper RODS for not more than 8 days during any 30 day period;
- Drivers who conduct driveaway-towaway operations, where the vehicle being driven is the commodity being delivered; and
- Drivers of vehicles manufactured before model year 2000.

These exempted drivers must still document RODS using either paper logs or ELD's, whichever they choose. There are no changes to drivers or carriers who meet the current exemptions from RODS as listed in 49 CFR 395 and Idaho Code 67-2901B(2).

Idaho is required to adopt this regulation by reference to maintain compliance with Federal Motor Carrier Safety Administration (FMCSA) and remain eligible for grant and highway funds.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Captain Tim Horn, Idaho State Police Commercial Vehicle Safety at (208) 884-7220 or tim.horn@isp.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 26, 2016.

DATED this 1st day of September, 2016.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
(208) 884-7003/(208) 884-7090
Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
(208) 884-7003 / (208) 884-7090

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1301-1603
(Only Those Sections With Amendments Are Shown.)**

004. INCORPORATION BY REFERENCE (RULE 4).

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: (3-25-16)

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. (3-25-16)

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. (3-25-16)

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. (3-25-16)

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.

(3-25-16)

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~~ October 21, 2015.
(3-25-16)()

04. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov or copies may be viewed at the office of the Idaho State Police.
(3-25-16)

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

DOCKET NO. 12-0108-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

COORDINATOR'S NOTE: This rulemaking was incorrectly designated as a fee rule when it was promulgated as proposed and published in the August 2016 Administrative Bulletin. There was no additional fee being imposed through the rulemaking as was incorrectly indicated. The fee in question is being reduced which does not negatively impact agency revenues. Because a pending rule that imposes a fee or charge must be approved by concurrent resolution of the legislature to become effective, it is important that this pending rule be correctly promulgated as a non-fee rulemaking. This correction makes no substantive change and does not change the intent or effect of this rulemaking.

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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(s) 30-14-605 and 30-14-608, Idaho Code.

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

The reason for adopting the pending rule is to reflect changes that have been made to existing guidance governing securities industry participants (dealers, dealer and advisor sales agents, investment advisors and issuers of securities).

After consideration of public comments, and in accordance with Section 67-5227, Idaho Code, the text of the pending rule has been amended at Section 104.22 and is adopted as amended. The remainder of the rule has been adopted as initially proposed. Only that section containing the change that differs from the proposed text is printed in this bulletin. The complete text of the proposed rule was published in the August 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 69-98](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Burns at (208) 332-8080, jburns@finance.idaho.gov, or securitiesrules@finance.idaho.gov.

DATED this 1st day of September, 2016.

James A. Burns
Securities Bureau Chief
Department of Finance
800 Park Blvd.
PO Box 83720 Boise, ID 83720-0031
Office: (208) 332-8080
Fax: (208) 332-8099

DOCKET NO. 12-0108-1601 - ADOPTION OF PENDING RULE

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

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 16-8, August 3, 2016, pages 69 through 98.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2017 Idaho State Legislature.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE FOR
DOCKET NO. 12-0108-1601

104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES (RULE 104).

01. Fraudulent, Dishonest and Unethical Practices. Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the *following* practices identified in Subsections 104.02 through 104.47 of this rule shall be deemed to have engaged in one (1) or both of the following: ~~(3-24-05)~~()

a. An “act, practice, or course of business that operates or would operate as a fraud or deceit” as used in Section 30-14-501 and Section 30-14-502, Idaho Code; ~~(3-24-05)~~()

b. A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. (3-24-05)

c. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. (3-24-05)

[Subsection 104.22]

22. Loans to Customers. Loaning money to a customer, other than an immediate family member, unless the broker-dealer or investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the broker-dealer or investment adviser. ()

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

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

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

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

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

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 26, 2016.

DATED this 2nd day of September, 2016.

Michael Larsen
Consumer Finance Bureau Chief
800 Park Blvd.
PO Box 83720
Department of Finance
Boise, ID 83720-0031
208-332-8060 (office)
208-332-8099 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1601
(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, 2016~~7~~. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title12/html/USCODE-2015-title12-chap27.htm>. ~~(3-25-16)~~()

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, 2016~~7~~. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2016-title12-vol8/xml/CFR-2016-title12-vol8-part1024.xml>. ~~(3-25-16)~~()

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2016~~7~~. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title15/html/USCODE-2015-title15-chap41.htm>. ~~(3-25-16)~~()

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, 2016~~7~~. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2016-title12-vol9/xml/CFR-2016-title12-vol9-part1026.xml>. ~~(3-25-16)~~()

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)

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

13.01.02 - RULES GOVERNING HUNTER EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1601 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 36-103, 36-104, and 36-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 rules implement a mandatory trapping education program for trappers who purchased their first trapping license on or after July 1, 2011, broadens the description of mandatory education, establishes fees for mandatory hunter, archery, and trapping education, integrates reference to existing archery education pursuant to Sections 36-411 and 36-412, Idaho Code, and deletes an obsolete rule about practical handling and shooting of firearms requirement for hunter education certification.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Pursuant to Section 36-412, Idaho Code, the fee charged to each student enrolling in Hunter Education, Archery Education, or Trapper Education Program will be eight dollars (\$8.00).

FISCAL IMPACT: The following is a specific 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 negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because consensus was not achieved for similar rules for trapping education negotiated in 2015 so affected interests were not likely to reach consensus in 2016.

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 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 26, 2016.

DATED this 17th day of August, 2016.

Sharon W. Kiefer
Deputy Director
600 S. Walnut, P.O. Box 25
Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 13-0102-1601
(Only Those Sections With Amendments Are Shown.)

IDAPA 13
TITLE 01
CHAPTER 02

13.01.02 - RULES GOVERNING ~~HUNTER~~ MANDATORY EDUCATION AND MENTORED HUNTING

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting, trapping, and archery. The Idaho Fish and Game Commission is authorized to adopt rules concerning a mentored hunting program under Idaho Code Section 36-1508(b).

~~(4-4-13)~~()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.02.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.02, "Rules Governing Hunter Mandatory Education and Mentored Hunting."

~~(4-4-13)~~()

02. Scope. These rules establish criteria for education programs in hunting, trapping, and archery, and for mentored hunting.

~~(4-4-13)~~()

(BREAK IN CONTINUITY OF SECTIONS)

100. HUNTER AND ARCHERY EDUCATION.

01. Mandatory Hunter and Archery Education Programs. All students being certified under this program must have successfully completed ~~at least ten (10) hours of~~ instruction in firearms or archery safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms or archery equipment. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries.

~~(4-7-11)~~()

02. Fees. A fee ~~as established by Section 36-412(e), Idaho Code,~~ of eight dollars (\$8.00) shall be charged each student enrolling in the Hunter or Archery Education Program.

~~(3-20-04)~~()

03. Parent to Attend Shooting Clinic with Student. For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend any Hunter Education Shooting Clinic with the student. Preferably, the adult attending the Shooting Clinic exercise should be the same adult who will accompany the student into the field while hunting.

(4-11-15)

~~**04. Exemption from Practical Handling and Shooting of Firearms Requirement.** An active, former, or retired member of the United States Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) or an active, former or retired peace officer as defined by Section 19-5101(d), Idaho Code, may be exempted from the practical firearms handling and shooting requirement of the Mandatory Hunter Education Program if they received~~

~~training in firearms handling and shooting. To qualify for the exemption the applicant must submit by mail or in person a signed affidavit provided by the Department, which certifies the applicant meets the criteria for exemption due to training in the practical handling and shooting of firearms provided through either the Armed Forces or as a peace officer. (3-29-12)~~

(BREAK IN CONTINUITY OF SECTIONS)

102. TRAPPER EDUCATION.

01. Mandatory Trapper Education Program. All persons who purchased their first Idaho trapping license on or after July 1, 2011, must be certified as having successfully completed Department of Fish and Game trapper education, 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. Persons being certified in Department of Fish and Game trapper education must have successfully completed instruction including safe trapping methods and rules, non-target species avoidance techniques, wildlife identification, and good conduct and respect for the rights and property of others. Persons who have successfully completed wolf trapping education in Idaho or in another state or country are not exempt from certification as having successfully completed trapper education. ()

02. Fee. A fee of eight dollars (\$8.00) shall be charged each student enrolling in the Trapper Education Program. ()

03. Effective Date. On and after July 1, 2018, no person who purchased their first Idaho trapping license on or after July 1, 2011 shall be issued a trapping license unless that person presents a certificate of completion in trapper education issued by the Department of Fish and Game or presents proof of equivalent certification obtained in Idaho or from an authorized agency or association in another state or country. ()

04. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from the provisions of IDAPA 13.01.02.102. ()

1023. -- 999. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS

DOCKET NO. 13-0107-1601

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2016-2017 Upland Game Seasons establishing seasons and limits for hunting rabbits and hares in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be:

Wednesday, November 16, 2016 - 7:00 pm (PST)

**Clearwater Regional Office
3316 16th Street
Lewiston, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at (208) 334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at (208) 334-5159 or through the Idaho Relay Service at 1 (800) 377-2529 (TDD).

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

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. 13-0108-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 12, 2016 - 7:00 pm

**Washington Group, Main Auditorium
720 East Park Blvd.
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 proposed rules administer grizzly bear hunting should the Idaho Fish and Game Commission authorize hunting after grizzly bear in the Greater Yellowstone Ecosystem are taken off the federal endangered species list. The proposed rules do not make any decision to delist grizzly bears and do not propose to open any hunting season for grizzly bear in Idaho.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6 Idaho Administrative Bulletin, [Vol. 16-7, pages 59-60](#). Subsequently, negotiated rulemaking was determined infeasible on August 8, 2016 because public comment overwhelmingly concerned issues outside the scope of the rule proposals.

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, Jon Rachael, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 29th day of August, 2016.

Sharon W. Kiefer
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID 83707
Tel: (208) 334-3771 / Fax: (208) 334-4885

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. (3-25-16)

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 nonresident 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. (3-25-16)

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 who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. ()

ji. 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)

jk. Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

kl. 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)

lm. 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)

nn. 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. (3-25-16)

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 canceled 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, spring grizzly 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, fall grizzly 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, fall grizzly 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)

(BREAK IN CONTINUITY OF SECTIONS)

300. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN.

01. Big Game Animals of Either Sex. Big game animals of either sex may be taken as noted below: (7-1-93)

a. Mountain Goat. Either sex may be taken EXCEPT nannies accompanied by kids. (7-1-93)

b. Black Bear. Either sex may be taken EXCEPT female black bears accompanied by young. (7-1-93)

c. Mountain Lion. Either sex may be taken EXCEPT spotted young or females accompanied by young. (7-1-93)

d. Gray Wolf. Either sex may be taken. (3-29-10)

e. Grizzly Bear. Either sex may be taken EXCEPT adult grizzly bear accompanied by young, or young grizzly bear(s) accompanied by adult grizzly bear(s). ()

02. Seasons Restricted to Antlered or Male Animals Only. (7-1-93)

a. Deer. Only deer with at least one (1) antler longer than three (3) inches may be taken in any season which is open for antlered deer only. (7-1-93)

b. Two-point deer. Only deer with not more than two (2) points on one (1) antler, not including brow point, and at least one (1) antler longer than three (3) inches may be taken in any season which is open for two-point deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)

c. Three-point deer. Only deer having at least one (1) antler with three (3) or more points not counting

the brow point or tine may be taken in any season which is open for three-point or larger deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (3-15-02)

d. Four-point deer. Only deer having at least one (1) antler with four (4) or more points, not including the brow point or tine, may be taken in any season that is open for four-point or larger deer only. (4-6-05)

e. Elk. Only elk with at least one (1) antler longer than six (6) inches may be taken in any season which is open for antlered elk only. (7-1-99)

f. Spike elk. Only elk with no branching on either antler and at least one (1) antler longer than six (6) inches may be taken in any season which is open for spike elk only. A branch is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)

g. Brow-tined elk. Any elk having an antler or antlers with a visible point on the lower half of either main beam that is greater than or equal to four (4) inches long. (3-15-02)

h. Moose. Only moose with at least one (1) antler longer than six (6) inches may be taken in any season open for antlered moose only. (7-1-93)

03. Seasons Restricted to Antlerless or Female Animals Only. (7-1-93)

a. Deer. Only deer without antlers or with antlers shorter than three (3) inches may be taken in any season which is open for antlerless deer only. (7-1-93)

b. Elk. Only elk without antlers or with antlers shorter than six (6) inches may be taken in any season which is open for antlerless elk only. (7-1-93)

c. Pronghorn. Only pronghorn without a black "cheek patch" or horns less than three (3) inches long may be taken during doe and fawn only pronghorn seasons. (4-7-11)

d. Bighorn sheep. Only bighorn sheep with horns between six (6) inches and twelve (12) inches in length may be taken in any season which is open for bighorn ewes only. (7-1-93)

e. Moose. Only moose without antlers or with antlers less than six (6) inches long may be taken in any season which is open for antlerless moose only. (7-1-93)

301. -- 319. (RESERVED)

320. TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT.

01. Tag. Immediately after any deer, elk, pronghorn, moose, bighorn sheep, mountain goat, mountain lion, black bear, grizzly bear, or gray wolf is killed, the appropriate big game animal tag must be validated and securely attached to the animal. ~~(4-7-11)~~()

a. Validation. Cut out and completely remove only the two (2) triangles indicating the date and month of kill. (7-1-93)

b. Attachment of Tag. (7-1-93)

i. Deer, elk, pronghorn, moose, mountain goat, black bear, and bighorn sheep: to the largest portion of the edible meat to be retained by the hunter or any person transporting for the hunter. The tag must remain attached during transit to a place of processing and must remain attached until the meat is processed. The validated tag must accompany the processed meat to the place of final storage or final consumption. (4-7-11)

ii. Mountain lion, black bear, grizzly bear, and gray wolf: To the hide. ~~(4-7-11)~~()

02. Proxy Statement. Any person transporting or possessing any portion of a carcass of a big game

animal or processed big game animal meat taken by another must have in possession a written statement signed by the taker showing the number and kinds of animals, the date taken, the taker's name and address, the taker's hunting license number, and the taker's tag number. (4-7-11)

321. -- 349. (RESERVED)

350. IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Evidence of Sex. Evidence of sex must be left naturally attached to the carcass of any big game animal. (4-6-05)

a. In antlered or male only seasons, the evidence of sex requirement is met when the head, horns, or antlers are left naturally attached to the whole carcass or to a front quarter. If the head, horns, or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility; AND the horns or antlers must accompany the carcass while in transit. (5-8-09)

b. In spike elk or two-point (2) deer only seasons, the evidence of sex requirement is met when the head with both complete unaltered antlers are left naturally attached to the whole carcass or to a front quarter. If the head or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left or a commercial meat processing facility naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND both complete unaltered antlers naturally attached to each other must accompany the carcass while in transit. (5-8-09)

c. In antlerless, doe/fawn or female only seasons, if the head is removed from female elk, moose, deer, pronghorn, or bighorn sheep, some other external evidence of sex (either udder or the vulva) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption or a commercial meat processing facility. (4-7-11)

d. The entire head of antlerless male elk, moose, deer, or pronghorn, or a male lamb bighorn sheep killed during an antlerless, female, doe/fawn or ewe only season, may be left naturally attached to the carcass or to a front quarter until the carcass reaches the final place of storage or consumption. If the head is removed, some other external evidence of sex (either scrotum, penis, or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility, AND the lower jaw must accompany the carcass while in transit. (4-7-11)

e. For black bear, grizzly bear, mountain lion, and gray wolf external evidence of sex (either scrotum, penis or testicles for males, or vulva for females) must be left naturally attached to the hide until the mandatory check has been complied with. ~~(3-29-10)~~ ()

02. Evidence of Species. In seasons restricted to mule deer only or white-tailed deer only, if the head is removed, the fully-haired tail must be left naturally attached to the carcass. (7-1-93)

03. Evidence of Size. Any hunter taking a bighorn ram must leave that portion of the skull plate containing the upper one-half (1/2) of the eye socket naturally attached to both of the horns until after the horns have been pinned by the Department. (7-1-93)

04. Other. The Department may designate seasons and areas in which the head or lower jaw must accompany the carcass in transit. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

420. MANDATORY CHECK AND REPORT REQUIREMENTS.

Any hunter killing black bear, moose, bighorn sheep, ~~or~~ mountain goat, or gray wolf, or mountain lion in a unit with

no female lion quota must, WITHIN TEN (10) DAYS OF THE DATE OF KILL, or any hunter killing mountain lion in a unit with a female quota or a grizzly bear must, WITHIN FIVE (5) DAYS OF THE DATE OF KILL, ~~or any hunter killing a gray wolf must, WITHIN TEN (10) DAYS OF THE DATE OF KILL,~~ comply with the mandatory check and report requirements by: (4-7-11)()

01. Harvest Report. Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken. (4-6-05)

02. Presentation of Animal Parts. Presenting the following animal parts so that Department personnel may collect biological data and mark the animal parts: (7-1-93)

a. Black Bear: Skull and hide to be presented to a conservation officer, regional office or official check point for removal and retention of premolar tooth and to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw black bear pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)()

b. Grizzly Bear: Skull and hide to be presented to a conservation officer or regional office for removal and retention of a premolar tooth, and to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for five (5) days after the close of the season, any raw grizzly bear pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation). ()

~~**c.**~~ **Mountain Lion:** Skull and hide to be presented to a conservation officer or regional office to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for five (5) days after the close of the season, any raw mountain lion pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)

~~**d.**~~ **Gray Wolf:** Skull and hide to be presented to a conservation officer or regional office for removal and retention of a premolar tooth, and to have the hide marked. No person who does not possess a fur buyer or taxidermist license and/or appropriate import documentation shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw gray wolf pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation). (4-7-11)

~~**e.**~~ **Moose:** Antlers from antlered animals to be presented to a conservation officer or regional office. (7-1-93)

~~**f.**~~ **Bighorn Sheep:** Ram horns to be presented to a regional office for marking, ewe horns to be presented to a regional office. (7-1-93)

~~**g.**~~ **Mountain Goat:** Horns to be presented to a conservation officer or regional office. (7-1-93)

03. Authorized Representative. A hunter may authorize another person to comply with the above requirements if that person complies with reporting requirements and possesses enough information to accurately complete the necessary form. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

422. MANDATORY WOLF TELEPHONE REPORT.

01. Gray Wolf. In addition to other check and reporting requirements, any hunter killing a gray wolf must report the harvest within seventy-two (72) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the ~~gray wolf season~~ big game seasons and rules brochure available at Department offices and license vendors. (4-7-11)()

02. Grizzly Bear. In addition to other check and reporting requirements, any hunter killing a grizzly bear must report the harvest within twenty-four (24) hours by calling the Grizzly Bear Reporting Number, a toll-free telephone number published in the grizzly bear season and rules brochure available at Department offices and on the Department website. ()

423. -- 499. (RESERVED)

500. AREAS CLOSED TO HUNTING OF BIG GAME ANIMALS.

01. Restricted Areas for Big Game. Hunting, killing, or molesting of any big game animal is prohibited in the following areas: (7-1-93)

a. Craters of the Moon National Monument and Preserve in Blaine and Butte Counties; the boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. All of the lands added to the Monument and Preserve remain open to hunting, while lands within the former National Monument remain closed to hunting. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting. (4-6-05)

b. All state parks, EXCEPT Farragut State Park that has a November/December deer archery season, Billingsley Creek at Malad Gorge State Park, Castle Rock State Park and state land within the City of Rocks National Reserve are all open to hunting; (4-6-05)

c. Harriman State Park Wildlife Refuge. (4-6-05)

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 to Warm Springs Avenue and the Boise City limits; (4-6-05)

f. Yellowstone National Park in Fremont County; (7-1-93)

g. On any of those portions of State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which hunting closures have been declared by legislative or Commission action; (7-1-93)

h. All or portions of national wildlife refuges, EXCEPT as specified in federal regulations for individual refuges; and, (7-1-93)

i. All Snake River islands between the Glenns Ferry bridge and the Sailor Creek bridge in Elmore County. (7-1-93)

j. Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area of 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)

02. Mountain Lions and Gray Wolves. Mountain lion or gray wolf may not be hunted or pursued within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (3-29-10)

03. Black Bear, Grizzly Bear, and Gray Wolves. Black bear, grizzly bear, or gray wolf may not be hunted or pursued within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (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. 13-0108-1603

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 36-104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 will increase the amount of time from one to two years that a hunter must wait after drawing an antlered-only deer or elk tag to be eligible to apply again for an antlered-only deer or elk controlled hunt.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule proposal was already extensively scoped by the agency in 2015.

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 Jon Rachael, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 17th day of August, 2016.

Sharon W. Kiefer
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, Idaho, 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1603
(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. (3-25-16)

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 nonresident 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. (3-25-16)

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~~ two (~~+2~~) years. 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~~ two (~~+2~~) years. 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~~ two (~~+2~~) years 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. (3-25-16)

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 canceled 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. 13-0109-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 8, 2016.

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 36-103(b) and 36-104(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 modifies the current boundary of the Hagerman goose hunting closure area to remove certain private property to allow hunting to reduce goose depredation on crops.

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: Reduces goose depredation on private property during the 2016-17 goose season.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking for the boundary for the Hagerman goose hunting closure was conducted during 2015; this rule is a very slight modification to the negotiated rule and was not inconsistent with negotiations.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreaux, (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 26, 2016.

DATED this 17th day of August, 2016.

Sharon W. Kiefer
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3771
Fax (208) 334-4885

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 13-0109-1601
(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~~ along the south bank to a point perpendicular to 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. ~~(3-25-16)~~ (8-8-16)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. 13-0109-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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, 36-409, and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 simplifies the age and mentor requirements for youth-only hunts to make them more consistent and updates rule to be consistent with legislative revision of Section 36-409(i), Idaho Code, in 2016.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature, creating age eligibility consistent with statutory license provisions.

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 Greg Wooten, (208) 334-3736.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 22nd day of August, 2016.

Sharon W. Kiefer
Deputy Director
600 S. Walnut, P.O. Box 25
Idaho Department of Fish and Game
Boise, Idaho, 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1602
(Only Those Sections With Amendments Are Shown.)

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

a. Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. (4-4-13)

b. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (4-4-13)

c. The tag must remain attached so long as the sandhill crane is in transit or storage. (4-4-13)

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

- i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)
- ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)
- iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)
- iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
- v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)
- i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)
- j. The Commission establishes youth-only general and controlled hunts by proclamation. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. Only hunters nine (9) to ~~fifteen~~ seventeen (~~15~~17) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to ~~fifteen~~ seventeen (~~15~~17) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (~~4-7-11~~)()
- k. Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)
 - i. Designation of the controlled hunt permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)
 - ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)
 - iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)
- l. Any nonresident adult person who possesses a controlled hunt permit may designate the controlled

hunt permit to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any nonresident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (~~4-4-13~~)()

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

04. Early September Canada Goose Hunts. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.
Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

01. WMA Upland Game Permit. (4-2-08)

a. Permit Requirement. Any person ~~seventeen~~ eighteen (~~17~~8) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Upland Game Bird Permit in his or her possession. (~~5-8-09~~)()

b. Permit Limit. The WMA Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (4-2-08)

c. Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.01.a. must immediately validate their permit upon reducing a pheasant to possession by entering the harvest date and location in Non-Erasable ink, and removing a notch from the permit for each pheasant taken. (4-4-13)

02. Youth Pheasant Season. This season shall be open statewide. (7-1-99)

a. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

b. The Youth Pheasant Season shall be open for all licensed hunters ~~fifteen (15)~~ ten (10) to seventeen (17), and hunting passport holders eight (8) to seventeen (17) years of age ~~or younger~~. ~~All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter.~~ (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

900. MIGRATORY GAME BIRD SEASONS, BAG AND POSSESSION LIMITS.

01. Mourning Dove. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

02. Ducks Including Mergansers and American Coot. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

03. Wilson's Snipe. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

04. Geese Including Dark Geese -- Black Brant, Canada, Emperor, and White-Fronted, and Light Geese - Ross' and Snow. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

05. Youth Waterfowl Hunt. (3-29-12)

a. The youth waterfowl hunt is open only to youth ~~fifteen (15)~~ eight (8) to seventeen (17) years of age ~~and younger~~. Any youth participating must: ~~(3-29-12)()~~

i. Have in his or her possession the appropriate, valid hunting license or hunting passport. (The Federal Migratory Bird stamp is not required for hunters eight (8) to fifteen (15) years of age (~~Idaho Code 36-414;~~ Title 50 Code of Federal Regulations, Part 20)). ~~(3-29-12)()~~

ii. Be accompanied in the field at all times by at least one (1) adult eighteen (18) years of age or older, having in his or her possession a valid hunting license. (7-1-98)

b. Please see the Waterfowl brochure, which contains the Commission's proclamation setting seasons, bag and possession limits. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1603

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2016-2017 Migratory Game Bird and Turkey Seasons establishing seasons and limits for hunting Doves, Sandhill Cranes, Waterfowl, and Turkey in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be:

Wednesday, November 16, 2016 - 7:00 pm (PST)

**Clearwater Regional Office
3316 16th Street
Lewiston, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at (208) 334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at (208) 334-5159, or through the Idaho Relay Service at 1 (800) 377-2529 (TDD).

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 8, 2016.

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 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 provides opportunity to harvest unclipped summer Chinook salmon in the Clearwater River in 2016.

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: Confers a benefit to Anglers and Outfitters.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the timing of the 2016 run does not provide sufficient time for feasible negotiation. Several public meetings to collect public input regarding the 2016 salmon season structure were conducted.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Peter Hassemmer, (208) 334-3791.

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 26, 2016.

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 13-0111-1601
(Only Those Sections With Amendments Are Shown.)**

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 ~~M~~Unmarked 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, a~~ Anglers may retain salmon with an intact adipose fin as set by Commission season proclamation. ~~(3-25-16)~~ (8-8-16)I

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 FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1602

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2016-2018 Fishing Seasons establishing seasons and limits for fishing in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be:

Wednesday, November 16, 2016 - 7:00 pm (PST)

**Clearwater Regional Office
3316 16th Street
Lewiston, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at (208) 334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at (208) 334-5159 or through the Idaho Relay Service at 1 (800) 377-2529 (TDD).

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.13 - RULES GOVERNING THE TAKING OF AMERICAN CROW IN THE STATE OF IDAHO

DOCKET NO. 13-0113-1601

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2016-2017 American Crow Seasons establishing seasons and limits for hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be:

Wednesday, November 16, 2016 - 7:00 pm (PST)

**Clearwater Regional Office
3316 16th Street
Lewiston, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at (208) 334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at (208) 334-5159, or through the Idaho Relay Service at 1 (800) 377-2529 (TDD).

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

**13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE
AND THE TAKING OF FURBEARING ANIMALS**

DOCKET NO. 13-0116-1601

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2016-2017 Furbearer Trapping and Hunting Seasons establishing seasons and limits for hunting and trapping in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be:

Wednesday, November 16, 2016 - 7:00 pm (PST)

**Clearwater Regional Office
3316 16th Street
Lewiston, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at (208) 334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at (208) 334-5159, or through the Idaho Relay Service at 1 (800) 377-2529 (TDD).

DATED this 23rd day of August, 2016.

W. Dallas Burkhalter
Deputy Attorney General
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID, 83707
Tel (208) 334-3715
Fax (208) 334-4885

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. 13-0117-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 36-104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 revises the distance from road and trails for placing bear baits in the Panhandle and Clearwater regions because hilly terrain and an extensive road network make the current standard infeasible in many areas of these regions.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule was previously negotiated in 2015 and the rule is not applied statewide.

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 Jon Rachael, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 22nd Day of August, 2016.

Sharon W. Kiefer
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, Idaho, 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0117-1601
(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 established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles.~~ (3-25-16) ()

b. In all regions except the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) yards from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles; in the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) feet from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles. ()

~~**c.**~~ 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 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

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

DOCKET NO. 15-0401-1601

NOTICE OF RULEMAKING - PROPOSED RULE

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

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

**Tuesday, October 18, 2016
9:00 am to 12:00 pm**

**Office of Division of Human Resources
304 N. 8th Street, Room 347
Boise, ID**

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

The following amendments are being proposed for DHR Rule 15.04.01:

- Subsection 010.14 defines seasonal work as it relates to employees who work seasonally. Seasons referenced are summer, fall, winter, spring, holiday, or harvest;
- Subsection 074.04 deletes “informal agreements” in the job classification Hay point factoring process;
- Section 086 makes it clear that applications for classified jobs are submitted online only and deletes language regarding other options in Subsection 086.02;
- Subsection 086.05 makes it clearer that employees on entrance probation are not eligible to be on promotional hiring lists;
- Section 089 is deleted in its entirety since locations for taking examinations are not needed with the online application process;
- Subsection 120.03 clarifies that agencies are the responsible record keeper for Limited Service Agreements;
- Section 122 is divided into two subsections to give greater clarity regarding temporary appointments. The first section addresses the initial hire and second section addresses circumstances that limit movement of temps into classified positions without examination;
- Section 151 clarifies the probationary rule for employees who successfully complete probation;
- Subsection 152.01 clarifies the probationary rule for employees who are not successful completing probation;
- Subsection 200.04 clarifies the problem solving process for enhanced use of mediation. Employees and agency representatives may agree to extend timelines in writing and the process should follow management’s chain of command;
- Subsection 220.04.a. clarifies the manner in which performance evaluations are accessed when classified employees transfer agencies;
- Subsection 241.01 conforms rules to processing codes used in IPOPS system regarding compensatory time and vacation in conjunction with a Workers Compensation claim;
- Section 250 deletes references to “earned administrative leave” which was previously eliminated; and
- Subsection 250.10 updates the rule by deleting language relevant to the former “MDA” leave which was previously eliminated.

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

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

NEGOTIATED RULEMAKING: Pursuant to Idaho Code Section 67-5220(2), negotiated rulemaking was not feasible to conduct due to discussions on a separate matter with state agencies, HR professionals and interested parties during the month of August, 2016. The matter related to proposed legislative changes DHR is making to adapt to changes in federal wage and overtime law and regulation.

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 and subsections, contact Kim Toryanski, Deputy Administrator, phone number (208) 854-3077.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Susan E. Buxton
Administrator
Division of Human Resources
304 N. 8th Street
Boise, ID 82720

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS -- A THROUGH E.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (3-1-87)

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits remain intact. (3-20-14)

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

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

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

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

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

07. Appointing Authority. The officer, board, commission, person or group of persons authorized by

statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)

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

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

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

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

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

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

14. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods defined by a season (summer, fall, winter, spring, holiday or harvest.) (Ref. Section 67-5302(3+2), Idaho Code) ~~(3-16-04)~~ ()

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

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

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

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

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

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

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

- 22. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule Section 050) (5-8-09)
- 23. Disabled Veteran.** Those veterans separated under honorable conditions who: (3-20-14)
- a.** Have served on active duty in the armed forces and have a current service-connected disability rating of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or (3-20-14)
- b.** Are Purple Heart recipients. (Ref. Section 65-502(4), Idaho Code) (3-20-14)
- 24. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Section 190 of these rules. (5-8-09)
- 25. Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)
- 26. Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

074. ASSIGNMENT OF HAY EVALUATION POINTS.

- 01. Assignment to Pay Grade.** Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-16-04)
- 02. Guide Charts.** The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-16-04)
- 03. Factoring Benchmarks.** The factoring benchmarks correlated by Hay Management Consultants shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-16-04)
- 04. Factoring Process.** Hay evaluation points shall be assigned to a classification through the following methods, which may be used separately or in combination with the others: (3-16-04)
- ~~**a.** *Informal Agreement.* The appointing authority presents the new or revised classification and factoring recommendation informally to the administrator of the Division of Human Resources or designee and there is agreement on the points assigned. (3-16-04)~~
- ba.** Factoring Session. The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference. (3-16-04)
- eb.** Hay Management Consultants. After consultation with the appointing authority, the administrator

may refer the classification to Hay Management Consultants for a factoring analysis. (3-16-04)

05. Approval. After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division of Human Resources shall have final approval of the Hay evaluation points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

086. APPLICATIONS.

01. Form. All applications must be filed in the form approved by the administrator. (5-8-09)

02. Filing of Applications. Applications are currently accepted by internet application system, ~~mail, personal delivery, electronic mail and FAX to the Division of Human Resources. An application will also be considered timely if any state employment office or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources, and ensures that it is delivered to the Division of Human Resources by close of the next business day.~~ (3-16-04)()

03. Application by Military Personnel. An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

04. Application by Disabled Veterans. A disabled veteran may file an application at any time up until a selection for any classification for which the Division of Human Resources maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

05. Promotion of Entrance Probationary Employee. Any classified employee on entrance probation may ~~not~~ file an application for a promotion ~~at opportunity and be placed on a register but may not be appointed~~ until permanent status has been attained. (Ref. Rule Subsection 169.03.) (3-16-04)()

06. Disclosure of Information for Hiring Purposes. By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 74-106, Idaho Code). (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

089. ~~LOCATION OF EXAMINATIONS. (RESERVED)~~
~~To enhance recruiting efforts, agencies may request examinations be held in specific areas of the state, by approved proctors outside the state of Idaho, or via electronic communications.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

120. LIMITED SERVICE APPOINTMENTS.

01. Designation. Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. (3-16-04)

02. Permanent Status and Expedited Layoff. Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Paragraph 140.01.c. of these rules. (5-8-09)

03. Limited Service Agreement. Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be ~~submitted to the administrator~~ kept by the appointing authority. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

122. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

01. Hours Limitation. Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment (Ref. Section 67-5302(33), Idaho Code.) ()

02. Transition to Classified Service. ~~An applicant who is hired as a temporary employee from a hiring list created from a certified register, and serves at least one thousand forty (1,040) hours of continuous service, may be hired by the employing agency into that position in classified service as an entrance probationary employee without further examination. The announcement for the temporary position from which the certified register was created must~~ Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further examination if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (Ref. Section 67-5302(33), Idaho Code) (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

151. SATISFACTORY SERVICE.

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. The appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division of Human Resources a performance evaluation ~~indicating satisfactory performance and shall certify the employee to permanent status. Such e~~ Certification to permanent status shall be effective one thousand forty (1,040) hours of credited state service after appointment, except that it shall be effective two thousand eighty (2080) hours of credited state service after appointment for peace officer classifications unless either period has been extended pursuant to Rule 150.03. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (3-30-01)()

152. SEPARATION DURING PROBATION.

01. Notification. If a probationary employee does not serve satisfactorily, the appointing authority must, ~~no later than thirty (30) calendar days after the expiration of the probationary period,~~ provide the employee and the Division of Human Resources a performance evaluation indicating unsatisfactory performance in order to process the failure to complete probation separation within thirty (30) days after the expiration of the probationary period. (Ref. Section 67-5309(j), Idaho Code and Rule Subsection 210.04) (5-8-09)()

02. During Entrance and Voluntary Probation. (3-30-01)

a. An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (Ref. Section 67-5309(j), Idaho Code, and Subsection 210.04) (5-8-09)

b. Notice to the employee of termination for unsatisfactory service must be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. (3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions are appealable in accordance with Section 201 of these rules. (5-8-09)

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. (5-8-09)

02. Establishment of Agency Problem-Solving and Due Process Procedures. Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Section 200 of these rules. (5-8-09)

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. (5-8-09)

04. Elements of the Problem-Solving Procedure. The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or

representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code; Rule Section 152). ~~(5-8-09)~~()

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and must require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (5-8-09)

06. Elements of Due Process Procedure. An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than ten (10) working days after the employee has received notice, unless both the employee and agency agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agencies's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and agency agree otherwise in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code; Rule Sections 150 through 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. (5-8-09)

07. Notification. A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, provisional or entrance probationary status in the agency concerned. (5-8-09)

08. Assistance to Agencies. The administrator will assist agencies whenever requested in the development or revision of their agency problem-solving and due process procedures. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

b. Any employee may at all reasonable times during business hours review his service record maintained in the Division of Human Resources or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. ()

a. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (4-7-11)

#b. All performance evaluation documents must be *copied provided* by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. (3-20-14)()

(BREAK IN CONTINUITY OF SECTIONS)

241. WORKERS COMPENSATION OR DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee will be given the choice of either: (5-8-09)

a. Leave of absence without pay while receiving workers compensation; or (5-8-09)

b. Utilizing a portion of accrued sick *or other paid* leave to supplement workers compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (5-8-09)()

02. Layoff After Twelve Weeks' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule Subsection 101.01) Conditional releases will be considered in accordance with the Americans with Disabilities Act. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and must establish reasonable justification for approval. (5-8-09)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, ~~earned administrative leave~~ or compensatory time off for overtime before commencing leave without pay. (Ref. Section 240) (5-8-09)()

d. Resignation. If vacation leave, ~~earned administrative leave~~ and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (5-8-09)()

02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Subsection 240.07 of these rules. (5-8-09)

03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (5-8-09)

04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Subsection 124.05 of these rules. The employee will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (5-8-09)

05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: (5-8-09)

- a. Vacation leave; (5-8-09)
- b. Sick leave; (5-8-09)
- c. Special leave situations; (3-20-14)
- d. Compensatory time off for overtime worked; and (3-20-14)
- e. Administrative leave. (3-20-14)

06. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (5-8-09)

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (5-8-09)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (5-8-09)

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or

representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (5-8-09)

e. Notification. An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. (3-20-14)

07. Religious Leave. Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (5-8-09)

08. Leave During Facility Closure or Inaccessibility. (7-1-93)

a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees are authorized administrative leave to cover their scheduled hours of work during the closure or inaccessibility. (3-20-14)

b. Early release. When the appointing authority or designated representative authorizes early release of employees, the resulting time off will be charged to administrative leave. (3-20-14)

09. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (5-8-09)

10. Employee Assistance Program Leave. ~~Up to two (2) hours per visit will be granted for utilization of Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program.~~ (5-8-09) ()

11. Bone Marrow and Organ Donor Leave With Pay. (5-8-09)

a. Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (5-8-09)

b. Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (5-8-09)

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION**

15.06.01 - RULES GOVERNING THE IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION

DOCKET NO. 15-0601-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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 31-4816(9), Idaho Code.

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

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 100-102](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Craig Logan at (208) 258-6526.

DATED this 26th day of August, 2016.

Craig Logan
Idaho 9-1-1 Program Manager
Idaho Emergency Communications Commission
Idaho Military Division
4040 W. Guard St., Bldg. 616, Rm. 10
Boise, ID 83705-5005
Phone: (208) 258-6526
Fax: (208) 422-5993

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION**

**15.06.02 - RULES GOVERNING THE IDAHO PUBLIC SAFETY
COMMUNICATIONS COMMISSION GRANTS**

DOCKET NO. 15-0602-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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 31-4816(9), Idaho Code.

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

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 103-106](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Craig Logan at (208) 258-6526.

DATED this 26th day of August, 2016.

Craig Logan
Idaho 9-1-1 Program Manager
Idaho Emergency Communications Commission
Idaho Military Division
4040 W. Guard St., Bldg. 616, Rm. 10
Boise, ID 83705-5005
Phone: (208) 258-6526
Fax: (208) 422-5993

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION**

**15.06.02 - RULES GOVERNING THE IDAHO PUBLIC SAFETY
COMMUNICATIONS COMMISSION GRANTS**

DOCKET NO. 15-0602-1602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 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 31-4816(9), Idaho Code.

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

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 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8, pages 107-109](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Craig Logan at (208) 258-6526.

DATED this 26th day of August, 2016.

Craig Logan
Idaho 9-1-1 Program Manager
Idaho Emergency Communications Commission
Idaho Military Division
4040 W. Guard St., Bldg. 616, Rm. 10
Boise, ID 83705-5005
Phone: (208) 258-6526
Fax: (208) 422-5993

**IDAPA 15 - OFFICE OF THE GOVERNOR
MILITARY DIVISION - OFFICE OF EMERGENCY MANAGEMENT**

15.06.06 - RULES GOVERNING USE OF DISASTER EMERGENCY ACCOUNT FUNDS

DOCKET NO. 15-0606-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 46-1027, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Office of Emergency Management is responsible for managing the disaster emergency account. In the past, there has been some confusion as to what events and circumstances may qualify for funding from this account. In an effort to curb this confusion, the Office of Emergency Management would like to draft rules to specify what qualifies for fund use. These new rules outline what qualifies for disaster emergency fund use during a declared disaster.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Volume 16-8, page 110](#).

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 Brad Richy at (208) 422-3035.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 1st day of September, 2016.

Brad Richy
Director, Office of Emergency Management
Idaho Military Division
700 S. Stratford Dr., Bldg. 600
Meridian, ID 83642
Phone: (208) 422-3035
Fax: (208) 288-2605

THE FOLLOWING IS THE NEW PROPOSED TEXT OF DOCKET NO. 15-0606-1601
(Only Those Sections With Amendments Are Shown.)

IDAPA 15
TITLE 06
CHAPTER 06

MILITARY DIVISION - OFFICE OF EMERGENCY MANAGEMENT

15.06.06 - Rules Governing Use Of Disaster Emergency Account Funds

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the authority of Section 46-1027, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is IDAPA 15.06.06, "Rules Governing Use of Disaster Emergency Account Funds." ()

02. Scope. The scope of this chapter is to govern the expenditure of funds from the Disaster Emergency Account. ()

002. WRITTEN INTERPRETATIONS (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Division may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. Any such documents are available for public inspection and copying at the Division office. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. ()

004. INCORPORATION BY REFERENCE.

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

005. OFFICE, OFFICE HOURS, MAILING ADDRESS, TELEPHONE NUMBERS (RULE 5).

The office of the Idaho Military Division-Office of Emergency Management is located at 4040 Guard St., Bldg. 600 Boise, Idaho 83705-5004. Office hours are weekdays, 8:00 a.m. to 4:30 p.m., excluding holidays. The telephone number is (208) 422-3040. The twenty four (24) hour emergency notification number is (800) 632-8000 or (208) 846-7610. ()

006. PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Division office. ()

007. – 009. (RESERVED).

010. DEFINITIONS

01. Mitigation. Projects funded under the authority of the Stafford Act aimed at reducing the loss of life and property that might occur during a disaster by taking calculated measures to lessen the impact of future disasters. ()

02. Recovery. Actions taken to return a disaster-affected area to a normal or safer condition following the declaration of a state of disaster emergency. ()

011. – 099. (RESERVED).

100. STATE DISASTER EMERGENCY ACCOUNT.

01. Availability. In accordance with Section 46-1005A(1), Idaho Code, non-federal share contributions from the state disaster emergency account shall only be available to a public entity included in a state disaster declaration. ()

02. Mitigation. State disaster emergency account funds used for mitigation shall be limited to projects that are directly tied to recovery from the disaster. A project is not directly tied to the recovery from the disaster unless the need for the project directly arose from the event(s) which led to the disaster declaration. ()

03. Cost Share. In accordance with Section 46-1008(6), Idaho Code, when assistance is available, non-state recipients shall be required to pay up to forty percent (40%) of the non-federal cost share incurred by the non-state recipient. For the purpose of this section, non-state recipient means a recipient that is not the state of Idaho. ()

101. – 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.01 - RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

DOCKET NO. 16-0201-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 56-1024 through 56-1030, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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 TSE Council is revising the TSE Standards Manual with non-substantive changes that will better meet the needs for designation levels of trauma, stroke, and STEMI facilities who voluntarily apply for a TSE designation. These rules update the incorporated document to the revised "TSE Standards Manual," Edition 2017-1, that will become effective July 1, 2017 along with these rules.

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

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

This rulemaking has no anticipated fiscal impact to state general funds or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department deemed it was not feasible. The content to the proposed rule updates the current Time Sensitive Emergency System Standards Manual, Edition 2016-1, in the rules. Extensive input is received from stakeholders at the monthly TSE Council meetings with agendas and minutes posted to the TSE website.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the "Time Sensitive Emergency System Standards Manual," Edition 2017-1, is being incorporated to give it the force and effect of law. The current incorporated document is being updated from Edition 2016-1 to the revised Edition 2017-1.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Christian Surjan, at (208) 334-6564.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
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Phone: (208) 334-5500 / Fax: (208) 334-6558
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0201-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The Time Sensitive Emergency System Standards Manual, Edition 201~~6~~⁷-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at www.tse.idaho.gov or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249.
~~(3-24-16)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.02 - RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES
(EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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: N/A

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

There is no anticipated fiscal impact to the state general fund 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 throughout the year and at the quarterly meetings of the EMS Physician Commission.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2017-1, 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. Once the docket has been finalized and adopted, the manual will be available online at: www.emspc.dhw.idaho.gov.

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 26, 2016.

DATED this 30th day of August, 2016.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0202-1601
(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~~6~~⁷-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at www.emspc.dhw.idaho.gov 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. ~~(7-1-16)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 56-203A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

This rule amends when the Department will report a non-custodial parent for non-payment of child support to a consumer reporting agency. The current reporting requirement is when the arrears are in excess of \$500. This proposed rule will require reporting when the accrued arrears exceed three months of child support that is due.

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

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

There is no anticipated fiscal impact to the State General Fund or to any other funds for this rule change. The child support automated system is currently able to comply with this reporting change. 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 July 6, 2016, Idaho Administrative Bulletin, [Vol. 16-7, page 61](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kandace Yearsley at (208) 334-0620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0303-1601
(Only Those Sections With Amendments Are Shown.)

603. CONSUMER REPORTING AGENCIES.

01. **Consumer Reporting Agency.** Any person who for monetary fees, dues or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (7-1-98)

02. **Reports.** Reports are made to consumer reporting agencies ~~once~~ when the balance of the arrears accrued ~~in excess of five hundred dollars (\$500)~~ exceed three (3) months of child support payments that are due. Notice will be provided to the non-custodial parent prior to the report being made available to the agencies and ~~shall~~ will inform the non-custodial parent of the methods available for contesting the accuracy of the information. (7-1-98)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 removing language in rule that requires rule citations be included as part of the customer notices. This change will allow the Department to improve its business process when communicating with customers. The rules are also being amended to align the 36-month fixed time limitation for the Able Bodied Adult Without Dependents (ABAWD) program requirements.

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

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

There 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 Department determined it was not feasible since changes being made are to align with federal guidance.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kristin Matthews at (208) 334-5553.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0304-1601
(Only Those Sections With Amendments Are Shown.)

251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.

To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in a fixed thirty-six (36) month period. ~~The initial thirty-six (36) month period began December 1, 1996. The thirty-six (36) month period restarts the first day of December every third year thereafter.~~ (5-8-09)()

01. Work at Least Eighty Hours per Month. The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (5-3-03)

- a. Work in exchange for money. (3-15-02)
- b. Work in exchange for goods or services, known as “in-kind” work. (3-15-02)
- c. Unpaid work, with a public or private non-profit agency. (3-15-02)

02. Participate in JSAP or Another Work Program. The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for at least eighty (80) hours per month. (3-15-02)

03. Combination of Work and Work Programs. The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

04. Participate in Work Opportunities. The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

05. Residents of High Unemployment Areas. ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to his plan. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

630. ADEQUATE NOTICE.

Adequate notice is a written statement telling the household the action the Department is taking. The notice must tell the reasons for the action ~~and the rules supporting the action.~~ The notice must advise the household of the right to a hearing. All notices must be adequate. If Food Stamps are reduced, the household must receive the notice on or before the first day of the month the action is effective. If Food Stamps are ended, the household must receive the notice on or before the first day of the month the action is effective. (7-1-99)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

These rules are being amended to: clarify the primary method of determining countable self-employment income that aligns with social security rules; clarify what establishes disability criteria for residents in a nursing home who receive Medicaid; and remove the interest rate criteria for irrevocable annuities.

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

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

There is no anticipated fiscal impact for this rulemaking. The rules are clarifying current practices for long term care and are intended to be cost neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department determined these changes clarify current practices for a federal program that are not negotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact 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 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0305-1601
(Only Those Sections With Amendments Are Shown)

402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.

Allowable operating expenses subtracted from self-employment income are listed in Subsections 402.01 through 402.167 of this rule. ~~(3-25-16)~~()

01. **Labor.** Labor paid to individuals not in the family. (7-1-99)
02. **Materials.** Materials such as stock, seed and fertilizer. (7-1-99)
03. **Rent.** Rent on business property. (7-1-99)
04. **Interest.** Interest paid to purchase income producing property. (7-1-99)
05. **Insurance.** Insurance paid for business property. (7-1-99)
06. **Taxes.** Taxes on income producing property. (7-1-99)
07. **Business Transportation.** Business transportation as defined by the IRS. (7-1-99)
08. **Maintenance.** Landscape and grounds maintenance. (7-1-99)
09. **Lodging.** Lodging for business related travel. (7-1-99)
10. **Meals.** Meals for business related travel. (7-1-99)
11. **Use of Home.** Costs of partial use of home for business. (7-1-99)
12. **Legal.** Business related legal fees. (7-1-99)
13. **Shipping.** Business related shipping costs. (7-1-99)
14. **Uniforms.** Business related uniforms. (7-1-99)
15. **Utilities.** Utilities for business property. (7-1-99)
16. **Advertising.** Business related advertising. (7-1-99)
17. **Depreciation.** Depreciation for equipment, machinery, or other capital investments. ()

403. SELF-EMPLOYMENT EXPENSES NOT ALLOWED.

Self-employment expenses not allowed are listed in Subsections 403.01 through 403.098. ~~(7-1-99)~~()

01. **Payments on the Principal of Real Estate.** Payments on the principal of real estate mortgages on income-producing property. (7-1-99)
02. **Purchase of Capital Assets or Durable Goods.** Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items. (7-1-99)
03. **Taxes.** Federal, state, and local income taxes. (7-1-99)

- 04.** **Savings.** Monies set aside for future use such as retirement or work related expenses. (7-1-99)
- ~~**05.** **Depreciation.** *Depreciation for equipment, machinery, or other capital investments.* (7-1-99)~~
- ~~**065.** **Labor Paid to Family Member.** Labor paid to any family member. (7-1-99)~~
- ~~**076.** **Loss of Farm Income.** Loss of farm income subtracted from other income. (7-1-99)~~
- ~~**087.** **Personal Transportation.** Personal transportation. (7-1-99)~~
- ~~**098.** **Net Losses.** Net losses from previous periods. (7-1-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

720. LONG-TERM CARE RESIDENT AND MEDICAID.

A resident of a long-term care facility must meet the AABD eligibility criteria to be eligible for Medicaid. A long-term care facility is a nursing facility or an intermediate care facility for persons with intellectual disabilities. The need for long-term care is determined using IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)

01. Resources of Resident. The resident's resource limit is two thousand dollars (\$2,000). Resources of a married person in long-term care are computed using Federal Spousal Impoverishment rules. Under the SSI method, spouses can use the three thousand dollar (\$3,000) couple resource limit if more advantageous. The couple must have lived in the nursing home, in the same room, for six (6) months. (3-20-04)

02. Medicaid Income Limit of Long-Term Care Resident Thirty Days or More. The monthly income limit for a long-term care facility resident is three (3) times the Federal SSI benefit for a single person. To qualify for this income limit the participant must be, or be likely to remain, in long-term care at least thirty (30) consecutive days. (3-20-04)

03. Medicaid Income Limit of Long-Term Care Resident Less Than Thirty Days. The monthly income limit, for the resident of a long-term care facility for less than thirty (30) consecutive days, is the AABD income limit for the participant's living situation before long-term care. Living situations before long-term care do not include hospital stays. (7-1-99)

04. Income Not Counted. The income listed in Subsections 720.04.a. through 720.04.e. of these rules is not counted to compute Medicaid eligibility for a long-term care facility resident. This income is counted in determining participation in the cost of long-term care. (4-2-08)

- a.** Income excluded or disregarded, in determining eligibility for AABD cash, is not counted. (3-20-04)
- b.** The September 1972 RSDI increase is not counted. (3-20-04)
- c.** Any VA Aid and Attendance allowance, including any increment which is the result of a VA Unusual Medical Expense allowance, is not counted. These allowances are not counted for patient liability, unless the veteran lives in a state operated veterans' home. (3-20-04)
- d.** RSDI benefit increases, from cost-of-living adjustments (COLA) after April 1977, are not counted if they made the participant lose SSI or AABD cash. The COLA increases after SSI or AABD cash stopped are not counted. (3-20-04)
- e.** Income paid into an income trust exempt from counting for Medicaid eligibility under Subsection 872.02 of these rules is used for patient liability. Income paid to the trust and not used for patient liability, is subject to the asset transfer penalty. (3-20-04)

05. Medicaid Participant Residing in a Skilled Nursing Facility. When a Medicaid participant who is a resident of a skilled nursing facility and meets that level of care as evidenced by the PASARR defined in IDAPA 16.03.10. "Medicaid Enhanced Plan Benefits" Section 227, the resident is determined to be disabled for the duration of his residency in the skilled nursing facility. ()

(BREAK IN CONTINUITY OF SECTIONS)

838. ANNUITY AS ASSET TRANSFER.

Except as provided in this rule, when assets are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption, the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for Medicaid or avoid recovery from the estate following death. Proof is met if the participant shows the annuity meets the requirements described in Subsections 838.02 through 838.05 of this rule. (4-2-08)

01. Revocable Annuity. A revocable annuity is an annuity that can be assigned. The surrender amount of a revocable annuity is a countable resource. (4-2-08)

02. Irrevocable Annuity. The purchase price of an irrevocable, non-assignable annuity is treated as an asset transfer, unless the requirements of Subsections ~~838.02.a, 838.02.b,~~ 838.03 and 838.04~~5~~ of this rule are met. (~~4-2-08~~)()

#03. Irrevocable Annuity Life Expectancy Test. The participant's life expectancy, as shown in the following table, must equal or exceed the term of the annuity. Using the Table 838.02-~~a~~-3 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 838.02- a -3 - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74

68	13.61	16.85
69	13.00	16.14
70	12.41	15.44
71	11.82	14.75
72	11.24	14.06
73	10.67	13.40

88	4.26	5.34
89	3.98	4.97
90	3.73	4.63
95	2.71	3.26
100	2.05	2.39
110	1.14	1.22

(3-30-07)()

~~b.~~ ~~Annual Interest Test.~~ Any annuity is presumed to produce interest, at minimum, that is equal to the treasury rate. (4-2-08)

~~034.~~ **State Named as Beneficiary.** The purchase of an annuity is treated as an asset transfer unless the State of Idaho, Medicaid Estate Recovery is named as: (3-30-07)

a. The remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual under this title; or (4-2-08)

b. The remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value. (3-30-07)

~~045.~~ **Equal Payment Test.** The annuity must provide for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. (3-30-07)

~~056.~~ **Permitted Annuity.** The purchase of an annuity is not treated as an asset transfer if the annuity meets any of the descriptions in Sections 408(b), or 408(q), Internal Revenue Code; or is purchased with proceeds from an account or trust described in Sections 408(a), 408(c), or 408(p), Internal Revenue Code, or is a simplified employee pension as described in Section 408(k), Internal Revenue Code, or is a Roth IRA described in Section 408A, Internal Revenue Code. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.08 - RULES GOVERNING THE TEMPORARY ASSISTANCE
FOR FAMILIES IN IDAHO (TAFI) PROGRAM**

DOCKET NO. 16-0308-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code and 45 CFR Parts 260 - 265.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 amending the TAFI rules to clarify definitions for parents, step-parents, and caretaker relatives. These rules also modify additional components in other sections of rules that pertain to the changes made to those definitions.

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

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

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. 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 1, 2016, Idaho Administrative Bulletin, [Vol. 16-6, page 34](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sarah Buenrostro 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 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0308-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. **Agency Error.** A benefit error caused by the Department's action or failure to act. (7-1-12)
02. **Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
03. **Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
04. **Caretaker Relative.** An adult who is a specified relative, other than parents, who has an eligible related child residing with them and who are is responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt/great aunt, uncle/great uncle, grandparent/great grandparent, nephew, niece, cousin, any one (1) of these relationships by half-blood, a step-sibling, or a spouse of a relative by marriage, even if the marriage has ended. (~~5-8-09~~)()
05. **Claim Determination.** The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. (7-1-12)
06. **Department.** The Idaho Department of Health and Welfare. (7-1-98)
07. **Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)
08. **Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
09. **Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
10. **Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
11. **Household.** A unit of eligible individuals that includes parents ~~and step-parents~~, or may include caretaker relatives who have an eligible child residing with them. (~~7-1-12~~)()
12. **Inadvertent Household Error (IHE).** A benefit error caused unintentionally by the household. (7-1-12)
13. **Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
14. **Parent.** The mother/~~step-mother~~ or father/~~step-father~~ of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (~~7-1-98~~)()

15. **Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
16. **Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
17. **Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
18. **Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
19. **Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)
- ~~20. **Step Parent.** An individual in the TAFI household who is married to the parent of an eligible child when there are no children in common. (7-1-12)~~

(BREAK IN CONTINUITY OF SECTIONS)

125. MANDATORY TAFI HOUSEHOLD MEMBERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.04 of this rule. (7-1-12)

01. **Children.** Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school ~~or the equivalent level of vocational or technical training~~ full time. Children must reside with a parent or caretaker relative who exercises care and control of them. A dependent child's ~~natural or adoptive~~ brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. ~~(5-8-09)~~()
02. **Parents.** Parents, as defined in Section 010 of these rules, who have an eligible ~~natural or adopted~~ child residing with them. ~~(7-1-98)~~()
03. **Pregnant Woman.** A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)
- ~~04. **Step Parents.** Individuals who are married to the parent of a dependent child. (7-1-12)~~
- ~~054. **Spouses.** Anyone related by marriage to another mandatory household member. (7-1-12)~~

126. BUDGETING FOR CARETAKER RELATIVES.

Individuals who may be eligible are listed in Subsections 126.01 and 126.0~~2~~3 of this rule. ~~(5-8-09)~~()

01. **Relatives.** Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the ~~following~~ specified caretaker relatives: ~~brother, sister, aunt, uncle, nephew, niece, first cousin, or first cousin once removed; one (1) of these relationships prefixed by "grand" or "great"; one (1) of these relationships by half blood; a stepparent, step sibling, or the spouse of a relative by marriage, even if the marriage has ended~~ defined in Section 010 of these rules. ~~(5-8-09)~~()
02. **Caretaker Relative Applying Only for Relative Child.** When a caretaker relative applies only for a relative child, only the child's income is counted. ()
- ~~023. **Multiple Children.** When multiple children are included in the family unit and any child receives Social Security Income, that income is not counted in the determination of the grant amount. (5-8-09)~~

(BREAK IN CONTINUITY OF SECTIONS)

233. -- ~~2379.~~ (RESERVED)

~~238. CHILD LIVING WITH PARENT AND STEPPARENT.~~

~~When a child lives with a parent and a stepparent, fifty percent (50%) of the stepparent's earned and unearned income, minus child support paid is unearned income to the family. This calculation does not apply to families consisting of two (2) stepparents who have no children in common. Ineligibility due to citizenship or felony status of the stepparent does not affect this calculation. (7-1-98)~~

~~239. CARETAKER RELATIVE APPLYING ONLY FOR RELATIVE CHILD.~~

~~When a caretaker relative applies only for a relative child, only the child's income is counted. (5-8-09)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 440.70.

PUBLIC HEARING SCHEDULE: The public hearings concerning this rulemaking will be held as follows:

Monday, October 17, 2016 2:30 pm (Local)	Tuesday, October 18, 2016 11:30 am (Local)	Wednesday, October 19, 2016 9:00 am (Local)
Medicaid Reg. VII Office 150 Shoup Avenue Large Conf. Rm., 2nd Floor Idaho Falls, ID	Medicaid Reg. I Office 1120 Ironwood Drive, Ste. 102 Coeur d'Alene, ID	Medicaid Central Office 3232 W. Elder Street Conf. Rm. D - West/East Boise, ID
TELECONFERENCE CALL-IN		

Toll Free: 1-877-820-7831 -- Participant Code: 701700

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:

These rule changes serve to better ensure program integrity, to increase quality of care, and to align the chapter with recent changes regarding home health services and durable medical equipment (DME) in federal regulations.

These rule changes will:

1. Clarify requirements for physician orders for home health services and DME;
2. Add a requirement for a documented face-to-face encounter prior to delivery of services or equipment and supplies for home health services and DME providers;
3. Clarify the non-physician practitioners who may conduct face-to-face encounters; and
4. Clarify that home health services and DME cannot be restricted to services provided in the home, and that they may be provided in any setting in which normal life activities take place.

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

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible as these changes bring the rules into alignment with federal regulations and preserve federal participation dollars for these programs.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the edition of the CMS/Medicare Durable Medical Equipment Coverage Manual incorporated by reference in this chapter is being updated from 2007 edition to the 2016 edition along with the URL to the most current edition.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Westbrook at (208) 364-1960.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (3-30-07)

~~01. 42 CFR Part 447. 42 CFR Part 447, "Payment for Services," revised as of October 1, 2001, is available from CMS, 7500 Security Blvd, Baltimore, M.D., 21244-1850 or on the Code of Federal Regulations internet site at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfr/browse/Title42/42cfr447_main_02.tpl. (3-30-07)~~

~~02. American Academy of Pediatrics (AAP) Periodicity Schedule. This document is available on the internet at https://www.aap.org/en-us/Documents/periodicity_schedule.pdf. The schedule is also available at the Division of Medicaid, 3232 Elder Street, Boise, ID 83705. (3-30-07)~~

031. American Speech-Language-Hearing Association (ASHA): Medicaid Guidance for Speech-Language Pathology Services. The American Speech-Language-Hearing Association (2004) Medicaid Guidance for Speech-Language Pathology Services: Addressing the "Under the Direction of" Rule technical report is available on the internet at: <http://www.asha.org/policy/ps2004-00098.htm>. The report may also be obtained at the ASHA National Office, 2200 Research Boulevard, Rockville, MD 20850-3289, telephone (301) 296-5700. (3-29-10)

~~04. CDC Child and Teen BMI Calculator. The Centers for Disease Control (CDC) Child and Teen Body Mass Index (BMI) Calculator is available on the internet at <http://www.cdc.gov/nccdphp/dnpa/bmi/index.htm>. The Calculator is also available through the Division of Medicaid, 3232 Elder Street, Boise, ID 83705. (3-30-07)~~

052. DSM-5. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5) Arlington, VA, American Psychiatric Association, 2013. A copy of the manual is available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (3-20-14)

~~063.~~ **Estimated Useful Lives of Depreciable Hospital Assets, 2004 Revised Edition, Guidelines Lives.** This document may be obtained from American Hospital Publishing, Inc., 211 East Chicago Avenue, Chicago, IL, 60611. (3-30-07)

~~07.~~ **Idaho Infant Toddler Program Implementation Manual (Revised September 1999).** The full text of the "Idaho Infant Toddler Program Implementation Manual," revised September 1999, is available at <http://www.infanttoddler.idaho.gov>. (7-1-13)

~~08.~~ **Idaho Special Education Manual, September 2001.** The full text of the "Idaho Special Education Manual, September 2001" is available on the Internet at [http://www.sde.idaho.gov/sped/shared/2016 Special Education Manual.pdf](http://www.sde.idaho.gov/sped/shared/2016%20Special%20Education%20Manual.pdf). A copy is also available at the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, Idaho 83720-0027. (3-30-07)

~~094.~~ **Medicare Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) Jurisdiction D Supplier Manual 2007-16, As Amended (CMS/Medicare DME Coverage Manual).** Since the supplier manual is amended on a quarterly basis by CMS, the current year's manual is being incorporated by reference, as amended, to allow for the incorporation of the most recent amendments to the manual. The full text of the Medicare CMS/Medicare DME MAC Jurisdiction D Supplier Coverage Manual is available via the Internet at <https://med.noridianmedicare.com/web/jddme/education/supplier-manual>. (3-30-07)()

~~10.~~ **Physician's Current Procedural Terminology (CPT® Manual).** This document may be obtained from the American Medical Association, P.O. Box 10950, Chicago, Illinois 60610, or online at <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/cpt.page>. (3-30-07)

~~105.~~ **Provider Reimbursement Manual (PRM).** The Provider Reimbursement Manual (PRM), Part I and Part II (CMS Publication 15-1 and 15-2), is available on the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals.html>. (3-30-07)

~~1206.~~ **SIB-R Comprehensive Manual.** Scales of Independent Behavior - Revised Comprehensive Manual, 1996, Riverside Publishing Co, 425 Spring Lake Drive, Itasca, IL 60143-2079. A copy is available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702. (3-30-07)

~~1307.~~ **Travel Policies and Procedures of the Idaho State Board of Examiners.** The text of "Idaho State Travel Policies and Procedures of the Idaho State Board of Examiners," Appendices A and B, June 13, 2000, is available at the Office of the State Controller, 700 W. State St., 5th Fl., Box 83720, Boise, Idaho 83720-0011 or on the Internet at <http://www.sco.idaho.gov>. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS: A THROUGH H. For the purposes of these rules, the following terms are used as defined below: (3-30-07)

01. AABD. Aid to the Aged, Blind, and Disabled. (3-30-07)

02. Abortion. The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. (3-30-07)

03. Amortization. The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-30-07)

04. Ambulatory Surgical Center (ASC). Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department

- of Health and Human Services as an ASC. (3-30-07)
- 05. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-30-07)
- 06. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-30-07)
- 07. Audit Reports.** (3-30-07)
- a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-30-07)
- b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-30-07)
- c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-30-07)
- 08. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-30-07)
- 09. Basic Plan.** The medical assistance benefits included under this chapter of rules. (3-30-07)
- 10. Buy-In Coverage.** The amount the State pays for Part B of Title XVIII of the Social Security Act on behalf of the participant. (3-30-07)
- 11. Certified Registered Nurse Anesthetist (CRNA).** A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (3-30-07)
- 12. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-30-07)
- 13. CFR.** Code of Federal Regulations. (3-30-07)
- 14. Clinical Nurse Specialist (CNS).** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07) ()
- 15. CMS.** Centers for Medicare and Medicaid Services. (3-30-07)
- 16. CMS/Medicare DME Coverage Manual. Medicare Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) Jurisdiction D Supplier Manual.** ()
- 167. Co-Payment.** The amount a participant is required to pay to the provider for specified services. (3-30-07)
- 178. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-30-07)
- 189. Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt as described in

Chapter 3, Sections 310 and 312, PRM. (3-30-07)

~~1920.~~ **Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-30-07)

~~201.~~ **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

~~212.~~ **Dual Eligibles.** Medicaid participants who are also eligible for Medicare. (3-30-07)

~~223.~~ **Durable Medical Equipment (DME).** Equipment ~~other than prosthetics or orthotics that can withstand repeated use by one (1) or more individuals, is~~ and appliances that: ()

~~a.~~ Are primarily and customarily used to serve a medical purpose;~~is;~~ ()

~~b.~~ Are generally not useful to ~~an~~ person individual in the absence of ~~a~~ disability, illness, or injury,~~is~~ appropriate for use in the home, and is; ()

~~c.~~ Can withstand repeated use; ()

~~d.~~ Can be reusable or removable; ()

~~e.~~ Are suitable for use in any setting in which normal life activities take place; and ()

~~f.~~ Are reasonable and medically necessary for the treatment of ~~a~~ disability, illness, or injury for a Medicaid participant. ~~(5-8-09)~~()

~~234.~~ **Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-30-07)

~~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. (3-30-07)

~~b.~~ Serious impairment to bodily functions. (3-30-07)

~~c.~~ Serious dysfunction of any bodily organ or part. (3-30-07)

~~245.~~ **EPSDT.** Early and Periodic Screening, Diagnosis, and Treatment. (3-30-07)

~~256.~~ **Facility.** Facility refers to a hospital, nursing facility, or intermediate care facility for people with intellectual disabilities. (3-30-07)

~~267.~~ **Federally Qualified Health Center (FQHC).** An entity that meets the requirements of 42 U.S.C Section 1395x(aa)(4). The FQHC may be located in either a rural or urban area designated as a shortage area or in an area that has a medically underserved population. (3-30-07)

~~278.~~ **Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-30-07)

~~289.~~ **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 that requires ownership transfer to an existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-30-07)

~~2930.~~ **Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-30-07)

- 301. Home Health Services.** Services and items that are: ()
- a.** ~~Ordered~~ by a physician ~~and~~ as part of a home health plan of care: ()
 - b.** ~~Performed~~ by a licensed ~~nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, "Rules for Home Health Agencies."~~ qualified professional: (3-30-07)()
 - c.** Typically received by a Medicaid participant at the participant's place of residence; and ()
 - d.** Reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant. ()
- 312. Hospital.** A hospital as defined in Section 39-1301, Idaho Code. (3-30-07)
- 323. Hospital-Based Facility.** A nursing facility that is owned, managed, or operated by, or is otherwise a part of a licensed hospital. (3-30-07)
- 011. DEFINITIONS: I THROUGH O.**
For the purposes of these rules, the following terms are used as defined below: (3-30-07)
- 01. ICF/ID.** Intermediate Care Facility for People with Intellectual Disabilities. An ICF/ID is an entity licensed as an ICF/ID and federally certified to provide care to Medicaid and Medicare participants with developmental disabilities. (3-30-07)
- 02. Idaho Behavioral Health Plan (IBHP).** The Idaho Behavioral Health Plan is a prepaid ambulatory health plan (PAHP) that provides outpatient behavioral health coverage for Medicaid-eligible children and adults. Outpatient behavioral health services include mental health and substance use disorder treatment as well as case management services. The coordination and provision of behavioral health services as authorized through the IBHP contract are provided to qualified, enrolled participants by a statewide network of professionally licensed and certified behavioral health providers. (3-20-14)
- 03. Idaho Infant Toddler Program.** The Idaho Infant Toddler Program serves children from birth up to three (3) years of age (36 months), and must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. (7-1-13)
- a.** These requirements for the Idaho Infant Toddler Program include: (7-1-13)
 - i. Adherence to procedural safeguards and time lines; (7-1-13)
 - ii. Use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs); (7-1-13)
 - iii. Provision of early intervention services in the natural environment; (7-1-13)
 - iv. Transition planning; and (7-1-13)
 - v. Program enrollment and reporting requirements. (7-1-13)
 - b.** The Idaho Infant Toddler Program may provide the following services for Medicaid reimbursement: (7-1-13)
 - i. Occupational therapy; (7-1-13)
 - ii. Physical therapy; (7-1-13)
 - iii. Speech-language pathology; (7-1-13)

- iv. Audiology; and (7-1-13)
- v. Children's developmental disabilities services defined under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (7-1-13)
- 04. In-Patient Hospital Services.** Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (3-30-07)
- 05. Intermediary.** Any organization that administers Title XIX or Title XXI; in this case the Department of Health and Welfare. (3-30-07)
- 06. Intermediate Care Facility Services.** Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatorium. (3-30-07)
- 07. Legal Representative.** A parent with custody of a minor child, one who holds a legally-executed and effective power of attorney for health decisions, or a court-appointed guardian whose powers include the power to make health care decisions. (3-30-07)
- 08. Legend Drug.** A drug that requires, by federal regulation or state rule, the order of a licensed medical practitioner before dispensing or administration to the patient. (3-30-07)
- 09. Level of Care.** The classification in which a participant is placed, based on severity of need for institutional care. (3-30-07)
- 10. Licensed, Qualified Professionals.** Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (3-30-07)
- 11. Lock-In Program.** An administrative sanction, required of a participant found to have misused the services provided by the Medical Assistance Program. The participant is required to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (3-30-07)
- 12. Locum Tenens/Reciprocal Billing.** The practice of a physician to retain a substitute physician when the regular physician is absent for reasons such as illness, pregnancy, vacation, or continuing medical education. The substitute physician is called the "Locum Tenens" physician. Reimbursement to a Locum Tenens physician will be limited to a period of ninety (90) continuous days. Reciprocal billing occurs when a substitute physician covers the regular physician during an absence or on an on-call basis a period of fourteen (14) continuous days or less. (3-30-07)
- 13. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-30-07)
- 14. Medicaid.** Idaho's Medical Assistance Program. (3-30-07)
- 15. Medicaid-Related Ancillary Costs.** For the purpose of these rules, those services considered to be ancillary by Medicare cost reporting principles. Medicaid-related ancillary costs will be determined by apportioning direct and indirect costs associated with each ancillary service to Medicaid participants by dividing Medicaid charges into total charges for that service. The resulting percentage, when multiplied by the ancillary service cost, will be considered Medicaid-related ancillaries. (3-30-07)
- 16. Medical Necessity (Medically Necessary).** A service is medically necessary if: (3-30-07)
- a. It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (3-30-07)
- b. There is no other equally effective course of treatment available or suitable for the participant

requesting the service which is more conservative or substantially less costly. (3-30-07)

c. Medical services must be of a quality that meets professionally-recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (3-30-07)

~~17. Medical Supplies. Items excluding drugs, biologicals, and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. Healthcare-related items that are consumable, disposable, or cannot withstand repeated use by more than one (1) individual, are suitable for use in any setting in which normal life activities take place, and are reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant. (3-30-07)()~~

~~18. Medicare Durable Medical Equipment Medicare Administrative Contractor Jurisdiction D Supplier Manual (CMS/Medicare DME Coverage Manual). A publication that is incorporated by reference in Section 004 of these rules and contains information on DME supplier enrollment, documentation, claim submission, coverage, appeals, and overpayments. ()~~

~~19. Midwife. An individual qualified as one of the following: (3-29-12)~~

a. Licensed Midwife. A person who is licensed by the Idaho Board of Midwifery under Title 54, Chapter 55, Idaho Code, and IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." (3-29-12)

b. Nurse Midwife (NM). An advanced practice professional nurse who is licensed by the Idaho Board of nursing and who meets all the applicable requirements to practice as a nurse midwife under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-29-12)

~~20. Nominal Charges. A public provider's charges are nominal where aggregate charges amount to less than one-half (1/2) of the reasonable cost of the services provided. (3-30-07)~~

~~21. Nonambulatory. Unable to walk without assistance. (3-30-07)~~

~~22. Non-Legend Drug. Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (3-30-07)~~

~~23. Nurse Practitioner (NP). A registered nurse or licensed professional nurse (RN) who meets all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (7-1-13)~~

~~24. Nursing Facility (NF). An institution, or distinct part of an institution, that is primarily engaged in providing skilled nursing care and related services for participants. It is an entity licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare participants. Participants must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. (3-30-07)~~

~~25. Orthotic. Pertaining to or promoting the support of an impaired joint or limb. (3-30-07)~~

~~26. Outpatient Hospital Services. Preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to a patient not in need of inpatient hospital care. (3-30-07)~~

~~27. Out-of-State Care. Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (3-30-07)~~

~~28. Oxygen-Related Equipment. Equipment which is utilized or acquired for the routine~~

administration of oxygen in ~~the home~~ any setting in which normal life activities take place. This includes oxygen tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. ~~(3-20-07)~~()

(BREAK IN CONTINUITY OF SECTIONS)

200. PROVIDER APPLICATION PROCESS.

01. Provider Application. Providers who meet Medicaid enrollment requirements may apply for Idaho Medicaid provider status with the Department. All healthcare providers who are eligible for a National Provider Identifier (NPI) must apply using that identifying number. For providers not eligible for a NPI, the Department will assign a provider number upon approval of the application. (3-20-14)

02. Screening Levels. In accordance with 42 CFR 455.450, the Department will assign risk levels of “limited,” “moderate,” or “high” to defined groups of providers. These assignments and definitions will be published in the provider handbook. (3-20-14)

03. Medicare Enrollment Requirement for Specified Providers. The following providers must enroll as Medicare providers or demonstrate enrollment with another state’s Medicaid agency prior to enrollment or revalidation as an Idaho Medicaid provider. ~~(3-20-14)~~()

a. Any providers classified in the “moderate” or “high” categorical risk level, as defined in the provider handbook. (3-20-14)

b. Any provider type classified as an institutional provider by Medicare. (3-20-14)

04. Disclosure of Information by Providers and Fiscal Agents. All enrolling providers and their fiscal agents must comply with the disclosure requirements as stated in 42 CFR 455, Subpart B, “Disclosure of Information by Providers and Fiscal Agents.” (3-20-14)

05. Denial of Provider Agreement. The Department may deny provider status by refusing a request to enter into a provider agreement, refusing to extend an existing agreement, or refusing to enter into additional agreements with any individual or entity. Reasons for denying provider status include those described in IDAPA 16.05.07, “The Investigation and Enforcement of Fraud, Abuse, and Misconduct,” Section 265. (3-20-14)

06. Mandatory Denial of Provider Agreement. The Department will deny a request for a provider agreement when: (3-20-14)

a. The provider fails to meet the qualifications required by rule or by any applicable licensing board; (3-20-14)

b. The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that was previously found by the Department to have engaged in fraudulent conduct, or abusive conduct related to the Medicaid program, or has demonstrated an inability to comply with the requirements related to the provider status for which application is made, including submitting false claims or violating provisions of any provider agreement; (3-20-14)

c. The provider was a managing employee, or had an ownership interest, as defined in 42 CFR Section 455.101, in any entity that failed to repay the Department for any overpayments, or to repay claims previously found by the Department to have been paid improperly, whether the failure resulted from refusal, bankruptcy, or otherwise, unless prohibited by law; (3-20-14)

d. The provider employs as a managing employee, contracts for any management services, shares any ownership interests, or would be considered a related party to any individual or entity identified in Subsections 200.06.a. through 200.06.c. of this rule. (3-20-14)

- e. The provider fails to comply with any applicable requirement under 42 CFR 455. (3-20-14)
- f. The provider is precluded from enrollment due to a temporary moratorium issued by the Secretary of Health and Human Services in accordance with 42 CFR 455.470. (3-20-14)
- g. The provider is currently suspended from Medicare or Medicaid in any state, or has been terminated from Medicare or Medicaid in any state. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

455. AMBULATORY SURGICAL CENTER SERVICES: PROVIDER REIMBURSEMENT.

01. Payment Methodology. ASC services reimbursement is designed to pay for use of facilities and supplies necessary to safely care for the patient. Such services are reimbursed as follows: (3-30-07)

a. ASC service payments represent reimbursement for the costs of goods and services recognized by the Medicare program as described in 42 CFR, Part 416. Payment levels will be determined by the Department. Any surgical procedure covered by the Department, but which is not covered by Medicare will have a reimbursement rate established by the Department. (3-30-07)

b. ASC services include the following: (3-30-07)

i. Nursing, technician, and related services; (3-30-07)

ii. Use of ASC facilities; (3-30-07)

iii. Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures; (3-30-07)

iv. Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure; (3-30-07)

v. Administration, record-keeping and housekeeping items and services; and (3-30-07)

vi. Materials for anesthesia. (3-30-07)

c. ASC services do not include the following services: (3-30-07)

i. Physician services; (3-30-07)

ii. Laboratory services, x-ray or diagnostic procedures (other than those directly related to the performance of the surgical procedure); (3-30-07)

iii. Prosthetic and orthotic devices; (3-30-07)

iv. Ambulance services; (3-30-07)

v. Durable medical equipment for use in the patient's home typically used in the participant's place of residence, but may be suitable for use in any setting in which normal life activities take place, other than a hospital, nursing facility, or ICF/ID; and ~~(3-30-07)~~()

vi. Any other service not specified in Subsection 455.01.b. of this rule. (3-30-07)

02. Payment for Ambulatory Surgical Center Services. Payment is made at a rate established in

accordance with Section 230 of these rules.

(3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

522. MIDLEVEL PRACTITIONER SERVICES: COVERAGE AND LIMITATIONS.

The Medicaid Program will pay for services provided by certified registered nurse anesthetists (CRNA), nurse practitioners (NP), nurse midwives (NM), clinical nurse specialists (CNS), and physician assistants (PA), as defined in Sections 010, 011, 012 of these rules and in accordance with the provisions found under Sections 523 through 525 of these rules. (3-30-07)()

523. (RESERVED)

524. MIDLEVEL PRACTITIONER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.

01. Identification of Services. The required services must be covered under the legal scope of practice as identified by the appropriate State rules of the CRNA, NP, NM, CNS, or PA. (3-30-07)()

02. Deliverance of Services. The services must be delivered under physician supervision, if required by Idaho Statute. (3-30-07)

525. MIDLEVEL PRACTITIONER SERVICES: PROVIDER REIMBURSEMENT.

01. Billing of Services. Billing for the services must be as provided by the CRNA, NP, NM, CNS, or PA, and not represented as a physician service. (3-30-07)()

02. Payments Made Directly to CRNA. Payments under the fee schedule must be made directly to the CRNA under the individual provider number assigned to the CRNA. Rural hospitals that qualify for a Medicare exception and employ or contract CRNAs may be reimbursed on a reasonable cost basis. (3-30-07)

03. Reimbursement Limits. The Department will reimburse for each service to be delivered by the NP, NM, CNS, or PA as either the billed charge or reimbursement limit established by the Department, whichever is less. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

720. HOME HEALTH SERVICES: DEFINITIONS.

~~Home health services encompass services ordered by the participant's attending physician as a part of a plan of care, that include nursing services, home health aide, physical therapy, occupational therapy, and speech-language pathology services.~~ (4-2-08)

01. Home Health Plan of Care. A written description of home health services to be provided to a participant. ()

02. Home Health Services. Home health services are services and items, including nursing services, home health aide services, physical therapy, occupational therapy, speech-language pathology services, audiology services, and medical supplies, equipment, and appliances that are: ()

a. Ordered by a physician as part of a home health plan of care: ()

b. Performed by a licensed, qualified professional acting within their authorized scope of practice: ()

c. Typically received by a participant at the participant's place of residence, but may be received in ()

any setting in which normal life activities take place, other than a hospital, nursing facility, ICF/ID (unless such services are not otherwise required to be provided by the ICF/ID), or any other setting in which payment is made, or could be made, under Medicaid for inpatient services that include room and board; and ()

d. Reasonable and medically necessary for the treatment of a disability, illness, or injury for a Medicaid participant. ()

03. Place of Residence. For the purposes of home health services, generally any setting in which a participant makes their home, other than a hospital, nursing facility, or ICF/ID. ()

(BREAK IN CONTINUITY OF SECTIONS)

723. HOME HEALTH SERVICES: PROCEDURAL REQUIREMENTS.

01. Physician Orders. ()

a. Home health services must be ordered by a physician. Such orders must include at a minimum, the physician's National Provider Identifier (NPI), the services or items to be provided, the frequency, and, where applicable, the expected duration of time for which the home health services will be needed. ()

b. In the event that home health services are required for extended periods, these services must be reordered as necessary, but at least every sixty (60) days for services and at least annually for medical supplies, equipment, and appliances. ()

02. Face-to-Face Encounter for Home Health Services -- Excluding Medical Supplies, Equipment, and Appliances. ()

a. For the initiation of home health services, excluding medical supplies, equipment, and appliances, the participant's physician must document that a face-to-face encounter that is related to the primary reason the patient requires home health services occurred with the participant no more than ninety (90) days before, or thirty (30) days after, the start of the home health services. Appropriate documentation must indicate the practitioner who conducted the encounter, and the date of the encounter as described in the CMS/Medicare DME coverage manual. ()

b. The face-to-face encounter may occur via telehealth, as defined in Title 54, Chapter 57, Idaho Code. ()

c. The face-to-face encounter may be performed by participant's physician, including an attending acute or post-acute physician, or one (1) of the following non-physician practitioners (NPP): ()

i. A nurse practitioner or clinical nurse specialist working in collaboration with the ordering physician; ()

ii. A nurse midwife; or ()

iii. A physician assistant under the supervision of the ordering physician. ()

d. If the face-to-face encounter is performed by an allowed NPP, the NPP must communicate the clinical findings of that face-to-face encounter to the ordering physician. ()

03. Face-to-Face Encounter for Home Health Medical Supplies, Equipment, and Appliances. ()

a. For the initiation of home health medical supplies, equipment, and appliances, the participant's physician, or a non-physician practitioner as authorized in Subsection 723.03 of this rule, must document that a face-

to-face encounter that is related to the primary reason the patient requires medical supplies, equipment, and appliances, occurred with the participant no more than six (6) months before the start of services. Appropriate documentation must indicate the practitioner who conducted the encounter, and the date of the encounter as described in the CMS/Medicare DME coverage manual. ()

b. The face-to-face encounter may occur via telehealth, as defined in Title 54, Chapter 57, Idaho Code. ()

c. The face-to-face encounter may be performed by participant's physician, including an attending acute or post-acute physician, or one of the following non-physician practitioners (NPP): ()

i. A nurse practitioner or clinical nurse specialist working in collaboration with the ordering physician; or ()

ii. A physician assistant under the supervision of the ordering physician. ()

d. If the face-to-face encounter is performed by an allowed NPP, the NPP must communicate the clinical findings of that face-to-face encounter to the ordering physician. ()

014. Home Health Plan of Care Review. ()

a. All home health services must be provided under a home health plan of care that is established prior to beginning treatment. The home health plan of care must be signed by the licensed, qualified professional who established the plan and must contain the information required under IDAPA 16.03.07, "Rules for Home Health Agencies." ()

b. All home health plans of care must be reviewed by the participant's physician as necessary, but at least every sixty (60) days; ~~and for services, and at least annually for medical supplies, equipment, and appliances.~~ (3-30-07)()

~~02. Review for Necessity. The need for medical supplies and equipment ordered by the participant's physician as required in the care of the participant and suitable for use in the home must be reviewed at least once every sixty (60) days.~~ (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

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. Therapy services provided by a home health agency under a home health plan of care must meet the requirements found in Sections 730 through 739 of these rules, and the requirements found in Sections 720 through 729 of these rules. (7-1-16)()

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. (7-1-16)

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 aides and assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services. (7-1-16)

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 and who do not meet the criteria for a maintenance program. (7-1-16)

b. Services that address developmentally acceptable error patterns. (4-2-08)

c. Services that do not require the skills of a therapy professional. (7-1-16)

d. Massage, work hardening, and conditioning. (4-2-08)

e. Services that are not medically necessary, as defined in Section 011 of these rules. (4-2-08)

f. Duplicate services, as defined under Section 730 of these rules. (4-2-08)

g. 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). (7-1-16)

i. Biofeedback, unless provided to treat urinary incontinence. (7-1-16)

j. Duplicate Services. (7-1-16)

k. Services that are considered to be experimental or investigational. (7-1-16)

l. Vocational Program. (7-1-16)

m. Vision Therapy. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

733. THERAPY SERVICES: PROCEDURAL REQUIREMENTS.

The Department will pay for therapy services rendered by a therapy professional if such services are ordered by a physician, nurse practitioner, or physician assistant as part of a plan of care. (7-1-16)

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 expected duration of time for which the therapy will be needed. If the initial order is to evaluate and treat, but does not specify at least the type of service ordered and the frequency, then: (7-1-16)

i. The therapist may perform a therapy evaluation based on the initial physician order for the evaluation; and (7-1-16)

ii. The therapist must then develop a therapy plan of care based on that evaluation and send the plan to the ordering physician, nurse practitioner, or physician assistant and begin care; and (7-1-16)

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 that includes that information 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. (7-1-16)

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 long-term medical conditions, as documented by physician, nurse practitioner, or physician assistant, must be reordered at least every three hundred sixty-five (365) days. (7-1-16)

c. Therapy services provided under a home health plan of care must comply with the physician order requirements in Section 723 of these rules. ()

02. Level of Supervision. Supervision of physical therapist assistants and occupational therapist assistants by the physical therapist or occupational therapist must be done according to the rules of the applicable licensure board. (7-1-16)

03. Face-to-Face Encounter for Home Health Therapy Services. Therapy services provided under a home health plan of care must comply with the face-to-face encounter requirements in Section 723 of these rules. ()

034. Therapy Plan of Care. All therapy ~~is~~ services must be provided under a therapy plan of care that is established prior to beginning treatment. ()

a. The plan of care must be signed by the person who established the plan. ()

b. The plan of care must be consistent with the therapy evaluation and must contain, at a minimum: (7-1-16)()

a.i. Diagnoses; (7-1-16)

b.ii. Treatment goals that are measurable and pertain to the identified functional impairment(s); and (7-1-16)

c.iii. Type, frequency, and duration of therapy services. (7-1-16)

c. Therapy services provided under a home health plan of care must comply with the home health plan of care requirements in Section 723 of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

751. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PARTICIPANT ELIGIBILITY RESPONSIBILITY.

The participant has a responsibility to reasonably protect and preserve equipment issued to him. Replacement of medical equipment or supplies that are lost, damaged or broken due to participant misuse or abuse are the responsibility of the participant. (3-30-07)()

752. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: COVERAGE AND LIMITATIONS.

The Department will purchase or rent, when medically necessary, reasonable, and cost-effective, durable medical equipment (DME) and medical supplies ~~for participants residing in community settings including those provided by qualified home health providers under home health agency plans of care that meet the requirements found in Sections 720 through 724 of these rules~~ that are suitable for use in any setting in which normal life activities take place. Medical supplies, equipment, and appliances provided by a home health agency under a home health plan of care must meet the requirements found in Sections 750 through 779 of these rules and the requirements found in Sections 720 through 729 of these rules. (3-30-07)()

01. Medical Necessity Criteria -- Equipment and Supplies. Department standards for medical necessity are those national standards set by Centers for Medicare and Medicaid Services (CMS) in the ~~Medicare DME MAC Jurisdiction D Supplier Manual~~ CMS/Medicare DME coverage manual. Exceptions to Medicare

coverage are ~~contained in Section 752 of this chapter of rules. DME/medical supplies will be purchased or rented only if ordered in writing (signed and dated) by a physician as listed in the Medicare DME MAC Jurisdiction D Supplier Manual. Date of delivery is considered the date of service. The following information to support the medical necessity of the item(s) must be included in the physician's order and accompany all requests for prior authorization or be kept on file with the DME provider for items that do not require prior authorization: described in the Idaho Medicaid Provider Handbook available at: www.idmedicaid.com. Items for convenience, comfort, or cosmetic reasons are not covered.~~ (3-30-07)()

~~a. The participant's medical diagnosis including current information on the medical condition which requires the use of the supplies and/or medical equipment; and (3-30-07)~~

~~b. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; and (3-30-07)~~

~~c. For medical equipment, a full description of the equipment needed. All modifications or attachments to basic equipment must be supported; and (3-30-07)~~

~~d. For medical supplies, the type and quantity of supplies necessary must be identified; and (3-30-07)~~

~~e. Documentation of the participant's medical necessity for the item, that meets coverage criteria in the CMS/Medicare DME coverage manual. (3-30-07)~~

~~f. Additional information may be requested by the Department for specific equipment and/or supplies such as, but not limited to, wheelchairs, apnea monitors, oximeters, hospital beds or equipment for which CMS/Medicare has established no coverage criteria. (3-30-07)~~

~~g. Items for convenience, comfort or cosmetic reasons are not covered. (3-30-07)~~

02. Prior Authorization -- Equipment and Supplies. ()

~~a. Unless otherwise specified by the Department in the provider handbook, durable medical equipment and medical supplies require prior authorization by the Department. ()~~

~~b. Each request for prior authorization must include all medical necessity documentation required under Section 753 of these rules. ()~~

~~c. The Medicaid fee schedule that identifies medical supplies, equipment, and appliances commonly ordered for Medicaid participants, is not a comprehensive list of all medical supplies, equipment, and appliances available to Medicaid participants. If a participant requires an item that is not listed on the fee schedule, a request may be submitted to the Department to assess items for coverage. This request must include justification of the medical necessity, amount of, and duration for the item or service. ()~~

023. Coverage Conditions -- Equipment. Medical equipment is subject to coverage limitations in the CMS/Medicare DME coverage manual. ~~Additional documentation requirements or coverage beyond those in the CMS/Medicare DME coverage manual include:~~ Exceptions to these coverage conditions and coverage conditions for medically necessary equipment not included in that manual are described in the Idaho Medicaid Provider Handbook available at: www.idmedicaid.com. Exceptions must be established using evidence-based or best clinical practice standards as determined by the Department. (3-30-07)()

~~a. Wheelchairs. The Department will provide the least costly wheelchair that is appropriate to meet the participant's medical needs. Wheelchair rental or purchase requires prior authorization by the Department. (3-30-07)~~

~~i. In addition to the physician's information, each request for purchase of a wheelchair must be accompanied by a written evaluation by a physical therapist or an occupational therapist. The evaluation must include documentation of the appropriateness and cost effectiveness of the specific wheelchair and all modifications~~

~~and/or attachments and its ability to meet the participant's long-term medical needs. For each request for a rental of a wheelchair, a physical therapist or an occupational therapist evaluation may be required on a case-by-case basis, to be determined by the Department; (3-30-07)~~

~~ii. Additional wheelchairs or seating systems may be considered within the five (5) year limitation with written documentation from the physician and a written evaluation from a physical therapist or an occupational therapist indicating the reason the current wheelchair no longer meets the participant's medical needs and cannot be modified to meet the participant's needs. All documentation required for a wheelchair or seating system purchase is required. (3-30-07)~~

~~b. Semi-electric hospital beds must be prior authorized by the Department and will be approved only when the physician documents that the participant meets the criteria set by the CMS/Medicare DME coverage manual and the participant lives in an independent living situation where there is no one available to provide assistance with a manual bed a major portion of the day. (3-30-07)~~

~~e. Communication devices will be considered for purchase by the Department under the following conditions: (3-30-07)~~

~~i. The need for the device must be based on a comprehensive history and physical. (3-30-07)~~

~~ii. The individual must lack the ability to communicate needs with the primary care physician or caregiver. (3-30-07)~~

~~iii. If the individual knows sign language or is capable of learning sign language a communication device would not be considered medically necessary. (3-30-07)~~

~~iv. The assessment and evaluation for the communication device must include comprehensive information as related to the individual's ability to communicate and review of the most cost effective devices to meet the individual's needs. Documentation must include: (3-30-07)~~

~~(1) Demographic and biographic summary; (3-30-07)~~

~~(2) Inventory of skills and sensory function; (3-30-07)~~

~~(3) Inventory of present and anticipated future communication needs; (3-30-07)~~

~~(4) Summary of device options; (3-30-07)~~

~~(5) Recommendation for device; and (3-30-07)~~

~~(6) Copy of individual treatment plan. (3-30-07)~~

~~v. Repairs to the device must be prior authorized and must not include modifications, technological improvements or upgrades. (3-30-07)~~

~~vi. Reimbursable supplies include rechargeable batteries, overlays, and symbols. (3-30-07)~~

~~vii. The use or provision of the system by any individual other than the participant for which the system was authorized is prohibited (3-30-07)~~

~~viii. Training and orientation in the use of the communication device may be billed as speech-language pathology services by Medicaid providers of speech-language pathology services. (4-2-08)~~

~~d. Maternity abdominal supports will be covered if the participant has: (3-30-07)~~

~~i. Vulvular varicosities; (3-30-07)~~

- ~~ii. Perineal edema; (3-30-07)~~
- ~~iii. Lymphedema; (3-30-07)~~
- ~~iv. External prolapse of the uterus or bladder; (3-30-07)~~
- ~~v. Hip separation; (3-30-07)~~
- ~~vi. Pubic symphysis separation; or (3-30-07)~~
- ~~vii. Severe abdominal or back strain. (3-30-07)~~
- ~~e. Apnea monitor when there is one (1) or more documented apneic episodes in the previous two (2) months. (1-2-08)~~

034. ~~Medical Supply Program Requirements~~ Coverage Conditions -- Supplies. ()

a. The Department will purchase no more than a one (1) month supply of necessary medical supplies per ~~calendar~~ month for the treatment or amelioration of a medical condition identified by the attending physician. ~~Limitations for supplies follow the CMS/Medicare DME coverage manual.~~ Supplies in excess of ~~those~~ the limitations in the CMS/Medicare DME coverage manual must be prior authorized by the Department. (3-30-07)()

b. Medical supplies are subject to the coverage limitations in the CMS/Medicare DME coverage manual. Exceptions to these coverage conditions and coverage conditions for medically necessary supplies not included in that manual are described in the Idaho Medicaid Provider Handbook available at: www.idmedicaid.com. Exceptions must be established using evidence-based or best clinical practice standards as determined by the Department. ()

~~a. Each request for prior authorization must include all information required in Subsection 752.01 of this rule. (3-30-07)~~

~~b. Supplies other than those listed below will require prior authorization: (3-30-07)~~

~~i. Catheter supplies including catheters, drainage tubes, collection bags, and other incidental supplies; (3-30-07)~~

~~ii. Cervical collars; (3-30-07)~~

~~iii. Colostomy and/or urostomy supplies; (3-30-07)~~

~~iv. Cotton tip applicators; (3-30-07)~~

~~v. Disposable supplies necessary to operate Department approved medical equipment such as suction catheters, syringes, saline solution, etc.; (3-30-07)~~

~~vi. Dressings and bandages to treat wounds, burns, or provide support to a body part; (3-30-07)~~

~~vii. Fluids for irrigation; (3-30-07)~~

~~viii. Incontinence supplies (See Subsection 752.04.b. of this rule for limitations); (3-30-07)~~

~~ix. Injectable supplies including normal saline and Heparin but excluding all other prescription drug items; (3-30-07)~~

~~x. Blood glucose or urine glucose checking/monitoring materials (tablets, tapes, strips, etc.), lancets; and (3-30-07)~~

- ~~xi. Therapeutic drug-level home-monitoring kits. (3-30-07)~~
- ~~xii. Oral, enteral, or parenteral nutritional products, see Subsection 752.04.a. of this rule additional documentation requirements. (3-30-07)~~

~~**04. Coverage Conditions – Supplies.** Medical supplies are covered when medical necessity criteria per the CMS/Medicare DME coverage manual or the following medical supply items are subject to the following limitations and additional documentation requirements: (3-30-07)~~

~~**a. Nutritional products.** Nutritional products will be purchased for participants who meet the CMS/Medicare DME coverage manual criteria, when the supplement is given by tube feeding or orally to meet caloric needs of the participant who cannot maintain growth, weight, and strength commensurate with his general condition from traditional foods alone. (3-30-07)~~

~~i. A nutritional plan must be developed and be on file with the provider and must include appropriate nutritional history, the participant's current height, weight, age and medical diagnosis. For participants under the age of twenty-one (21), a growth chart including weight/height percentile must be included; (3-30-07)~~

~~ii. The plan must include goals for either weight maintenance and/or weight gain and must outline steps to be taken to decrease the participant's dependence on continuing use of nutritional supplements; (3-30-07)~~

~~iii. Documentation of evaluation and updating of the nutritional plan and assessment by a physician as needed but at least annually. (3-30-07)~~

~~**b. Incontinent supplies.** Incontinent supplies are covered for persons over four (4) years of age only and do not require prior authorization unless the participant needs supplies in excess of the following limitations: (3-30-07)~~

~~i. Diapers are restricted in number to two hundred forty (240) per month. If the physician documents that additional diapers are medically necessary, the Department may authorize additional amounts on an individual basis. (3-30-07)~~

~~ii. Disposable underpads are restricted to one hundred fifty (150) per month. (3-30-07)~~

~~iii. Pullups, for participants between the ages of four (4) and twenty-one (21), are only allowed when the participant is participating in a formal toilet training program written by an Occupational Therapist, Qualified Intellectual Disabilities Professional (QIDP), or Developmental Specialist. Documentation for toilet training program must be updated on a yearly basis. (4-2-08)~~

753. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PROCEDURAL REQUIREMENTS.

~~**01. Medical Equipment Program Requirements Physician Orders.** All claims for durable medical equipment are subject to the following guidelines: (3-30-07)()~~

~~**a.** Unless specified by the Department, durable medical equipment requires prior authorization by the Department. All medical supplies, equipment, and appliances must be ordered by a physician. Such orders must meet the requirements described in the CMS/Medicare DME coverage manual. (3-30-07)()~~

~~**b.** Date of delivery is considered the date of service. ()~~

~~**c.** In the event that medical equipment and supplies are required for extended periods, these must be reordered as necessary, but at least annually, for all participants. ()~~

~~**d.** The following information to support the medical necessity of the item(s) must be included in the physician's order and accompany all requests for prior authorization, or be kept on file with the DME provider for items that do not require prior authorization: ()~~

i. The participant's medical diagnosis, including current information on the medical condition which requires the use of the supplies or medical equipment, or both; ()

ii. An estimate of the time period that the medical equipment or supply item will be necessary and frequency of use. As needed (PRN) orders must include the conditions for use and the expected frequency; ()

iii. For medical equipment, a full description of the equipment needed. All modifications or attachments to the basic equipment must be supported; ()

iv. For medical supplies, the type and quantity of supplies necessary must be identified; and ()

v. Documentation of the participant's medical necessity for the item, that meets coverage criteria in the CMS/Medicare DME coverage manual. ()

vi. Additional information may be requested by the Department for specific equipment or supplies, or both, including equipment for which CMS/Medicare has established no coverage criteria. ()

02. Face-to-Face Encounter for Home Health Medical Supplies, Equipment, and Appliances. Medical supplies, equipment, and appliances provided under a home health plan of care must comply with the face-to-face encounter requirements in Section 723 of these rules. ()

03. Plan of Care Requirements for Home Health Medical Supplies, Equipment, and Appliances. Medical supplies, equipment, and appliances provided under a home health plan of care must comply with the home health plan of care requirements in Section 723 of these rules. ()

04. Prior Authorizations. ()

a. Prior authorization means a written, faxed, or electronic approval from the Department that permits payment or coverage of a medical item or service that is covered only by such authorization. ()

i. Medicaid payment will be denied for the medical item or service or portions thereof which were provided prior to the submission of a valid prior authorization request. ()

ii. The provider may not bill the Medicaid participant for services not reimbursed by Medicaid solely because the authorization was not requested or obtained in a timely manner. An exception may be allowed on a case-by-case basis where, despite diligent efforts on the part of the provider to submit a request, or events beyond the provider's control prevented it. ()

b. An item or service will be deemed prior approved where the individual to whom the service was provided was not eligible for Medicaid at the time the service was provided, but was subsequently found eligible pursuant to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled," and the medical item or service provided is approved by the Department by the same guidance that applies to other prior authorization requests. (3-30-07)()

c. A valid prior authorization request is a written, faxed, or electronic request from a provider of Medicaid for services that contains all information and documentation as required by these rules to justify the medical necessity, amount of and duration for the item or service. (3-30-07)

05. Notification of Changes to Prior Authorization Requirements. The Department will provide sixty (60) days notice of any substantive and significant changes to requirements for prior authorization in its provider handbook. The Department will provide a method to allow providers to provide input and comment on proposed changes. ()

06. Equipment Rental -- Purchase Procedures. Unless specified by the Department, all equipment must be rented except when it would be more cost effective to purchase it. Rentals are subject to the following guidelines: (3-30-07)()

~~ia.~~ Rental payments, including intermittent payments, are to be automatically applied to the purchase of the equipment. (3-30-07)

~~ib.~~ The Department may choose to continue to rent certain equipment without purchasing it. Such items include apnea monitors, ventilators, and other respiratory equipment. (3-30-07)

~~ic.~~ The total monthly rental cost of a DME item must not exceed one-tenth (1/10) of the total purchase price of the item. (3-30-07)

~~e.~~ *For codes that are manually priced, including miscellaneous codes, a copy of the manufacturer's suggested retail pricing (MSRP) or an invoice or quote from the manufacturer is required. Reimbursement will be seventy five percent (75%) of MSRP. If pricing documentation is the invoice, reimbursement will be at cost plus ten percent (10%), plus shipping (if that documentation is provided).* (3-30-07)

~~d.~~ *No reimbursement will be made for the cost of repairs (materials or labor) covered under the manufacturer's warranty. The date of purchase and the warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department:* (3-30-07)

~~i.~~ *A power drive wheelchair must have a minimum one (1) year warranty period;* (3-30-07)

~~ii.~~ *An ultra light or high strength lightweight wheelchair must have a lifetime warranty period on the frame and crossbraces;* (3-30-07)

~~iii.~~ *All other wheelchairs must have a minimum one (1) year warranty period;* (3-30-07)

~~iv.~~ *All electrical components and new or replacement parts must have a minimum six (6) month warranty period;* (3-30-07)

~~v.~~ *All other DME not specified above must have a minimum one (1) year warranty period;* (3-30-07)

~~vi.~~ *If the manufacturer denies the warranty due to user misuse/abuse, that information must be forwarded to the Department at the time of the request for repair or replacement;* (3-30-07)

~~vii.~~ *The monthly rental payment must include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment are the responsibility of the provider.* (3-30-07)

~~e.~~ *Covered equipment must meet the definition of durable medical equipment and be medically necessary as defined in Section 011 of these rules. All equipment must be prior authorized by the Department except for the following:* (3-30-07)

~~i.~~ *Bilirubin lights (require prior authorization after fourteen (14) days);* (3-30-07)

~~ii.~~ *Commode chairs and toilet seat extenders;* (3-30-07)

~~iii.~~ *Crutches and canes;* (3-30-07)

~~iv.~~ *Electric or hydraulic patient lift devices designed to transfer a person to and from bed to wheelchair or bathtub, but excluding lift chairs, devices attached to motor vehicles, and wall mounted chairs which lift persons up and down stairs;* (3-30-07)

~~v.~~ *Grab bars for the bathroom adjacent to the toilet and/or bathtub;* (3-30-07)

~~vi.~~ *Hand held showers;* (3-30-07)

~~vii.~~ *Head gear (protective);* (3-30-07)

~~viii.~~ *Hearing aids (see Section 742 of these rules for coverage and limitations);* (3-30-07)

- ~~ix. Home blood glucose monitoring equipment; (3-30-07)~~
- ~~x. Non-implantable intravenous infusion pumps, and/or NG/gastric tube feeding pumps, IV poles/stands, intrathecal administration kits; (3-30-07)~~
- ~~xi. Hand-held nebulizers and manual or electric percussor; (3-30-07)~~
- ~~xii. Medication organizers; (3-30-07)~~
- ~~xiii. Oxygen equipment; (3-30-07)~~
- ~~xiv. Compressors and breathing circuits, humidifiers used with IPPB or oxygen; (3-30-07)~~
- ~~xv. Sliding boards and bath benches/chairs; (3-30-07)~~
- ~~xvi. Suction pumps; (3-30-07)~~
- ~~xvii. Sheep skins, foam or gel pads or alternating pressure pad with pump for the prevention or treatment of decubitus ulcers; (3-30-07)~~
- ~~xviii. Traction equipment; and (3-30-07)~~
- ~~xix. Walkers. (3-30-07)~~

027. Notice of Decision. A Notice of Decision approving or denying a requested item will be issued to the participant by the Department. The participant has twenty-eight (28) days from the date of the denial to request an administrative fair hearing on the decision. Hearings will be conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(3-30-07)~~()

754. (RESERVED)

755. DURABLE MEDICAL EQUIPMENT AND SUPPLIES: PROVIDER REIMBURSEMENT.

01. Items Included in Per Diem Excluded. No payment will be made for any participant's DME or medical supplies that are included in the per diem payment while such an individual is an inpatient in a hospital nursing facility or ICF/ID. (3-30-07)

02. Least Costly Limitation. When multiple features, models or brands of equipment or supplies are available, coverage will be limited to the least costly version that will reasonably and effectively meet the minimum requirements of the individual's medical needs. (3-30-07)

03. Billing Procedures. The Department will provide billing instructions to providers of DME/medical supplies. When prior authorization by the Department is required, the authorization number must be included on the claim form. (3-30-07)

04. Fees and Upper Limits. The Department will reimburse according to Section 230 of these rules. (3-30-07)

05. Date of Service. Unless specifically authorized by the Department the date of services for durable medical equipment and supplies is the date of delivery of the equipment and/or supply(s). The date of service cannot be prior to the vendor receiving all medical necessity documentation (3-30-07)

06. Manually Priced Codes. For codes that are manually priced, including miscellaneous codes, a copy of the manufacturer's suggested retail pricing (MSRP) or an invoice or quote from the manufacturer is required. Reimbursement will be seventy-five percent (75%) of MSRP. If the pricing documentation is the invoice, reimbursement will be at cost plus ten percent (10%), plus shipping, if that documentation is provided. ()

07. Warranties and Cost of Repairs. No reimbursement will be made for the cost of repairs (materials or labor, or both) covered under the manufacturer's warranty. The date of purchase and the warranty period must be kept on file by the DME vendor. The following warranty periods are required to be provided on equipment purchased by the Department: ()

a. A power drive wheelchair must have a minimum one (1) year warranty period; ()

b. An ultra-light or high-strength lightweight wheelchair must have a lifetime warranty period on the frame and crossbraces; ()

c. All other wheelchairs must have a minimum one (1) year warranty period; ()

d. All electrical components and new or replacement parts must have a minimum six (6) month warranty period; ()

e. All other DME not specified in Subsections 755.07.a. through 755.07.d. of this rule must have a minimum one (1) year warranty period; ()

f. If the manufacturer denies the warranty due to user misuse or abuse, or both, that information must be forwarded to the Department at the time of the request for repair or replacement; ()

g. The monthly rental payment must include a full service warranty. All routine maintenance, repairs, and replacement of rental equipment are the responsibility of the provider. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also 42 CFR 447, Sections 500 through 522.

PUBLIC HEARING SCHEDULE: The public hearings concerning this rulemaking will be held as follows:

Monday, October 17, 2016 2:30 pm (Local)	Tuesday, October 18, 2016 11:30 am (Local)	Wednesday, October 19, 2016 9:00 am (Local)
Medicaid Reg. VII Office 150 Shoup Avenue Large Conf. Rm., 2nd Floor Idaho Falls, ID	Medicaid Reg. I Office 1120 Ironwood Drive, Ste. 102 Coeur d'Alene, ID	Medicaid Central Office 3232 W. Elder Street Conf. Rm. D - West/East Boise, ID
TELECONFERENCE CALL-IN		

Toll Free: 1-877-820-7831 -- Participant Code: 701700

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 is one of a few states that have already implemented the actual acquisition cost pricing methodology now required by Centers for Medicare and Medicaid Services (CMS) and has recognized significant savings as a result.

These rule changes clarify the Department's use of the appropriate pricing methodologies to provide reimbursement to pharmacies, reimbursement for physician-administered drugs, and reimbursement to 340B covered entities that already receive discounts from the drug manufacturers. These rule changes also align language and definitions with recent changes to federal regulations under 42 CFR 447.

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

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible as these changes bring the chapter into alignment with federal regulations.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Westbrook at (208) 364-1960.

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

directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1602
(Only Those Sections With Amendments Are Shown.)

665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.

All medications dispensed to Idaho Medicaid participants will be reimbursed based on actual acquisition costs. All medications administered to participants by physicians or other qualified and licensed providers must be reimbursed based on Medicare rates as directed in Section 56-265, Idaho Code, or if no Medicare rate is available, based on actual acquisition cost. Idaho Medicaid may require providers to supply documentation of their acquisition costs as described in the Medicaid Pharmacy Claims Submission Manual available at: https://idaho.fhsc.com/downloads/providers/IDRx_Pharmacy_Claims_Submission_Manual.pdf. Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program. ()

01. Pharmacy Reimbursement. Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. The following protocol must be followed for proper reimbursement. (4-4-13)()

01a. Filing Claims. ~~Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program.~~ Pharmacists must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (4-4-13)()

02b. Claim Form Review. Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)

03c. Billed Charges. A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

04d. Reimbursement. Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

i. Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the dispensing fee assigned by the Department; (3-30-07)

ii. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned dispensing fee; (3-30-07)

iii. Estimated Acquisition Cost (EAC), defined as the Average Actual Acquisition Cost (AAAC) based on results of the periodic state cost survey as defined in this rule, plus the assigned dispensing fee. In cases where no

AAAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter; or (4-4-13)()

~~iv.~~ The pharmacy's billed charges as defined in Subsection 665.031 of this rule. (4-4-13)()

e. Periodic State Cost Surveys. The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. ()

~~5f.~~ **Dispensing Fee.** Only one (1) dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (4-4-13)

~~i.~~ Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

~~ii.~~ Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)

~~iii.~~ Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

~~iv.~~ When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

~~6g.~~ **Claims Volume Survey for Tier-Based Dispensing Fees.** The Department will survey pharmacy providers to establish a dispensing fee for each provider. The dispensing fees will be paid based on the provider's total annual claims volume. The provider must return the claims volume survey to the Department no later than May 31st each year. Pharmacy providers who do not complete the annual claims volume survey will be assigned the lowest dispensing fee starting on July 1st until the next annual survey is completed. Based upon the annual claims volume of the enrolled pharmacy, the dispensing fee is provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-4-13)

~~7h.~~ **Remittance Advice.** Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic claims transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (3-30-07)

02. 340B Covered Entity Reimbursement. ()

a. Participation as a 340B Covered Entity. Medicaid will reimburse 340B covered entities as defined in Section 340B of the Public Health Service Act, codified under 42 U.S.C. 256b(a)(4), when the provider meets the following requirements: ()

i. A 340B covered entity may receive reimbursement for drugs provided to Idaho Medicaid participants through the 340B drug pricing program if the 340B covered entity submits its unique 340B identification number issued by the Health Resources and Services Administration (HRSA) and a copy of its completed HRSA 340B registration to Idaho Medicaid. ()

ii. A 340B covered entity that elects to provide drugs to Idaho Medicaid participants through the 340B drug pricing program must use 340B covered outpatient drugs for all dispensed or administered drugs, including those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic. A 340B covered entity must ensure that a contract pharmacy does not dispense drugs, or receive Medicaid reimbursement for drugs, acquired by the 340B covered entity through the 340B drug pricing program. ()

iii. A 340B covered entity must provide Idaho Medicaid with thirty (30) days advance written notice of its intent to discontinue the provision of drugs acquired through the 340B drug pricing program to Idaho Medicaid participants. ()

b. Filing Claims. A 340B covered entity must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. The form must include information described in the pharmacy guidelines issued by the Department. ()

c. Claim Form Review. Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. ()

d. Billed Charges. A 340B covered entity's billed charges are not to exceed the entity's actual 340B drug acquisition cost. ()

e. Reimbursement. Reimbursement to 340B covered entities is limited to the actual 340B drug acquisition cost submitted (not to exceed the 340B ceiling price) plus the assigned dispensing fee. ()

f. Dispensing Fee. Only one (1) dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: ()

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; ()

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; ()

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or ()

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. ()

g. Claims Volume Survey for Tier-Based Dispensing Fees. A dispensing fee for each 340B covered entity will be established in accordance with this rule. ()

h. Remittance Advice. Claims are processed by computer, and payments are made directly to the 340B covered entity or its designated bank through electronic claims transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. ()

083. Return of Drugs. Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," ~~Subsection 156-05012~~, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: (3-30-07)()

a. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," ~~Subsection 154-05~~. (3-30-07)()

b. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the dispensing fee. (3-30-07)

c. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

~~**09. Periodic State Cost Surveys.** The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by~~

~~disclosing the costs of all drugs net of any special discounts or allowances. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. (4-4-13)~~

404. Cost Appeal Process. Cost appeals will be determined by the Department's process provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>.
(4-4-13)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.07.19 - BEHAVIORAL HEALTH CERTIFICATION OF PEER SUPPORT
SPECIALISTS AND FAMILY SUPPORT PARTNERS

DOCKET NO. 16-0719-1601 (NEW CHAPTER)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 31, Idaho Code.

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

Friday, October 21, 2016 - 11:00 am (MDT)

Department of Health & Welfare
Central Office
450 W. State Street
3rd Floor Conference Room 3A
Boise, ID

TELECONFERENCE CALL-IN

Toll Free: 1-866-906-9888 -- Participant Code: 5082829

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 Department is proposing this new chapter of rule for certification of peer support specialists and family support partners. This chapter provides for the qualifications and requirements needed to be certified by the Department for Behavioral Health support services. This new chapter includes:

1. Qualifications and Requirements needed for certification;
2. Administration for certification including enforcement and actions for denial, revocation, or suspension; and
3. Required sections needed to meet the Administrative Procedures Act and Rules of the Office of Administrative Rules.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. 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, 1, 2016, Idaho Administrative Bulletin, [Vol. 16-6, pages 45 and 46](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance

on technical questions concerning the proposed rule, contact Treena Clark, (208) 334-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0719-1601

**IDAPA 16
TITLE 07
CHAPTER 19**

**16.07.19 - BEHAVIORAL HEALTH CERTIFICATION OF PEER SUPPORT SPECIALISTS
AND FAMILY SUPPORT PARTNERS**

000. LEGAL AUTHORITY.

Under Title 39, Chapter 31, Idaho Code, the Idaho Legislature has delegated to the Department of Health and Welfare as the state behavioral health authority the establishment, maintenance, and oversight of the state of Idaho's behavioral health services. Section 39-3140, Idaho Code, authorizes the Department to promulgate and enforce rules to carry out the purposes and intent of the Regional Behavioral Health Services Act. Under Sections 56-1003, 56-1004, Idaho Code, the Director of the Department is authorized to adopt and enforce rules to supervise and administer mental health programs. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.07.19, "Behavioral Health Certification of Peer Support Specialists and Family Support Partners." ()

02. Scope. These rules establish the minimum qualifications and requirements for certification of peer support specialists and family support partners in Idaho including enforcement actions. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of these rules, or to the documentation of compliance with these rules. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case

Proceedings and Declaratory Rulings.” ()

004. INCORPORATION BY REFERENCE.

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

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

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

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

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

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

05. Internet Website. The Department's internet website at <http://www.healthandwelfare.idaho.gov>. ()

06. Mental Health Services Website. The Mental Health Services internet website at <http://www.mentalhealth.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.

01. Confidentiality of Records. Records relating to an inquiry into an individual's fitness to be granted or retain a behavioral health certification will be released in compliance with Section 74-106(9), Idaho Code, and IDAPA 16.05.01, "Use and Disclosure of Department Records." These records will otherwise be provided in redacted form as required by law or rule. ()

02. Public Records. The use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." Unless otherwise exempted by state or federal law, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, the following terms apply. ()

01. Behavioral Health Program. A behavioral health program refers to an organization offering mental health or substance use disorders treatment services that includes the organization's facilities, management, staffing patterns, treatment, and related activities. ()

02. Certificate. A certificate issued by the Department to an individual who is a behavioral health peer support specialist or a family support partner who the Department deems to be in compliance with these rules. ()

03. Department. The Idaho Department of Health and Welfare, or its designee. ()

04. Director. The Director of the Department of Health and Welfare, or designee. ()

05. Family Support Partner. An individual who has lived experience raising a child who has a behavioral health disorder diagnosis, has specialized training related to such care, and who has successfully navigated the various systems of care. ()

06. Family Support Partner Services. Family-to-family services are non-clinical support services provided by family support partners who have participated in mental health services, and who have received training in how to share their experiences with others facing similar challenges. ()

07. Lived Experience. Life experiences of an individual who has received behavioral health services or has raised a child who is living with a behavioral health diagnosis and has at least one (1) year of lived experience navigating the behavioral health systems. ()

08. Peer Support Services. Non-clinical services are provided by peer support specialists who are on their own recovery journey, and who have received training in supporting others who are actively involved in their own recovery process. ()

09. Peer Support Specialist. An individual in recovery from mental illness or mental illness with a co-occurring substance use disorder who uses lived experience and specialized training to assist other individuals in recovery. ()

011. -- 099. (RESERVED)

100. APPLICATION FOR CERTIFICATION.

An applicant for any certification by the Department must furnish the following information prior to any certification being issued. ()

01. Completed Application. Each applicant must complete and sign an application for certification on forms approved by the Department. ()

02. Verification of Education, Training, and Experience. Each applicant must provide verification to the Department of the following: ()

a. A copy of his high school diploma, GED certificate, or a Bachelor's degree in a human services field; ()

b. Documentation of successful completion of training required for the certification being sought according to the requirements in Sections 200 and 300 of these rules; and ()

c. A summary of work or volunteer experience, including documentation of supervised hours. ()

03. Code of Ethics Acknowledgment. Each applicant must submit a signed and dated Code of Ethics Acknowledgment. ()

101. -- 109. (RESERVED)

110. TYPES OF CERTIFICATION.

01. Peer Support Specialist. ()

02. Family Support Partner. ()

111. DURATION OF CERTIFICATION.

01. Six-Month Certification. A six (6) month certification applies to an applicant that has completed the requirements in Sections 200 and 300 of these rules for initial certification, but may be lacking work or volunteer experience and supervised hours. ()

02. Full Certification. A full certification applies to an applicant that has completed all requirements in Sections 200 and 300 of these rules for certification, including work or volunteer experience and supervised hours. Full certification is valid for one (1) year. ()

112. RENEWAL OF CERTIFICATION.

01. Submit Renewal Application. Each certified peer support specialist or certified family support partner who is seeking certification renewal must submit a completed renewal application prior to expiration of current certificate. ()

02. Continuing Education. Each certified peer support specialist or certified family support partner must provide documentation of a minimum of ten (10) hours of continuing education as follows: ()

a. Continuing education must be obtained in competency areas listed in training requirements germane to the type of certification being renewed; and ()

b. At least one (1) hour of continuing education for each renewal period must be in ethics. ()

03. Code of Ethics Acknowledgment. Each certified peer support specialist or certified family support partner must submit a signed and dated Code of Ethics Acknowledgment. ()

113. -- 119. (RESERVED)

120. RECIPROCITY.

An applicant for a peer support specialist or a family support partner certificate must be a holder of a current and active license or certificate at the level for which certification is sought, and be in good standing in the profession, and with the other state who is the authorizing regulatory entity for licensure or certification. ()

01. Completed Application. Each applicant must complete and sign an application for reciprocity on forms approved by the Department. ()

02. Provide Verification of Education, Training, and Experience. Each applicant seeking reciprocity must provide the Department with the following: ()

a. Education experience summary; ()

b. Continuing education/training hours received since certification; ()

c. Statement of personal experience; and ()

d. Work or volunteer experience summary form with documentation of supervised hours. ()

03. Code of Ethics Acknowledgment. Each applicant seeking reciprocity must submit a signed and dated Code of Ethics Acknowledgment. ()

04. Documentation From Other State. Documentation of licensure or certification must be received from the other state's issuing regulatory agency. The other state's licensing or certification requirements must be substantially equivalent to, or higher than, those required in this chapter of rules. ()

121. -- 149. (RESERVED)

150. INACTIVE STATUS.

A certified peer specialist or certified family support partner, in good standing, may request an inactive status due to an inability to meet recertification requirements related to a decline in physical, mental health, or extenuating circumstances. ()

01. Request for Inactive Status. An individual who is certified must submit a request in writing to the Department asking for inactive status. ()

02. Inactive Certification Status. The Department may grant inactive status to a certified individual

for up to one (1) year. ()

03. Reactivation of Certification. When the individual desires to reactivate status, a new application and documentation of fulfillment of continuing education requirements for the previous twelve (12) months must be submitted to the Department. ()

151. -- 199. (RESERVED)

200. PEER SUPPORT SPECIALIST -- CERTIFICATION QUALIFICATIONS AND REQUIREMENTS. Each applicant must be at least eighteen (18) years of age and meet the minimum qualifications and requirements listed below to be certified as a Peer Support Specialist in Idaho. ()

01. Educational Requirements. Each applicant for a peer support specialist must have, at a minimum, a high school diploma or GED certificate. ()

02. Training Requirements. Each applicant must complete a minimum of forty (40) hours of training specific to the following Peer Support Specialist competency areas: ()

- a. Overview of mental illness and substance use disorders and their effects on the brain; ()
- b. The stages of recovery and the role peers play within it; ()
- c. The state behavioral health system and the role peers play within it; ()
- d. Advocacy for recovery programs and for the peers they serve; ()
- e. The practice of recovery values: authenticity, self-determination, diversity, and inclusion; ()
- f. How to use your recovery story to help others; ()
- g. Ethics; ()
- h. The identification of risk factors in participants' behaviors and how to respond in and to a crisis; ()
- i. The use of interpersonal and professional communication skills; ()
- j. Effecting change; ()
- k. Work place dynamics and processes; ()
- l. Family dynamics; ()
- m. The effects of trauma and use of a trauma informed approach; ()
- n. Wellness and natural supports; ()
- o. Maintaining one's wellness; ()
- p. Cultural sensitivity; ()
- q. Recovery plans; and ()
- r. Local, state, and national resources. ()

03. Work or Volunteer Experience Requirements. Each applicant must obtain supervised experience providing peer support services. A six (6) month certification may be granted according to Section 111 of these rules

to an applicant who lacks the required experience. ()

a. An applicant who holds a bachelor's degree in a human services field must document one hundred (100) hours of peer support specialist experience. ()

b. An applicant who does not hold a bachelor's degree in a human support services field must document two hundred (200) hours of peer support specialist experience. ()

c. An applicant must document at a minimum twenty (20) hours of supervised work or volunteer experience. ()

04. Supervision Requirements. A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks the required work or volunteer supervision hours required in Subsection 200.03 of this rule. ()

05. Person Self-Identified with Lived Experience. Each applicant must identify as an individual with lived experience in recovery from mental illness or mental illness with a co-occurring substance use disorder. ()

201. -- 249. (RESERVED)

250. PEER SUPPORT SPECIALISTS -- CODE OF ETHICS AND PROFESSIONAL CONDUCT.

01. Peer Support. Peer Support is a helping relationship between mental health clients and Certified Peer Support Specialists. The primary responsibility of Certified Peer Support Specialists is to help those they serve achieve self-directed recovery. They believe that every individual has strengths and the ability to learn and grow. ()

02. Certified Peer Support Specialists. Certified peer support specialists are committed to providing and advocating for effective recovery-based services for the people they serve in order for these individuals to meet their own needs, desires, and goals. ()

03. Certified Peer Support Specialist Professional Conduct. A certified peer support specialist must: ()

a. Seek to role-model recovery; ()

b. Respect the rights and dignity of those they serve; ()

c. Respect the privacy and confidentiality of those they serve; ()

d. Openly share their personal recovery stories with colleagues and those they serve; ()

e. Maintain high standards of personal conduct and conduct themselves in a manner that fosters their own recovery; ()

f. Never intimidate, threaten, or harass those they serve; never use undue influence, physical force, or verbal abuse with those they serve; and never make unwarranted promises of benefits to those they serve; ()

g. Not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of ethnicity, race, gender, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical disability; ()

h. Never engage in sexual/intimate activities with colleagues or those they serve; ()

i. Not accept gifts of significant value from those they serve; ()

j. Not enter into dual relationships or commitments that conflict with the interests of those they serve;

- ()
- k. Not abuse substances under any circumstances while they are employed as a Certified Peer Support Specialist; ()
- l. Work to equalize the power differentials that may occur in the peer support/client relationship; ()
- m. Ensure that all information and documentation provided is true and accurate to the best of their knowledge; ()
- n. Keep current with emerging knowledge relevant to recovery, and openly share this knowledge with their colleagues and those they serve; ()
- o. Remain aware of their skills and limitations, and do not provide services or represent themselves as expert in areas for which they do not have sufficient knowledge or expertise; and ()
- p. Not hold a clinical role nor offer primary treatment for mental health issues, prescribe medicine, act as a legal representative or provide legal advice, participate in the determination of competence, or provide counseling, therapy, social work, drug testing, or diagnosis of symptoms and disorders. ()

04. Ethics Training. A certified peer support specialist must complete ethics training at least once per year, and maintain personal documentation of completed ethics training. ()

05. Comply with Code of Ethics. A certified peer support specialist must understand and comply with these rules and Idaho's Certified Peer Support Specialists Code of Ethics and Professional Conduct. ()

251. -- 299. (RESERVED)

300. FAMILY SUPPORT PARTNER -- CERTIFICATION QUALIFICATIONS AND REQUIREMENTS.

Each applicant must be at least eighteen (18) years of age and meet the minimum qualifications and requirements listed below to be certified as a family support partner in Idaho. ()

01. Educational Requirements. Each applicant for a family support partner must have, at a minimum, a high school diploma or GED certificate. ()

02. Training Requirements. Each applicant must complete a minimum of forty (40) hours of training specific to the following Family Support Partner competency areas: ()

- a. Overview of mental illness and substance use disorders and their effects on the brain; ()
- b. Advocacy skills used in multiple systems (children's behavioral health system, education and special education system, child welfare system, and juvenile court system); ()
- c. Ethics; ()
- d. The awareness of risk factors in participants' behaviors and the ability to access appropriate services; ()
- e. The use of interpersonal and professional communication skills; ()
- f. Effecting change; ()
- g. Empowerment; ()
- h. Parenting special needs children and family dynamics; ()

- i. The recovery process; ()
- j. The effects of trauma and use of a trauma-informed approach; ()
- k. Wellness and natural supports; ()
- l. Family-centered planning; ()
- m. Maintaining one's wellness; ()
- n. Cultural sensitivity; ()
- o. Recovery plans; and ()
- p. Local, state, and national resources. ()

03. Work or Volunteer Experience Requirements. Each applicant must obtain supervised experience providing family support services. A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks required experience. ()

a. An applicant that holds a bachelor's degree in a human services field must document one hundred (100) hours of family support partner experience. ()

b. An applicant that does not hold a bachelor's degree in a human support services field must document two hundred (200) hours of family support partner experience. ()

c. An applicant must document at a minimum twenty (20) hours of supervised work or volunteer experience. ()

04. Supervision Requirements. A six (6) month certification may be granted according to Section 111 of these rules to an applicant who lacks the required work or volunteer supervision hours required in Subsection 300.03 of this rule. ()

05. Person Self-Identified with Lived Experience. Each applicant must identify as an individual with lived experience as a parent or adult caregiver who is raising a child or has raised a child who lives with a mental illness or mental illness with a co-occurring substance use disorder. ()

301. -- 349. (RESERVED)

350. FAMILY SUPPORT PARTNERS -- CODE OF ETHICS.

01. Family Support Principles. These family support principles are intended to serve as a guide relationship for certified family support partners and those who are working toward full certification in their everyday professional conduct that includes various roles, relationships, and levels of responsibilities within their jobs. ()

02. Certified Family Support Partner Integrity. In order to maintain high standards of competency and integrity, a certified family support partner must: ()

a. Apply the principles of resiliency, wellness and recovery, or both, family-driven approach, youth-guided or youth-driven approach, consumer-driven approach, and peer-to-peer mutual-learning principles in every day interactions with family members; ()

b. Promote the family member's ethical decision-making and personal responsibility consistent with that family member's culture, values, and beliefs; ()

c. Promote the family members' voices and the articulation of their values in planning and evaluating

- children's behavioral health related issues; ()
- d.** Teach, mentor, coach, and support family members to articulate goals that reflect each family member's current needs and strengths; ()
 - e.** Demonstrate respect for the cultural-based values of the family members engaged in peer support; ()
 - f.** Communicate information in ways that are both developmentally and culturally appropriate; ()
 - g.** Empower family members I am assisting to be fully informed in preparing to make decisions and understand the implications of these decisions; ()
 - h.** Maintain high standards of professional competence and integrity; ()
 - i.** Abstain from discriminating against or refusing services to anyone on the basis of race, ethnicity, gender, gender identity, religion/spirituality, culture, national origin, age, sexual orientation, marital status, language preference, socioeconomic status, or disability; ()
 - j.** Only assist family members whose concerns are within my competency as determined by my education, training, experience, and on-going supervision or consultation; ()
 - k.** Abstain from establishing or maintaining a relationship for the sole purpose of financial remuneration to me or the agency associated with me; and ()
 - l.** Terminate a relationship when it becomes reasonably clear that the peer relationship is no longer the desire of the family member. ()
- 03. Certified Family Support Partner Safety.** In order to maintain the safety of all family members involved with family support services, a certified family support partner must: ()
- a.** Comply with all laws and regulations applicable to the jurisdiction in which the peer support services are provided, including confidentiality; ()
 - b.** Maintain confidentiality in my personal and professional communication and ensure that family members have authorized my use or release of any and all information about themselves or family members for whom they have legal authority, including verbal statements, writings, or re-release of documents; ()
 - c.** Respect the privacy of the agencies with whom I partner and not distribute internal or draft documents or share private, internal conversations; ()
 - d.** When complying with laws and regulations involving mandatory reporting of harm, abuse, or neglect, make every effort to involve the family members in the planning for services and ensure that no further harm is done to family members as the result of the reporting; ()
 - e.** Discuss and explain to family members the rights, roles, expectations, benefits, and limitations of the peer support process; ()
 - f.** Avoid ambiguity in the relationship with family members and ensure clarity of my role at all times; ()
 - g.** Maintain a positive relationship with family members, refraining from premature or unannounced ceasing of the relationship until a reasonable alternative arrangement is made for continuation of similar peer support services; ()
 - h.** Abstain from engaging in intimate, emotional, or physical relationships with family members

engaged in a peer support relationship; ()

i. Neither offer nor accept gifts, other than token gifts, related to the professional service of peer support, including personal barter services, payment for referrals, or other remunerations; and ()

j. Abstain from engaging in personal financial transactions with family members engaged in a peer support relationship. ()

04. Certified Family Support Partner Professional Responsibility. Through educational activities, supervision and personal commitment, a certified family support partner must: ()

a. Stay informed and up-to-date with regard to the research, policy, and developments in the field of parent/peer support and children's emotional, developmental, behavioral (including substance use), or mental health which relates to my own practice area and children's general health and wellbeing; ()

b. Engage in helping relationships that include skills-building, not exceeding my scope of practice, experience, training, education, or competence; ()

c. Perform or hold myself out as competent to perform only peer services not beyond my education, training, experience, or competence; ()

d. Seek appropriate professional supervision/consultation or assistance for my personal problems or conflicts that may impair or affect work/volunteer performance or judgment; ()

e. File a complaint with the certification body for Family Support Partners when I have reason to believe that another Family Support Partner is, or has been, engaged in conduct that violates the law or these rules. Making a complaint to the certification body for Family Support Partners is an additional requirement, not a substitute for, or alternative to, any duty of filing reports required by statute or regulation; ()

f. Refrain from distorting, misusing, or misrepresenting my experience, knowledge, skills, or research findings; ()

g. Refrain from financially or professionally exploiting a colleague or representing a colleague's work, associated with the provision of peer support or the profession of peer support, as my own; ()

h. In the role of a supervisor/consultant, be responsible for maintaining the quality of my own supervisory/consultation skills and obtaining supervision/consultation for work as a supervisor/consultant; ()

i. In the role of a researcher, be aware of and comply with federal and state laws and regulations, agency regulations, and professional standards governing the conduct of research, including ensuring the participants' complete informed consent for participating or declining to participate in a study; and ()

j. In the role as a volunteer, member, or employee of an organization, give credit to persons for published or unpublished original ideas, take reasonable precautions to ensure that my employer or affiliate organization promotes and advertises materials accurately and factually. ()

05. Ethics Training. A certified family support partner must complete ethics training at least once per year, and maintain personal documentation of completed ethics training. ()

06. Comply with Code of Ethics. A certified family support partner must understand and comply with these rules and Idaho's Certified Family Support Partners Code of Ethics. ()

351. -- 399. (RESERVED)

400. SUPERVISOR FOR PEER SUPPORT SPECIALIST OR FAMILY SUPPORT PARTNER -- QUALIFICATIONS AND REQUIREMENTS.

An individual must meet the following requirements to provide supervision to a peer support specialist or family

support partner. ()

01. Bachelor's Degree or Higher. In order to supervise a peer support specialist or family support partner, an individual must hold a bachelor's degree or higher in a human services field. ()

02. Supervisory Position. An individual must be in a supervisory position and work in that capacity within the agency. ()

401. -- 499. (RESERVED)

500. COMPLAINTS.

A complaint is an informal process to address the concerns of an individual. Any individual may file a written complaint or concern with the Department regarding a peer specialist, family support partner, or a behavioral health program. ()

01. Complaint Content. A complaint must include: ()

a. The full name, mailing address, phone number, and email contact for the person reporting the complaint; ()

b. A description of the nature of the complaint, including the desired outcome. ()

02. Department Response to Complaint. The Department will respond to the complaint within thirty (30) days of receipt of the complaint. This process may include gathering additional information from involved parties, including the complainant. ()

501. -- 509. (RESERVED)

510. GRIEVANCES.

A grievance is a type of complaint about the certification decision that has been made following application to the Department. When an applicant is denied certification, questions the results of the application review process, or is subject to an action that he deems unjustified, the applicant may submit a written grievance to the Department. ()

01. Grievance Content. The grievance must include: ()

a. The full name, mailing address, phone number, and email contact for the person reporting the grievance; and ()

b. A detailed explanation of the decision that is being contested, from the perspective of the complainant, including any steps already taken to resolve the issue. ()

02. Department Response to Grievance. The Department will respond within sixty (60) days of receipt of the grievance. This process may include gathering additional information from involved parties. ()

511. -- 519. (RESERVED)

520. DENIAL, REVOCATION, OR SUSPENSION OF CERTIFICATION.

The Department may deny, suspend, or revoke an individual's application, certification, or recertification as a peer support specialist or family support partner for noncompliance with these rules. ()

521. -- 524. (RESERVED)

525. IMMEDIATE DENIAL, REVOCATION, OR SUSPENSION.

The Department may deny, revoke, or suspend a certification or recertification, without prior notice, when conditions exist that endanger the health and safety of any participant. ()

526. -- 529. (RESERVED)

530. REASONS FOR DENIAL, REVOCATION, OR SUSPENSION.

An individual may have a certification denied, revoked, or suspended for any one (1) of the reasons listed below. ()

01. Failure to Comply. Failure to comply with these rules and the code of ethics described in Sections 250 and 350 of these rules. ()

02. Failure to Provide Information. Failure to provide information requested by the Department. ()

03. Failure to Perform. Inadequate knowledge or performance that is demonstrated by repeated substandard peer or quality assurance reviews. ()

04. Misrepresentation of Information Provided. Misrepresentation by the applicant in an application, or in documents required by the Department for certification. ()

05. Conflict of Interest. Conflict of interest in which a certified individual exploits his position as a Certified Peer Support Specialist or a Certified Family Support Partner for personal benefit. ()

06. Negligent Performance or Fraud. A criminal, civil, or administrative determination that a certified individual has committed fraud or gross negligence in his capacity as a Certified Peer Support Specialist or Certified Family Support Partner. ()

07. Failure to Correct. Failure to correct within thirty (30) days of written notice, any unacceptable conduct, practice, or condition as determined by the Department. ()

531. -- 534. (RESERVED)

535. APPEAL OF DEPARTMENT DECISION.

An applicant or certificate holder may appeal a Department decision to deny, suspend, or revoke a certification according to IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

536. -- 539. (RESERVED)

540. REAPPLICATION FOR CERTIFICATION.

Following a denial, suspension, or revocation of certification or recertification, the same applicant may not reapply for certification for a period of six (6) months after the effective date of the action. ()

541. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, 56-1004A.

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

Monday, October 17, 2016 - 11:00 am (MDT)

**Department of Health & Welfare
Central Office
450 W. State Street
3rd Floor Conference Room 3A
Boise, ID**

TELECONFERENCE CALL-IN

**Toll Free: 1-866-906-9888
Participant Code: 5082829**

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 Department is adopting a new assessment tool in compliance with the Jeff D lawsuit. Language in the eligibility section of this chapter is being revised to allow for implementation of this new tool.

The Department no longer accesses federal child welfare funding for children's mental health services and has adjusted alternate care practices in response to the change in funding. Federal child welfare requirements are no longer applicable and no longer need to be included in the rule.

1. This chapter is being updated to reflect the adoption of the Child and Adolescent Needs and Strengths (CANS) assessment tool as specified in the Jeff D court-approved implementation plan.
2. References to federal child welfare requirements in the Alternate Care sections of the chapter which are no longer applicable are being deleted and the language updated to reflect current practice.
3. Finally, throughout the chapter, "clean-up" changes are being made that make technical or clerical corrections, or minor clarifications of existing language.

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

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

This rulemaking has no fiscal impact to the state general fund or any other funds. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and was deemed not feasible. These proposed rule changes really only effect the Department and were vetted with Department staff from the effected Divisions. However, the new assessment tool was negotiated with representative stakeholders through the Jeff D mediation and implementation planning process.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, is incorporated in this chapter and is being updated from the Fourth Edition, to the Fifth Edition, (DSM-5).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephanie Hoffman at (208) 334-6559.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 30th day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0737-1601
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS.

01. Appeal from a Denial Based on Eligibility Criteria. Administrative appeals from a denial of children's mental health services based on the eligibility criteria under Section ~~4~~107 of these rules are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."

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

02. Appeal of Decision Based on Clinical Judgment. All decisions involving clinical judgment, which may include the category of services, the particular provider of services, or the duration of services, are reserved to the Department, and are not subject to appeal, administratively or otherwise, in accordance with Maresh v. State, 132 Idaho 221, 970 P.2d 14 (Idaho 1999).

(5-8-09)

004. INCORPORATION BY REFERENCE.

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition, ~~Text Revision~~ (DSM-~~IV-TR~~5), Washington, D.C., American Psychiatric Association, ~~2000~~13, is hereby incorporated by reference under this chapter of rules. Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W., Washington, DC, 20005~~ 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702.

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

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules, the following terms apply: (5-8-09)

01. Alternate Care. Temporary living arrangements outside the family home which may include licensed foster care, residential treatment, and other facilities licensed by the state to provide twenty-four (24) hour care for children in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." (5-8-09)

02. Alternate Care Plan. A ~~federally required~~ component of the treatment plan for children in alternate care. The alternate care plan contains elements related to ~~reasonable efforts~~ the justification of the need for Alternate Care Placement, the provision of treatment plan while in Alternate Care Placement, the child's alternate care provider, ~~compelling reasons for not terminating parental rights, Indian status,~~ education, immunization, medical and other information important to the day-to-day care of the child. ~~An alternate care plan is part of the treatment plan for children placed in alternate care.~~ (5-8-09)()

03. Area(s) of Concern. A circumstance or circumstances that brought a child and family to the attention of the Department. (5-8-09)

04. Assessment. The gathering of historical and current clinical information through a clinical interview and from other available resources to identify the child's mental health issues, the child's strengths, the family's strengths, and the service needs. (5-8-09)

05. Behavioral Health. An integrated system for evaluation and treatment of mental health and substance use disorders. ()

~~056.~~ **Case Management.** A change-oriented service provided to families that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)

067. Case Record. Compilation of all electronic and hard copy documentation relating to a child who is receiving or has received children's mental health services including legal documents, identifying information, and assessments. (5-8-09)

~~078.~~ **Child.** An individual who is under the age of eighteen (18) years. (5-8-09)

~~089.~~ **Children's Mental Health Services.** The children's mental health services are listed under Section ~~4100~~ of these rules. These services are provided in response to the mental health needs of children eligible for services under Section ~~4107~~ of these rules and their families in accordance with the provisions of the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. (5-8-09)()

~~0910.~~ **Clinician.** Any of the direct service personnel with a Master's degree working in regional Children's Mental Health programs, including master's level social workers, psychologists, counselors, and family therapists. (5-8-09)

~~101.~~ **Crisis Intervention.** A set of planned activities for a child eligible for services under Section ~~4107~~ of these rules designed to reduce the risk of life-threatening harm to self or another person. (5-8-09)()

12. Crisis Plan. As part of the treatment plan, the individualized crisis plan is developed to prevent a crisis or prepare for a crisis situation and to keep the child and others safe. The crisis plan may include the child's trigger behaviors, preferred strategies for resolving a crisis, interventions to be avoided, and contact information of community resources and natural supports. ()

~~143.~~ **Crisis Response.** A service for a child that involves immediate actions taken to assess risk or intervene in an emergency as defined in Section 16-2403(6), Idaho Code. A determination of eligibility under Section ~~4107~~ of these rules is not required for crisis response. (5-8-09)()

~~124.~~ **Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational, and family interventions provided on a regularly scheduled, typically daily, basis. (5-8-09)

~~135.~~ **Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the State ~~Mental Behavioral~~ Health Authority under Section 39-312~~43~~, Idaho Code. (5-8-09)()

~~146.~~ **Desired Result.** Behaviorally-specific description of the child's and family's circumstances when the factors that brought the child and family to the Department's attention, either no longer exist or are significantly reduced. (5-8-09)

~~157.~~ **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (5-8-09)

~~168.~~ **Emergency.** Emergency, as defined in Section 16-2403(6), Idaho Code, means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home. (5-8-09)

~~179.~~ **Extended Family Member of an Indian Child.** As defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (5-8-09)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.

For the purposes of these rules, the following terms apply: (5-8-09)

~~01.~~ **Face-to-Face Contact.** An interaction between Department staff and another individual. The interaction may occur in-person or by electronic means that includes both audio and visual technology that comply with HIPAA and 42 CFR Part 2. ()

~~042.~~ **Family.** A family is two (2) or more persons related by blood, marriage, or adoption. (5-8-09)

~~023.~~ **Family Support Services.** Assistance provided to a family to assist them in caring for a child eligible for services under Section ~~4107~~ of these rules. The purpose of family support services is to strengthen adults in their role as parents through the provision of services including: assistance with transportation, family counseling services, training, education, and emergency assistance funds in accordance with IDAPA 16.06.13, "Rules Governing Emergency Assistance for Families and Children." Family support services must be on the treatment plan. (5-8-09)()

~~034.~~ **Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found online at <http://aspe.hhs.gov/poverty/>. (5-8-09)

~~045.~~ **Guardian.** (5-8-09)

a. As set forth under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child; or (5-8-09)

b. The Department, an agency, or an individual, other than a parent, who is acting in the place of a parent (in loco parentis) or, has assumed legal responsibility for, legal custody of, or control of a child. (5-8-09)

~~05. **Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty one (21) designed to support a successful transition to adulthood. (5-8-09)~~

06. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 USC 1606. (5-8-09)

07. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (5-8-09)

a. A member of an Indian tribe; or (5-8-09)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (5-8-09)

08. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 USC 1901, et seq. (5-8-09)

09. Indian Child's Tribe. (5-8-09)

a. The Indian tribe in which an Indian child is a member or eligible for membership; or (5-8-09)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (5-8-09)

10. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c). (5-8-09)

11. Inpatient Services. Mental health and medical services provided to a child admitted to a psychiatric hospital. (5-8-09)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms apply: (5-8-09)

01. Licensed. Facilities or programs that are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or hospitals licensed in accordance with IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." (5-8-09)

02. Medicaid. Idaho's Medical Assistance Program administered under Title XIX of the Social Security Act. (5-8-09)

03. Outpatient Services. Mental health services provided to a child who is not admitted to a psychiatric hospital or in a residential treatment setting. (5-8-09)

04. Parent. A person who, by birth or through adoption, is considered legally responsible for a child. The term "guardian" is not included in the definition of parent. (5-8-09)

~~05. **P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (5-8-09)~~

~~06. **P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (5-8-09)~~

~~07. **Reasonable Efforts.** A court determination that the Department offered or provided services to a family intended to assist a child eligible for services under Section 407 of these rules to remain in the family home, return to the family home, or to finalize a permanency plan. (5-8-09)~~

05. Placement Agreement. A standardized, written agreement, signed by the Department and a parent

or guardian, that outlines specific responsibilities of each party regarding the child's placement in alternate care. ()

086. Residential Treatment. A treatment facility licensed as a children's residential care facility that provides twenty-four (24) hour care in a highly-structured setting delivering substitute parental care and mental health services. (5-8-09)

097. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a caregiver different from ~~his~~ the child's usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)()

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

For the purposes of these rules, the following terms apply: (5-8-09)

01. Sliding Fee Scale. A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

02. Teens at Risk. Individuals attending Idaho secondary public schools who have been identified by school personnel or their designee as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance ~~ab~~use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance ~~ab~~use disorder. (5-8-09)()

03. Teen Early Intervention Specialist. A person with a master's degree in social work, psychology, marriage and family therapy, counseling, chemical dependency, addictive studies, psychiatric nursing, or very closely-related field of study contracted to work with teens at risk. (5-8-09)

~~**04. Title IV-E.** Title IV-E under the Social Security Act provides funding for foster care maintenance and adoption assistance payments for certain eligible children.~~ (5-8-09)

054. Title XIX (Medicaid). 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. (5-8-09)

065. Treatment Foster Care. A service that provides clinical intervention for children eligible for services under Section 4107 of these rules within the private homes of trained, licensed foster families. (5-8-09)()

~~**076. Treatment Plan.** *A written and signed agreement between the Department and a parent or guardian that serves as the guide for the provision of services.* The individualized treatment plan contains describes the child's strengths and needs, short and long-term treatment goals, areas of concern, desired results outcomes, and task responsibilities, including payment for services the roles, strategies, resources, and timeframes for coordinated implementation of services and supports. The plan; is developed with the child, when possible, and the child's parent or guardian clearly identifies who does what, when, and how. The treatment plan includes a crisis plan and plans for transitioning out of services or to adult services. The treatment plan also includes the alternate care plan, if the child is in alternate care. (5-8-09)()~~

~~**08. Voluntary Placement Agreement.** *A standardized written agreement signed by a parent or guardian and the Department that outlines specific responsibilities of each party and authorizes the Department to place a child in alternate care.* (5-8-09)~~

097. Wraparound. Wraparound is a planning process that brings together a team of professionals and citizens working together to support children eligible for services under Section 4107 of these rules and their families. Members of the team include the child, family members, representatives of public and private agencies, civic groups, and other community members. The services and supports focus on the strengths of the child and family, are provided in the local community, and are customized to fit the individual culture of the family. (5-8-09)()

014. -- 099. (RESERVED)

~~GENERAL PROVISIONS FOR CHILDREN RECEIVING
MENTAL HEALTH SERVICES AND THEIR FAMILIES
(Sections 100—399)~~

~~100. GENERAL REQUIREMENTS FOR CHILDREN AND FAMILIES.~~

~~01. Reasonable Efforts. The Department must document services offered or provided to a family to assist a child eligible for services under Section 407 of these rules to remain in the family home, return to the family home, or finalize a permanency plan. The court will make the determination of whether or not the Department's efforts were reasonable. (5-8-09)~~

~~02. Least Restrictive Setting. Whenever possible, the Department will arrange placement: (5-8-09)~~

~~a. In the least restrictive setting available that will meet the child's mental health treatment needs; and (5-8-09)~~

~~b. That is in close proximity to the parent or guardian. (5-8-09)~~

~~c. If the placement does not meet the requirements of Subsections 100.02.a. and 100.02.b. of this rule, the Department will provide written justification to the child's parent or guardian that the placement is in the best interests of the child. (5-8-09)~~

~~03. Visitation for Child's Parent or Guardian. Visitation arrangements will be documented in the alternate care plan. (5-8-09)~~

~~04. Notification of Change in Placement. (5-8-09)~~

~~a. The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. (5-8-09)~~

~~b. If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. (5-8-09)~~

~~101. TREATMENT PLAN DEVELOPMENT.~~

~~01. Development of Treatment Plan. A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for Children's Mental Health services. The parent or guardian will be given the opportunity to participate in the development of the treatment plan and to sign it. If the services are court ordered and the parent or guardian refuses to sign the plan, the reason for their refusal will be documented on the plan. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case. (5-8-09)~~

~~02. Annual Development of Treatment Plan. The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it. (5-8-09)~~

~~03. One Hundred Twenty Day Review. Treatment plans are to be reviewed with the family at least once~~

~~every one hundred twenty (120) days. (5-8-09)~~

~~04. **Goals and Tasks.** Treatment plans must include a long-term goal that identifies specific behavior changes, has measurable desired results, and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)~~

~~102.—104. (RESERVED)~~

~~105. **CASE RECORDS.**~~

~~01. **Electronic and Physical Files.** The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards and assessment information which originates outside the Department. (5-8-09)~~

~~02. **Storage of Records.** All physical case records must be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed. (5-8-09)~~

~~a. **Exception for Adoption Records.** Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. (5-8-09)~~

~~b. **Exception for Case Records Involving an Indian Child.** A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. (5-8-09)~~

~~106.—399. (RESERVED)~~

CHILDREN'S MENTAL HEALTH SERVICES
(Sections ~~4100-4199~~)

4100. CHILDREN'S MENTAL HEALTH SERVICES.

The Department is the lead agency in establishing and coordinating community supports, services, and treatment for children eligible for services under Section ~~4107~~ of these rules and their families. The following services, as defined under Sections 010 through 013 of these rules, are provided by or through Children's Mental Health field offices in each region: ~~(5-8-09)()~~

- 01. **Assessment.** (5-8-09)
- 02. **Case Management.** (5-8-09)
- 03. **Crisis Response.** (5-8-09)
- 04. **Day Treatment Services.** (5-8-09)
- 05. **Family Support Services.** (5-8-09)
- ~~06. **Independent Living.** (5-8-09)~~
- ~~07. **Inpatient Services.** (5-8-09)~~
- ~~08. **Outpatient Services.** (5-8-09)~~
- ~~09. **Residential Treatment.** (5-8-09)~~
- ~~10. **Respite Care.** (5-8-09)~~

- 140.** Treatment Foster Care. (5-8-09)
- 121.** Wraparound. (5-8-09)

4101. TEENS AT RISK PROGRAM.

The Teens at Risk program is for individuals attending Idaho secondary public schools who have been identified by school personnel or their designee as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. The Department may enter into contracts for Teens at Risk programs in cooperation with Idaho public school districts subject to Department appropriations and available funding for this program. The Department reserves the right to make the final determination to award a school district a Teens at Risk contract. (5-8-09)

01. Application. School districts may apply to the Department through a competitive application process. The Department will provide written information to the State Department of Education and interested school districts on the amount of funding available, closing date for submission of applications, and information on how to obtain application forms and instructions by July 1 of each year that funding is available. Only applications submitted on the prescribed forms and consistent with Department instructions will be considered for evaluation. (5-8-09)

02. Contracting Process. (5-8-09)

a. A team comprised of at least one (1) Department staff person, a representative from the state Department of Education, a representative from the local school district, and a parent, will evaluate the applications from school districts for contracts for Teens at Risk programs. The evaluation criteria will include the demonstrated need for the program in the school district and the contribution the school district is providing to the program, with a preference for rural school districts. The Department will consider the team recommendations and make the final determination of contracts for Teens at Risk programs. (5-8-09)

b. The number of school districts awarded a Teens at Risk program will depend upon the amount of specific funding appropriated by the legislature for this program. (5-8-09)

c. The Department will enter into a written contract with each school district awarded a Teens at Risk program. The contract will set forth the terms, services, data collecting, funding, and other activities prior to the implementation of the program. (5-8-09)

03. Services. Teen early intervention specialists hired or under contract with the school district will be available to serve teens at risk within the school setting and offer group counseling, recovery support, suicide prevention and other mental health and substance use disorder counseling services as needed. Teens at risk who are not enrolled in public schools may only participate in services if assigned by a judge and with the permission of the local school administrator who administers the Teens at Risk program. Parents of teens participating in the Teens at Risk program will not incur a financial obligation for services provided by the program. (5-8-09)

04. Outcomes. The Department will gather data and evaluate the effectiveness of the Teens at Risk program. In accordance with Section 16-2404A(7), Idaho Code, the Department may contract with state universities or colleges to assist in the identification of appropriate data elements, data collection, and evaluation. Data elements used to evaluate the program may include: (5-8-09)

- a.** Teen arrests, detention, and commitments to state custody; (5-8-09)
- b.** Teen suicide rates; (5-8-09)
- c.** Impacts on juvenile mental health and drug courts; (5-8-09)
- d.** Access to mental health services; and (5-8-09)
- e.** Academic achievement and school disciplinary actions. (5-8-09)

~~4102.~~ -- ~~4104.~~ (RESERVED)

~~4105.~~ ACCESSING CHILDREN'S MENTAL HEALTH SERVICES.

Children's mental health services may be accessed either through an application for services or through a court order for services. An application for services must be signed by a child's parent or guardian. (5-8-09)

~~4106.~~ MENTAL HEALTH ASSESSMENT.

Once an application has been signed or a court order has been received for children's mental health services, the Department will schedule and conduct a mental health assessment. Each mental health assessment will be documented using the Department's Idaho Standard Mental Health Assessment Report at <http://www.healthandwelfare.idaho.gov>. A Department clinician will either complete a mental health assessment, or, at the Department's discretion, accept an assessment completed by another mental health professional. In order to be considered, assessments completed by other mental health professionals must have occurred within ninety (90) days prior to the date of application or court order. The Department clinician will gather additional information, as needed, in order to complete the assessment process. (5-8-09)

~~4107.~~ ELIGIBILITY DETERMINATION.

01. The Department Determines Eligibility for Mental Health Services. The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (4-7-11)

02. Eligibility Requirements. To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

- a. Be under eighteen (18) years of age; (5-8-09)
- b. Reside within the state of Idaho; (5-8-09)
- c. Have a DSM-~~IV-TR~~5 Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and ~~(5-8-09)~~()

d. Have a substantial functional impairment as assessed by using the ~~Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS) Department's approved tool. Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales:~~ (4-7-11)()

- ~~i. Self-harmful behavior;~~ (5-8-09)
- ~~ii. Moods/emotions; or~~ (5-8-09)
- ~~iii. Thinking.~~ (5-8-09)

03. Court-Ordered Assessment, Treatment, and Services. The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. Parents or guardians retain custody of the child. ~~(5-8-09)~~()

04. Ineligible Conditions. A child who does not meet the requirements under Subsections ~~4107.02~~ or ~~4107.03~~ of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental

Disabilities Agencies," for substance use or developmental disability services.

(4-7-11)()

~~4108.~~ -- ~~4109.~~ (RESERVED)

~~4110.~~ NOTICE OF DECISION ON ELIGIBILITY.

01. Notification of Eligibility Determination. The Department will determine the child's eligibility for children's mental health services, in accordance with Section ~~4107~~ of these rules, within thirty (30) calendar days of receipt of a signed application for services. Within five (5) working days of the determination of eligibility, the Department will send written notification to the child's parent or guardian of the eligibility determination. The written notice will include: ~~(5-8-09)~~()

- a. The child's name and identifying information; (5-8-09)
- b. A statement of the decision; (5-8-09)
- c. A concise statement of the reasons for the decision; and (5-8-09)
- d. The process for pursuing an administrative appeal regarding eligibility determinations. (5-8-09)

02. Parental Rights. If the Department determines that an applicant is eligible for children's mental health services through the Department, the Department clinician must inform the child's parent or guardian that they have the right to reject the services offered by the Department, unless imposed by court order. (5-8-09)

03. Other Information that Must be Provided to the Parent. The clinician must also inform the parent that fees may be incurred for certain services, in accordance with IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," and that a parent has financial responsibility for the child. (5-8-09)

04. Reapplication for Mental Health Services. If the Department determines that a child is not eligible for children's mental health services through the Department, the child's parent or guardian may reapply after six (6) months or at any time upon a showing of a substantial, material change in circumstances. (5-8-09)

~~4111.~~ -- ~~4114.~~ (RESERVED)

~~4115.~~ TREATMENT PLAN.

A treatment plan will be developed by the Department, a parent or guardian, and the child, if appropriate, and may include the service provider or service providers. This plan will be specific, measurable, and realistic in the identification of the goal(s), relevant areas of concern, and desired results, ~~and will be developed in accordance with the requirements under Section 101 of these rules.~~ ~~(5-8-09)~~()

01. Development of Treatment Plan. ~~A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for Children's Mental Health services. The parent or guardian must be given the opportunity to participate in the development of the treatment plan and sign it. If the services are court-ordered and the parent or guardian refuses to sign the plan, the refusal must be documented on the plan and the reason for the refusal noted in the record. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case.~~ ()

02. Annual Development of Treatment Plan. ~~The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it.~~ ()

03. One Hundred Twenty Day Review. ~~Treatment plans are to be reviewed with the family at least once every one hundred twenty (120) days.~~ ()

04. Goals and Tasks. ~~Treatment plans must include a long-term goal that identifies specific behavior changes, have measurable desired results, and have specific tasks that identify by whom, how, and when the tasks will be completed.~~ ()

~~4~~**16. OUTCOMES FOR CHILDREN'S MENTAL HEALTH SERVICES.**

Outcomes for children's mental health services are measured through the administration of a satisfaction survey and ~~a~~ the Department-approved standardized functional assessment tool, ~~such as CAFAS or PECFAS.~~ (5-8-09)()

117. CASE RECORDS.

01. Electronic and Physical Files. The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards, and assessment information that originates outside the Department. ()

02. Storage of Records. All physical case records must be stored in a secure file storage area away from public access, and retained not less than five (5) years after the case is closed, after which they may be destroyed. ()

a. Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. ()

b. Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. ()

~~4~~**18. USE OF PUBLIC FUNDS AND BENEFITS.**

Public funds and benefits will be used to provide services for children eligible for services under Section ~~4~~**107** of these rules and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, the Department will arrange services to minimize the need for institutional or alternate care placement. Services will be individually planned with the family to meet the unique needs of each child and family. The Department will not require a parent or guardian to relinquish custody of the child in order to receive Department-funded services. (5-8-09)()

~~4~~**19. FINANCIAL RESPONSIBILITY OF PARENT(S).**

Parent(s) of a child eligible for services under Section ~~4~~**107** of these rules who is receiving outpatient services either directly from the Department or through Department contracts with private providers, are financially responsible for services provided to their child and to their family, including court-ordered children's mental health services. The financial responsibility for each service will be in accordance with the ability of parent(s) to pay as determined under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." Parent(s) will not incur a financial obligation for services provided to their child through a Teens at Risk program. (5-8-09)()

~~4~~**120. SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

The fee charged to parents for outpatient children's mental health services is determined using the sliding fee schedule under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 300. (5-8-09)

~~4~~**121. FEE DETERMINATION FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.**

Prior to the delivery of outpatient services, a "Fee Determination" form must be completed by a child's parent when requesting children's mental health services. The fee determination process includes the considerations found under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 400. (5-8-09)

~~4~~**122. -- 4199. (RESERVED)**

ALTERNATE CARE PLACEMENT
(Sections ~~5~~**200 - 5299**)

~~5~~**200. AUTHORITY FOR ALTERNATE CARE PLACEMENT.**

The Department may place a child into alternate care under either of the following conditions in Subsection ~~5~~**200.01** or ~~5~~**200.02** of this rule: (5-8-09)()

01. Court Order. The Department may place a child into alternate care when the Department has been ordered by the Court to provide alternate care for a child; ~~or. A placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired outcomes, time frames, tasks, and task responsibilities. The placement agreement entered into between the Department and a parent or guardian may be revoked with a twenty-four (24) hour notice by the child's parent or guardian. If notice is given by the parent or guardian, the Department will notify the court.~~ (5-8-09)()

02. Voluntary Placement. The Department may place a child into alternate care with the Department when a parent or guardian is no longer able to maintain a child eligible for services under Section 4107 of these rules in the child's home and the Department determines that the child would benefit from alternate care and treatment services. A treatment plan, alternate care plan, and a ~~voluntary~~ placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired ~~results~~ ~~outcomes~~, time frames, tasks and task responsibilities. ~~The placement agreement entered into between the Department and a parent or guardian may be revoked with a twenty-four (24) hour notice by the child's parent or guardian. If notice is given by the parent or guardian, the Department will notify the court.~~ (5-8-09)()

~~a. A voluntary placement agreement entered into between the Department and a parent or the guardian of a minor child may be revoked at any time by the child's parent or guardian. (5-8-09)~~

~~b. Voluntary alternate care placements exceeding one hundred eighty (180) days, without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. The Department may request the court hold a hearing for the child in accordance with 16-2407(3), Idaho Code. (5-8-09)~~

201. PROTECTIONS FOR CHILDREN IN ALTERNATE CARE.

01. Statutory Requirements. The Department must arrange alternate care in accordance with the protections established in: (5-8-09)

~~a. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980," as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997; (5-8-09)~~

~~b.a. The Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code; (5-8-09)~~

~~b.b. The Child Protective Act, Title 16, Chapter 16, Idaho Code; and (5-8-09)~~

~~b.c. The Indian Child Welfare Act, 25 USC 1901, et seq. (5-8-09)~~

02. Requirement for Licensure. A child that is placed in alternate care must be placed in a licensed foster home, licensed residential care facility, or in a licensed hospital. (5-8-09)

03. Out-of-State Placement. Placement of a child in an alternate care setting outside the state of Idaho requires that the Department comply with the Interstate Compact on the Placement of Children, in accordance with Section 16-2102, Idaho Code. (5-8-09)

04. Least Restrictive Setting. ~~Whenever possible, the Department will arrange placement: ()~~

~~a. In the least restrictive setting available that will meet the child's mental health treatment needs; and ()~~

~~b. That is in close proximity to the parent or guardian. ()~~

~~c. If the placement does not meet the requirements of Subsections 201.04.a. and 201.04.b. of this rule, the Department will provide written justification to the child's parent or guardian by way of the Alternate Care Plan~~

that the placement is in the best interests of the child. ()

05. Visitation for Child's Parent or Guardian. Visitation arrangements will be documented in the alternate care plan. ()

06. Notification to Parents or Guardians of Change in Placement. ()

a. The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. ()

b. If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. ()

§202. (RESERVED)

§203. DATE A CHILD ENTERED ALTERNATE CARE.

A child is considered to have entered alternate care on the date the child is actually placed in an alternate care setting. All alternate care benefits, eligibility determinations, and required reviews are based on the date the child entered alternate care. (5-8-09)

§204. ~~TITLE IV-E AND~~ TITLE XIX ELIGIBILITY.

Children placed in alternate care through the Department are eligible for ~~Title IV-E funding and~~ Title XIX, if they meet the eligibility requirements as defined in IDAPA 16.06.01, "Rules Governing Family and Children's Services." Application for these programs will be made by Department clinicians on the forms and in the manner prescribed by the Department's Division of Family and Community Services. (5-8-09)()

§205. ALTERNATE CARE LICENSURE.

All private homes and facilities in Idaho providing alternate care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed, approved, or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (5-8-09)

§206. ALTERNATE CARE CASE MANAGEMENT.

Case management must continue while the child is in alternate care and must include the following: (5-8-09)

01. Preparation for Placement. Preparing a child for placement in alternate care is the joint responsibility of the child's parent or guardian, the child (when appropriate), the clinician and the alternate care provider. (5-8-09)

02. Information for Alternate Care Provider. The Department and the child's parent or guardian must inform the alternate care provider of the alternate care provider's roles and responsibilities in meeting the needs of the child and provide the following information to the alternate care provider: (5-8-09)

a. Any medical, health, and dental needs of the child including the names and addresses of the child's doctor, dentist, and other health providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (5-8-09)

b. The child's current functioning and behaviors; (5-8-09)

c. The child's history, past experiences, and reasons for placement into alternate care; (5-8-09)

- d. The child's cultural and racial identity; (5-8-09)
- e. Any educational, developmental, or special needs of the child; (5-8-09)
- f. Names and addresses of the child's current or last school attended, including homeschool or alternate school, if applicable; (5-8-09)
- g. The child's interests and talents; (5-8-09)
- h. The child's attachment to current caretakers; (5-8-09)
- i. The individualized and unique needs of the child; (5-8-09)
- j. Procedures to follow in case of emergency; and (5-8-09)
- k. Any additional information that may be required to meet the needs of the child. (5-8-09)

03. Consent for Medical Care. A parent or guardian must sign a Departmental form of consent for medical care and keep the clinician advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the case record. (5-8-09)

04. Financial Arrangements. The clinician Department is responsible for explaining the financial and payment arrangements to the alternate care provider and must complete the documentation required for payment to the alternate care provider. ~~(5-8-09)~~()

05. Contact Requirements. The child's parent or guardian, the clinician, the alternate care provider, and the child, if of appropriate developmental age, must establish a schedule for frequent and regular visits between the child and the family and the clinician or his designee. (5-8-09)

a. Face-to-face contact ~~in the alternate care or treatment setting~~ between the child and the clinician must occur at least monthly. An in-person visit must occur within the first thirty (30) days of placement and then the in-person visits must occur at a minimum of quarterly thereafter. ~~(5-8-09)~~()

b. Face-to-face contact between the child's parent or guardian and the clinician must occur at least monthly. (5-8-09)

c. Face-to-face contact ~~in the alternate care or treatment setting~~ between the alternate care provider and the clinician must occur at least monthly. ~~(5-8-09)~~()

d. Frequent and regular contact between the child, the child's parent or guardian, and other family members will be encouraged and facilitated unless it is specifically determined by the Department not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. (5-8-09)

e. When a child is placed in alternate care in another state, a Department clinician must maintain at least monthly contact with the child, the child's family, and the alternate care provider with whom he has been placed as long as the state of Idaho has the placement responsibility for the child, in accordance with Section ~~5~~200 of these rules. The supervising agency in the state where the child is living will be requested to maintain monthly, face-to-face contact with the child and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. ~~(5-8-09)~~()

06. Transition Planning. Planning for transition from alternate care will be developed with all concerned parties. Transition planning will be initiated at the time of placement and completed prior to the child's return home or to another living arrangement. A written Transition Plan is part of the Alternate Care Plan and the Treatment Plan. As part of transition planning, efforts are coordinated by the Department and the parents or guardians

to expedite access to community and Department services.

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

~~07. Accessing Services. As part of the transition planning, efforts will be coordinated to expedite access to community and Department services.~~ (5-8-09)

~~§207. -- §221. (RESERVED)~~

§222. ALTERNATE CARE PLANNING.

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272. (5-8-09)

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

a. The purpose of the plan is to facilitate the provision of mental health treatment services and the safe return of the child to his or her own home as expeditiously as possible, or to make other permanent arrangements for the child if such return is not feasible. (5-8-09)

b. The alternate care plan must be included as part of the treatment plan. (5-8-09)

02. Written Alternate Care Plan. The Department must have completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care. (5-8-09)

a. A parent or guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (5-8-09)

b. The alternate care plan must include documentation that a parent or guardian has been provided written notification of: (5-8-09)

i. Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (5-8-09)

ii. Any change of placement, when the child is relocated to another alternate care or institutional setting as soon as possible, but no later than seven (7) days after placement; and (5-8-09)

iii. Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. (5-8-09)

c. All parties involved in developing the alternate care plan, including the alternate care provider, parent or guardian, and the child, if of appropriate developmental age: (5-8-09)

i. Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and (5-8-09)

ii. Will receive a copy of the alternate care plan from the Department. (5-8-09)

~~§223. -- §235. (RESERVED)~~

§236. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. (5-8-09)

01. Notice of Parental Responsibility. The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. (5-8-09)

02. Financial Arrangements with Parent(s). Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary

placement agreement. (5-8-09)

a. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. (5-8-09)

b. The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. (5-8-09)

§237. SUPPORT AGREEMENTS AND SUPPORT ORDERS.

01. Support Agreement for Voluntary Placement. If the placement is voluntary, a parent must sign a support agreement that specifies the amount of support to be paid to the Department, when it is to be paid, and the address to which it is to be paid. (5-8-09)

02. Support Order for Payment of Involuntary Placement Costs. In the case of a court-ordered placement, if no support agreement has been reached with a parent prior to the court hearing, the Department may request the Court hold a support hearing to establish a support order for payment of involuntary placement costs. (5-8-09)

§238. -- §239. (RESERVED)

§240. INSURANCE COVERAGE.

The parent or guardian must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health, and dental insurance coverage is available for the child, the parent must acquire and maintain such insurance. (5-8-09)

§241. MEDICAL CARD FOR CHILDREN IN ALTERNATE CARE.

The Department will issue a medical card to cover medical expenses for each child placed in alternate care. (5-8-09)

§242. - §243. (RESERVED)

§244. MEDICAL EMERGENCIES.

In case of serious illness, the alternate care provider must immediately seek medical attention for the child and notify the Department as soon as possible. A parent or guardian, the court in an emergency, or the Department, if it is the guardian of the child, has the authority to consent to major medical care or hospitalization in accordance with Section 39-4504, Idaho Code. (5-8-09)

§245. DENTAL CARE.

Each child age three (3) years or older who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist. (5-8-09)

01. Costs Paid by Medicaid. If dental care not included in the state medical assistance program is recommended, a request for payment will be submitted to the state Medicaid dental consultant. (5-8-09)

02. Emergencies. Emergency dental services will be provided for children in alternate care and paid for by the Department, if there are no other financial resources available. (5-8-09)

§246. COSTS OF PRESCRIPTION DRUGS.

The Department will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacies. (5-8-09)

§247. MEDICAL EXAMINATION UPON ENTERING ALTERNATE CARE.

Within thirty (30) days of entering alternate care, each child will receive a medical examination to assess the child's health status, and thereafter according to a schedule prescribed by the child's physician or other health care professional. (5-8-09)

~~5248.~~ -- ~~5250.~~ (RESERVED)

~~5251.~~ **DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.**

Only a parent or guardian of a child in alternate care may authorize drivers' training, provide payment, and sign for drivers' licenses and permits. (5-8-09)

~~5252.~~ -- ~~5282.~~ (RESERVED)

~~5283.~~ **PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.**

Monthly payments for care provided by family alternate care providers:

Family Alternate Care Payments - Table 5283			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$274 ³²⁹	\$300 ³⁶⁶	\$431 ⁴⁸⁷

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

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. (5-8-09)

02. Clothing. Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (5-8-09)

03. School Fees. School fees due upon enrollment will be paid directly to the school or to the foster parents, based upon the Department's determination of the child's needs. (5-8-09)

~~5284.~~ **ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.**

For those children who, as determined by the Department, require additional care above room, board, shelter, daily supervision, school supplies, and personal incidentals, the Department may pay the family alternate care provider an additional amount to that paid under Section ~~5283~~ of these rules. The family alternate care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Additional payment will be made as follows:

Additional Family Alternate Care Payments - Table 5284		
Lowest Level of Need	Moderate Level of Need	Highest Level of Need
\$90 per month	\$150 per month	\$240 per month

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

01. Lowest Level of Need. Ninety dollars (\$90) per month for a child requiring a mild degree of care for documented conditions including: (5-8-09)

- a. Chronic medical problems; (5-8-09)
- b. Frequent, time-consuming transportation needs; (5-8-09)
- c. Behaviors requiring extra supervision and control; and (5-8-09)
- d. Need for preparation for independent living. (5-8-09)

02. Moderate Level of Need. One hundred fifty dollars (\$150) per month for a child requiring a moderate degree of care for documented conditions including: (5-8-09)

- a. Ongoing major medical problems; (5-8-09)
 - b. Behaviors that require immediate action or control; and (5-8-09)
 - c. Alcohol or other substance use disorder. (5-8-09)
- 03. Highest Level of Need.** Two hundred forty dollars (\$240) per month for a child requiring an extraordinary degree of care for documented conditions including: (5-8-09)
- a. Serious emotional or behavioral disorder that requires continuous supervision; (5-8-09)
 - b. Severe developmental disability; and (5-8-09)
 - c. Severe physical disability such as quadriplegia. (5-8-09)
- 04. Reportable Income.** Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. (5-8-09)

~~5285.~~ -- 599. (RESERVED)

600. TREATMENT FOSTER CARE.

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the child's treatment plan, behavior modification, community supports, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children eligible for services under Section ~~4107~~ of these rules is based on the documented needs of the child, the inability of less restrictive settings to meet the child's needs, and the clinical judgment of the Department. (~~3-29-10~~) ()

- 01. Qualifications.** Prior to being considered for designation and reimbursement as a treatment foster parent, each prospective treatment foster parent must accomplish the following: (3-29-10)
- a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"; (5-8-09)
 - b. Complete Department-approved treatment foster care initial training; and (5-8-09)
 - c. Provide a minimum of two (2) references in addition to those provided to be licensed to provide foster care. The additional references must be from individuals who have worked with the prospective treatment foster parent. The additional references must verify that the prospective treatment foster parent has: (3-29-10)
 - i. Training related to, or experience working with, children or youth with mental illness or behavior disorders; and (3-29-10)
 - ii. Demonstrated cooperation and a positive working relationship with families and providers of mental health services. (3-29-10)
- 02. Continuing Education.** Following designation as a treatment foster home, each treatment foster home parent must complete fourteen (14) hours of additional training per year as specified in an agreement developed between the treatment foster parents and the Department. (3-29-10)
- 03. Availability.** At least one (1) treatment foster parent in each treatment family home must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. (3-29-10)
- 04. Payment.** The Department will pay treatment foster parents up to one thousand eight hundred

(\$1,800) dollars per month per child, which includes the monthly payment rate specified in Sections ~~5283~~ and ~~5284~~ of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department. The purpose of the contract is to make clear that the treatment foster parents must fulfill the requirements for treatment foster parents under the treatment plan referenced in Subsection 600.06 of this rule.

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

05. Payment to Contractors. The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency.

(5-8-09)

06. Treatment Plan. The treatment foster parent(s) must implement the portions of the Department-approved treatment plan for which they are designated as responsible for each child in their care. This plan is incorporated as part of the treatment plan identified in Section ~~1015~~ of these rules.

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

601. -- 699. (RESERVED)

700. RESIDENTIAL CARE FACILITIES.

Residential care facilities provide a more intensive setting than treatment foster care. Residential care facilities in Idaho are licensed under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" to provide residential care for children and staffed by employees who cover assigned shifts. Children placed in residential care facilities receive services that may include the following: assessment, supervision, treatment plan development and implementation, documentation, behaviorally focused skill building, service coordination or clinical case management, consultation, psychotherapy, psychiatric care, and twenty-four (24) hour crisis intervention. Placement into a residential care facility for children eligible for services under Section ~~4107~~ of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs.

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

01. Prior Authorization. Prior authorization must be obtained from an authorized representative in the Department's Division of Behavioral Health for placement of a child in a residential care facility where the Division of Behavioral Health is making full or partial payment.

(5-8-09)

02. Payment. When care is purchased from private providers, payment will be made in accordance with a contract authorized by the Department, based on the needs of each child being placed and the services to be provided.

(5-8-09)

701. -- 799. (RESERVED)

800. SIX-MONTH REVIEWS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.

~~When a judicial A~~ review ~~does not~~ is to occur at the end of a six (6) month period for any child in an alternate care placement. ~~The~~ Department will conduct a case review to assure compliance with all applicable state and federal laws, and to ensure the treatment plan focuses on the goals of safety, permanency, effectiveness of treatment, and well-being of the child. The Department may request the court hold a review hearing for the child in accordance with Section 16-2407(3), Idaho Code.

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

01. Notice of Six-Month Review. The parent or guardian, foster parent of a child, or relative providing care for the child ~~or any preadoptive parent are~~ is to be provided with notice of their right to be heard in the six-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, ~~preadoptive parent,~~ or relative providing care for the child be made a party to the review solely on the basis of the receipt of such notice. Participants have the right to be represented by the individual of their choice.

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

02. Procedure in the Six-Month Review. The parties who received notice will be given the opportunity to participate in the case review.

(5-8-09)

03. Members of Six-Month Review Panel. The six-month review panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent or guardian. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by and

receive instructions from an authorized representative in the Department's Division of Behavioral Health, to enable them to understand the review process and their roles as participants. (5-8-09)

04. Considerations in Six-Month Review. Whether conducted by the court in a review hearing or a Department review panel, under state law, federal law and regulation, each of the following must be addressed in a six-month review: (5-8-09)

- a. Determine the extent of compliance with the treatment plan; (5-8-09)
- b. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-8-09)
- c. Review compliance with the Indian Child Welfare Act, when applicable; (5-8-09)
- d. Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-8-09)
- e. Project a date by which the child may be returned and safely maintained at home or placed for adoption, guardianship, or other permanent placement. (5-8-09)

05. Recommendations and Conclusions of Six-Month Review Panel. Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The document containing the written conclusions and recommendations must also include appeal rights. (5-8-09)

~~801. PERMANENCY HEARINGS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.~~

~~Under Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than twelve (12) months after the date of the child's placement in alternate care and no later than every twelve (12) months thereafter while the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department.~~ (5-8-09)

~~**01. Department Request for Permanency Hearing.** The Department may request the court hold a permanency hearing for a child in accordance with Section 16-2407(3), Idaho Code.~~ (5-8-09)

~~**02. Attendance at Permanency Hearings.** The permanency hearing includes, at a minimum, the child's parent or guardian, foster parent of a child, and any preadoptive parent or relative providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (if there is one), must also be included in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not to be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis of the receipt of such notice.~~ (5-8-09)

~~**03. Judicial Determinations.**~~ (5-8-09)

~~**a.** The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanency plan for the child and issue an order specifying the permanency plan.~~ (5-8-09)

~~**b.** In cases where the Department has documented, in the alternate care plan component of the treatment plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist.~~ (5-8-09)

~~802~~1. -- 999. (RESERVED)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.48 - RULE TO IMPLEMENT THE PRIVACY OF CONSUMER FINANCIAL INFORMATION

DOCKET NO. 18-0148-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2016.

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 Sections 41-211 and 41-1334, Idaho Code.

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

Friday, October 28, 2016 at 10:00 a.m.

**Idaho Department of Insurance
700 W. State Street – 3rd Floor
Boise, ID 83720**

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:

This rulemaking provides language that relieves insurers and producers (licensees of the DOI) from having to send their customers an annual privacy notice where they comply with other requirements concerning any disclosure of personally identifiable financial information, and only in situations where the licensee's practices and policies regarding disclosure have not changed since the last notice sent to their customer. The rulemaking will also benefit consumers by relieving them from receiving duplicative annual notices, because only new or changed notices will be received.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) and 41-1334, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:
It will confer a benefit upon insurers, producers, and consumers.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is brought based on a request from multiple industry groups establishing a consensus of support, is not viewed as controversial, and it confers the benefit for 2016 with a goal of a final rule in 2017 rather than waiting for an additional year in the rulemaking process.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Thomas A. Donovan, at tom.donovan@doi.idaho.gov or (208) 334-4214.

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 5:00PM (MST), Friday, October 28, 2016.

DATED this 25th day of August, 2016

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 18-0148-1601
(Only Those Sections With Amendments Are Shown.)**

150. ANNUAL PRIVACY NOTICE TO CUSTOMERS REQUIRED.

01. General Rule. (5-3-03)

a. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve (12) consecutive-month period, but the licensee shall apply it to the customer on a consistent basis. (5-3-03)

b. Example. A licensee provides a notice annually if it defines the twelve (12) consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year one (1), the licensee shall provide an annual notice to that customer by December 31 of year two (2). (5-3-03)

02. Exceptions: Termination of Customer Relationship and Duplicate Notices. ~~(5-3-03)~~(9-1-16)T

a. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. (5-3-03)

b. Examples: (5-3-03)

i. If the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee. (5-3-03)

ii. If the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive-months, other than to provide annual privacy notices, material required by law or rule, or promotional materials. (5-3-03)

iii. If the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful. (5-3-03)

iv. In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later. (5-3-03)

c. Notwithstanding Subsection 150.01.a, a licensee is not required to provide the annual privacy notice to a current customer if the licensee: (9-1-16)T

i. Provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 450, 451, and 452; and (9-1-16)T

ii. Has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with Section 100 or Section 150. (9-1-16)T

03. Delivery. When a licensee is required by Section 150 to deliver an annual privacy notice, the licensee shall deliver it according to Section 350. (5-3-03)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING TITLE INSURANCE BUSINESS RULES

DOCKET NO. 18-0156-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 existing rule concerns rebates and illegal inducements in title insurance and provides limits on what items of value may be provided to producers of title business. Changes in technology have increased efficiencies of operations for title agents such that items of value can be produced much more quickly, easily, and therefore inexpensively. Additionally, some of the limitations in the rule have not been changed in many years. The proposed rulemaking makes the following changes:

- * Subsection 010.05 (Social Media) – define social media.
- * Subsection 012.02 (Listing Packages) – permit photos to be included in allowed materials if no additional charge is required; paper delivery would have commensurate charge.
- * Subsection 012.03 (Additional Information That May Be Provided) – permit last deed of record.
- * Subsection 013.01 (Advertisement) – eliminate the quarterly publication requirement; amend to permit advertising in annual trade association publications.
- * Subsection 014.01 (Self-Promotional Items) – increase amount spent on self-promotion items from \$10 to \$25/item and from \$50 to \$200/year in cumulative value.
- * Subsection 014.02 (Social Media) – implement new section that clarifies the use of social media.
- * Subsection 014.03 (Educational Programs) – increase the expenditure from \$10 to \$20 per person. Also change “solely regarding title and escrow.” The intent is to expand the programs which may be offered while maintaining the integrity of the topics as being “related” to title and escrow.
- * Section 017 (Escrow Closing Charges and Premium Rates) – remove the reference to Section 41-2706, Idaho Code, which is improper following a legislative change in 2011.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Volume 16-8, Page 111](#).

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 Jim Scanlon, at jim.scanlon@doi.idaho.gov or (208)334-4321.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED September 2, 2016

Dean L. Cameron
Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0156-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Business of Title Insurance. “Business of title insurance” has the meaning set forth in Idaho Code, Section 41-2704 and includes in addition thereto, the performance in this state by a title entity of any service in conjunction with the issuance of any contract or policy of title insurance. (7-1-93)

02. Person. “Person” includes any natural person and any firm, association, organization, partnership, business trust, corporation or other legal entity. (7-1-93)

03. Producer of Title Business. “Producer of title business” includes any person engaged in this state in the trade, business, occupation or profession of: (7-1-93)

a. Buying or selling interest in real property; or (7-1-93)

b. Making loans secured by interest in real property; and (7-1-93)

c. Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing. (7-1-93)

04. Self Promotional. “Self promotional” refers to either a promotional function which is conducted by a single entity or a promotional item intended for distribution by a single entity. All benefits from the promotional function or item must accrue to the entity promoting itself. (7-1-93)

05. Social Media. “Social media” means electronic communication (such as websites for networking and blogging) that are used by persons to share information and to develop social and professional contacts. ()

056. Things of Value. “Things of value” means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, uncollected cancellation fees for issuance of title commitments, and all other forms of consideration. (7-1-93)

067. Trade Association. “Trade association” means an association of persons, a majority of whom are producers of title business, or persons whose primary activity involves real property. (7-1-93)

078. Title Entity. “Title entity” includes both title insurance agents and title insurers and their employees, agents, or representatives. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

012. PERMITTED CONSUMER INFORMATION.

01. **Information That May Be Provided.** To facilitate the listing and sale of Idaho property, certain consumer information may be provided without charge to licensed real estate agents and brokers or to a person who owns the property for which the request is made, but is limited to the following information: (3-15-02)

02. **Listing Package.** A single copy of a “listing package,” “property profile,” or similarly named packet of information. (7-1-93)

a. A “listing package” shall consist of information relating to the ownership and status of title to real property, and may include a single copy of only the following ~~six~~ seven (~~6~~7) items: (~~3-15-02~~)()

i. The last deed appearing of record; (7-1-93)

ii. Deeds of trust or mortgages which appear to be in full force and effect; (7-1-93)

iii. A plat map reproduction and/or a locator map; (3-15-02)

iv. A copy of applicable restrictive covenants; (3-15-02)

v. Tax information; ~~and~~ (~~3-15-02~~)()

vi. Property characteristics such as number of rooms, square footage and year built: ~~and~~ (~~3-15-02~~)()

vii. Photographs, including aerial, of the property. ()

b. A “listing package” may include no more than the ~~six~~ seven (~~6~~7) above described items of information and shall not include market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances. Photographs may be provided, but only if the title entity does not pay a separate fee or provide any other consideration to a person for that product or service. The title entity may provide any photographs that are acquired through normal subscriptions or licensing fees associated with obtaining access to county records for tax information, property characteristics, or plat maps, as long as there is no additional charge to the title entity for the production, reproduction or delivery of the photographs. A generic cover letter with the printed standard letterhead of the title entity may be attached to the “listing package.” The cover letter may include a brief statement identifying by name only, which of the ~~six~~ seven (~~6~~7) permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or “listing package” is strictly limited to the foregoing and shall specifically not include any advertising or marketing for the benefit of the recipient. (~~3-15-02~~)()

c. Market value information, demographics, ~~or~~ additions, addenda, photographs (other than as described in Paragraph 012.02.b) or other attachments, which attachments may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances, may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished (See Exhibit 1, #11). (~~3-15-02~~)()

03. **Additional Information That May Be Provided.** A title entity may provide to licensed attorneys and licensed appraisers only the following documents without charge; (4-4-13)

a. A plat map reproduction; (4-4-13)

- b. A copy of applicable restrictive covenants; (4-4-13)
- c. The last deed appearing of record; and ()
- ed. A cover letter as described in Paragraph 012.02.b. (4-4-13)

013. PERMITTED ADVERTISING WITH TRADE ASSOCIATIONS.

01. Advertisements. No advertisement may be placed in a publication that is published or distributed by, or on behalf of, a producer of title business. Advertising in a trade association publication is only permitted if the publication is an official publication, published or distributed by, or on behalf of the trade association with at least regular ~~quarterly~~ annual publications. The publications must be nonexclusive (any title entity must have an equal opportunity to advertise in the publication and at a standard rate). The title entity's ad must be purely self-promotional. (4-26-95)()

02. Donations. A title entity is permitted to donate time to serve on a trade association committee and may also serve as an officer or director for the trade association. A title entity may also donate, contribute or otherwise sponsor a trade association event if the event is a recognized association event that generally benefits all members and affiliated members in an equal manner. The donation cannot benefit selected producer of title business members of the association unless through random process. Solicitation for the donation must be made of all members and affiliated members in an equal manner. Donations are per agent license or insurer and are limited to a cumulative donation value of two thousand dollars (\$2,000) or equivalent things of value collectively to all trade associations per year. In addition, a title entity is allowed to participate in or attend trade association events as long as the title entity pays a fee commensurate with fees paid by other participants in the events. These events include, but are not limited to, conventions, award banquets, symposiums, breakfasts, lunches, dinners, open houses, sporting activities and all other similar activities. (3-30-07)

014. PERMITTED SELF-PROMOTIONAL ADVERTISING.

01. Self-Promotional Items. A title entity may distribute self-promotional items having an acquisition value of less than ~~ten~~ twenty five dollars (~~\$10~~25) to producers of title business, consumers, and members of the general public. These self-promotional items are limited to novelty gifts, advertising novelties, and generic business forms and specifically do not include food ~~or~~ beverages, or gift certificates, gift cards or other items that have a specific monetary value on their face or that may be exchanged for any other item having a specific monetary value. Self-promotional items shall not contain the name, logo or any reference to a producer of title business, trade association or donee. A recipient of a novelty gift or advertising novelty shall not receive gifts or advertising novelties title entity shall not distribute to any one recipient self-promotional items with in excess of ten dollars (\$10) of cumulative value per month and no more than fifty two hundred dollars (\$50200) of cumulative value of gifts or advertising novelties per year. A title entity shall also not give novelty gifts, advertising novelties or generic business forms to producers of title business, consumers, members of the general public, or trade associations for redistribution by these entities. (3-30-07)()

02. Social Media. A title entity may use free or paid social media services to promote its own business as long as such social media services are open and available to the general public. A title entity may write or post on social media services about an event that directly involves the title entity and a producer of title business or a trade association, and it may reference or link to the social media of a producer of title business or a trade association. A title entity may share, like, respond to, tag or comment on a producer of title business's or a trade association's social media page, post, or event as long as such action is free of charge. A title entity shall not pay a fee to share, like, respond to, tag or comment on any social media service that involves a producer of title business or a trade association or to increase the visibility, ranking, or distribution of any social media involving a producer of title business or a trade association. ()

023. Self-Promotional Functions. Self-promotional functions are limited to the following two (2) types of functions: (3-30-07)()

- a. Educational programs - a title entity is permitted to conduct educational programs. The education programs are limited to education solely regarding must only address title insurance and escrow and other topics

related thereto. A title entity is permitted to expend no more than ~~ten~~ twenty dollars (\$~~10~~20) per person at an educational program. For purposes of determining the maximum permitted expenditure, all costs associated with the delivery of the educational program shall be considered, including but not limited to, costs paid by the entity for travel, refreshments, instructor or speaking fees and facility rental. A title entity may participate in or make presentations at educational programs which are conducted or presented by other entities. The title entity is not permitted to expend any money to sponsor or cosponsor these programs, unless the educational program is a trade association event in which case Subsection 013.02 of this chapter will apply. ~~(3-30-07)~~ ()

b. Open houses - a title entity is permitted to have two (2) open houses per year. An open house shall be a self-promotional function at the title entity's owned or occupied facility (i.e. a Christmas party or any party, an open house for remodeling of its facility, an open house for a new building to become the title entity's facility). It shall be nonexclusive (an open invitation to all producers of title business is required). A title entity must not expend more than fifteen dollars (\$15) per guest per open house. A title entity cannot combine permitted expenditures for two (2) open houses to be used for one (1) open house. A title entity also cannot accumulate left over or unused expenditures from one (1) open house and use those expenditures for a second open house. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

017. ESCROW CLOSING CHARGES AND PREMIUM RATES.

A title entity shall not charge less than the rate as filed with the Department of Insurance for a specified title or escrow service or for a policy of title insurance. A specified title service is any service defined in the title entity's filed schedule of rates and charges or the schedule in use by the title entity. A title entity shall also not waive or offer to waive all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Department of Insurance. A filed charge or rate shall not be less than the title entity's cost for providing that service. Rates shall not reflect credits of any kind applicable with regard to different classifications of customers or to types of closings. ~~Rates shall be filed with justification in accordance with Idaho Code, Section 41-2706. Justification shall clearly demonstrate that the title entity's filed rates for escrow services are not less than the title entity's cost to provide the escrow services.~~ Escrow rates shall be refiled on or before December 15, 1988 establishing a title entity's basic rate including a minimum and negotiable rate. However, a title entity shall utilize its basic rate, minimum rate, and negotiable rate with respect to different classifications of customers or to types of closings effective December 1, 1988. Escrow rates shall be filed thereafter on a yearly basis due March 15 reflecting experience based on the calendar year. The first yearly filing will be due March 15, 1990 reflecting experience from January 1, 1989 to December 31, 1989. In addition, rates shall be filed as often as necessary if escrow costs exceed escrow revenues. Rates may also be filed in addition to the yearly filing for filings to increase revenues. Rate filings in these instances shall be filed at least thirty (30) days prior to implementation. All rate filings shall be based on twelve months' experience. ~~(7-1-93)~~ ()

IDAPA 20.03.16 - IDAHO DEPARTMENT OF LANDS

20.03.16 - RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS

DOCKET NO. 20-0316-1601 (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 Idaho Code Title 47, Chapter 8, Section 47-802.

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

Thursday, October 13th, 2016 - 9:00 am

**Idaho Department of Lands
300 N. 6th Street, Suite 103
Garnet West Room
Boise, ID 83702**

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

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

The proposed rule changes:

- Clarify the lease nomination and lease auction process (including the option to use on-line auctions)
- Allow Idaho Code Title 47, Chapter 8, Section 47-801 to determine the lease length and remove the redundant language in the existing rule language
- Improve lease area language to minimize unnecessary small acreage leases
- Adjust the lease tract application/nomination fee, the annual lease rental rate per acre (and a minimum annual rental rate), the assignment fee, and the shut-in fee (see Fee Summary below) to current day cost recovery levels
- Update definitions to current day terms
- Adjust rule formatting to comply with current Administrative Rule standards and for general, non-substantive housekeeping

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

The following fee increases reflect cost recovery levels for administrative efforts on behalf of the Department of Lands and are in line with other oil and gas producing states in the western United States. The existing fees are at 1988 dollar levels. Idaho Code Title 58, Chapter 1, Section 58-127 and Idaho Code Title 47, Chapter 8, Sections 47-801, 47-802, 47-805, and 47-807 authorize the Department to issue oil and gas leases and establish fees.

The existing application/nomination fee for lease tracts is \$25. The Department is proposing raising the application/nomination fee to \$250 per lease tract, which is the current application fee for all other leasing applications on state endowment trust lands (as approved by the Land Board). If approved this would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The number of lease tracts nominated per year has been highly variable during the last 10 years, the average being approximately 20-40 lease tracts per year, with one year including more than 200.

The existing rental rate per acre for oil and gas leases is \$1.00 per acre annually. The Department is proposing raising the rental rate to \$3.00 per acre annually, consistent with other western oil and gas producing states. The Department is also proposing a minimum annual rental of \$250.00 to avoid the issuance of leases with unavoidably small acreages that would otherwise yield a rental rate that would cost more to administer than the revenue returned. This increase in rent would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The

Department currently leases approximately 70,000 acres for oil and gas. The increase in revenue would slowly be realized as oil and gas leases carrying the \$1.00 per acre rental rate expire over the next 10 years, subjecting the leases to the new rental rate (if approved).

The existing administrative fee for assignments is \$1.00 per document. The Department is proposing raising the assignment fee to \$100.00 in order to achieve cost recovery for processing. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. Request for lease assignments historically have been highly variable yet there have been only six assignments in the last three years.

The existing rule language for shut-in oil and gas wells (wells suspended from production at the request of the operator and subject to approval by the Director) does not identify a rental rate associated with the shut-in period. The Department is proposing a doubling of the existing annual rental rate in the lease for the shut-in fee which is consistent with other western oil and gas producing states and would provide revenue to the endowed beneficiary that would otherwise be generated through royalty payments. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues.

FISCAL IMPACT: This Proposed Rule will have no impact, negative or positive, on the General Fund because the oil and gas leasing program impacts only Dedicated (Earnings Reserve) Funds. The proposed fee increases (described above in the Fee Summary) will result in incremental increases in Dedicated Fund revenues, with the actual increases dependent on future oil and gas activities initiated by the industry.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7 page 75](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A
No documents are incorporated by reference in these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Murphy (208) 334-0200 ext. 0290.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 8th day of September, 2016.

Mike Murphy, Bureau Chief - Endowment Leasing
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050
Phone: 208-334-0290 / Fax: 208-334-5342

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 20-0316-1601
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Title 47, Chapter 8 and Title 67, Chapter 52, Idaho Code, and are intended to satisfy the Board's mandate (Idaho Constitution, Art. 9) to

~~maximize return on state lands by encouraging leasing, production of oil and gas, prevention of waste, and protection of the oil, gas and other natural resources of state lands~~ This Chapter is adopted under the legal authorities of Sections 58-104(10), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 8, Idaho Code; and Title 67, Chapter 51, Idaho Code. ~~(10-11-88)~~ ()

~~001. -- 002.~~ (RESERVED)

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 20.03.16, "Rules Governing Oil and Gas Leasing on Idaho State Lands." ()

02. Scope. These rules apply to the exploration and extraction of oil and gas resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the lessee shall comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules. ()

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of interpretations, subject to the exemptions in Title 9, Chapter 3, Idaho Code, Sections 9-340A through 9-340H, are available for public inspection and copying at the Director's office of the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho. ()

003. ADMINISTRATIVE APPEALS.

01. Appeal to Board. All decisions of the director are appealable to the Board. An aggrieved party desiring to take such an appeal shall, within thirty (30) days after notice of the director's decision, file with the director a written notice of appeal setting forth the basis for the appeal. (10-11-88)

02. Hearing. The Board shall hear the appeal at the earliest practical time or in its discretion appoint a hearing officer to hear the appeal, within sixty (60) days after filing of the notice of appeal. The hearing officer will make findings and conclusions that the Board may accept, reject or modify. The decision of the Board after hearing or upon a ruling concerning the hearing officer's findings and conclusions shall be final. (10-11-88)

03. Judicial Review. Judicial review of the final decision of the Board shall be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, by filing a petition in the district court in Ada County, or the county where the Board heard the appeal and made its final decision, within thirty (30) days after notice of the Board's decision. Service of the Board's decision may be by personal service or by certified mail to the lessee. (10-11-88)

004. INCORPORATION BY REFERENCE.

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

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

The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho 83702 and it is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-3698. ()

006. PUBLIC RECORDS ACTION COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 51, Idaho Code and are public records. ()

~~0047.~~ -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its authorized representative, or where appropriate, the state of Idaho. (10-11-88)

02. Commission. The Idaho Oil and Gas Conservation Commission. (10-11-88)

03. Collateral Surety Bond and Corporate Surety Bond. See Subsections 080.04.a. and 080.04.b. (10-11-88)

04. Department. The Idaho Department of Lands, Boise office business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (10-11-88)

05. Director. The director of the Idaho Department of Lands or his authorized representative. (10-11-88)

06. Discretion. Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal. (10-11-88)

07. Exploration. ~~The activities related to the search for oil and gas including without limitation aerial, geographical and geophysical surveys and studies, seismic work, core drilling and the drilling of test wells~~ Activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. (10-11-88)()

08. Final Board Approval. Approval of a lease occurs after the lease is signed by the Governor, the Secretary of State and the director on behalf of the Board after approval of the lease by a majority of the Board. All approved leases shall first be signed by the lessee and then by the above-entitled state officials. (10-11-88)

09. Lease. ~~An oil and gas lease in accord with these rules~~ A written agreement between the Department and a Person containing the terms and conditions upon which the Person will be authorized to use state lands. (10-11-88)()

10. Legal Subdivision. See Subsection 071.04. (10-11-88)

11. Lessee. The person to whom a lease has been issued and his successor in interest or assignee(s). More than one (1) person may be entered as an applicant on the application form but only one (1) person shall be designated in the application for lease or assignment as the lessee of record with sole responsibility for the lease under these rules. (10-11-88)

12. Lessor. The Board on behalf of the state of Idaho. (10-11-88)

13. Motorized Exploration Equipment. ~~Seismic, stratigraphic, core or other drilling equipment, whether portable or vehicular, vibrator vehicles and other similar equipment~~ Motorized exploration equipment means the equipment used in exploration which may appreciably disturb or damage the land or resources thereon as defined in Idaho Code 47-703A. (10-11-88)()

14. Oil and Gas. ~~Oil, gas, casinghead gas, casinghead gasoline, all other hydrocarbons and other carbonaceous substances present in the earth and produced therefrom in a gaseous or liquid form and shall include sulfur and such other gaseous substances and elements as shall be produced in a gaseous or liquid form in association with or separate from oil and gas including carbon dioxide and helium, but shall not include coal, lignite, oil shale or similar hydrocarbons, or synthetic fuels derived therefrom.~~ (10-11-88)

14. Natural Gas Plant Liquids. Natural Gas Plant Liquids means hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Natural Gas Plant Liquids obtained include ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed. ()

- 15. Oil and Gas.** Oil and gas means oil or gas or both. ()
- 156. Person.** (7-1-93)
- a. An individual of legal age; (7-1-93)
- b. Any firm, association or corporation that is qualified to do business in the state of Idaho; (7-1-93)
- c. Or any public agency or governmental unit, including without limitation, municipalities. (10-11-88)
- 167. Production in Paying Quantities.** That gross income from oil and/or gas produced and saved (after deduction of taxes and royalty) that exceeds the cost of operation. (10-11-88)
- 178. State Lands.** Lands, including the beds of navigable waters within Idaho, in which the title to mineral rights are owned by the state of Idaho and that are under the jurisdiction and control of the Board or any other state agency. (10-11-88)
- 19. Tract.** Tract means an expanse of land representing the surface expression of the underlying mineral estate that includes oil and gas rights owned by the State. A tract: ()
- a. May be identified by its public land survey system of rectangular surveys which subdivides and describes land in the United States in the public domain and is regulated by the U.S. Department of the Interior, Bureau of Land Management; ()
- b. Is of no particular size; ()
- c. Shall be a maximum size of 640 acres or one section, unless otherwise determined by the Director; ()
- d. May be irregular in form; ()
- e. Is contiguous; ()
- f. May lie in more than one township or one section; ()
- g. May have a boundary defined entirely or in part by natural monuments such as streams, divides, or straight lines connecting prominent features of topography; ()
- h. May include the mineral estate beneath navigable waters of the State; and ()
- i. May be combined with other tracts to form a Lease. ()

(BREAK IN CONTINUITY OF SECTIONS)

016. WITHDRAWAL OF LANDS.

At any time prior to final Board approval of a lease, the Board reserves the right to withdraw state lands entirely from oil and gas leasing if consistent with its constitutional and statutory duties and in the state's best interests; ~~provided that the Department shall refund application fee.~~ (10-11-88) ()

017. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person ~~as defined in Subsection 010.15 shall be qualified to lease the oil and gas resources in state lands or take~~

~~or hold an interest therein, provided that n who is not then in default of any contract with the state of Idaho or any Department or agency thereof is a qualified applicant and lessee. No member of the Board or employee of the Department may take or hold such lease; and provided further, that the Board may in its discretion deny a lease or assignment to any person who has forfeited a lease as per Subsection 071.01 or until delinquent rentals plus interest on any previous lease have been paid in full.~~ (10-11-88)()

021. EXPLORATION.

01. Written Permit Required. Any ~~exploration with appreciable surface disturbing activity, including, but not limited to,~~ motorized exploration ~~equipment~~ on state lands is prohibited except by written permit for exploration ~~signed for a period of time as determined~~ by the ~~d~~Director, ~~which shall be valid for ninety (90) days or less for each section of state lands not withdrawn or leased under these rules. However, no test well shall be drilled prior to award of a lease and compliance with Section 055~~ This permit is in addition to any permit required by the Commission. (10-11-88)()

02. Permit Conditions. The permit shall contain such conditions as the director determines will protect the existing surface uses and resources of the state. The permit applicant shall pay in advance the fee required by Section 120; ~~however, when the permit applicant is also the lessee, no fee is required.~~ (10-11-88)()

~~**022. APPLICATIONS—CONTENT—FEE.**~~

~~**01. Filing.** An application for a lease may be filed with the Department in Boise during regular business hours (8:00 a.m. to 5:00 p.m.) on a department form or exact copy thereof. The application shall contain the following: name, address, telephone number, signature of the applicant, the Department's tract number and legal description of the lands applied for, and the twenty five dollars (\$25) nonrefundable application fee. The Department's tract number and legal description for each tract shall be obtained from the competitive tract list.~~ (10-11-88)

~~**02. Establishing Priority.** Individuals not attending a competitive auction under Section 025 may file an application establishing a priority for purposes of Rule 025.02.~~ (10-11-88)

~~**03. Competitive Bidding.** Individuals bidding at a competitive auction will file an application in accord with Subsection 028.04.~~ (10-11-88)

~~**023. SIZE AND COMPOSITION OF LEASABLE TRACT.**~~

~~**01. Maximum Size.** Each lease shall include all available state lands within a section and shall not exceed six hundred and forty (640) acres in size, unless available state lands in the section exceed six hundred and forty (640) acres. Available state lands means lands not withdrawn or leased per these rules.~~ (10-11-88)

~~**02. Navigable Water Courses.** Operations in or under the beds of navigable water courses shall not be authorized except in extraordinary circumstances and only with express written approval of the Board upon such conditions and security as the Board deems appropriate. An applicant may need to obtain a stream channel alteration permit from the Department of Water Resources prior to commencing operations in the beds of any water courses.~~ (10-11-88)

~~**024. (RESERVED)**~~

~~**025. COMPETITIVE BIDDING.**~~

~~**01. Highest Bid.** Subject to Section 016 and Subsection 025.02 a lease shall be acquired by competitive bidding and shall be awarded to the qualified bidder with the highest bid. If no application for a particular tract is timely filed and in the absence of any bids for such tract at an auction, that tract will be offered on an over the counter basis on the first of the month following the sale to the first qualified applicant. The tract offering period shall be open for a six (6) month period of the auction year.~~ (10-11-88)

~~**02. First Applicant When No Bid.** In the absence of any bid at an auction on a particular tract, a lease~~

~~shall be awarded to the person who filed an application first in time in accord with these rules. If an application with a priority in time is withdrawn per Subsection 027.04, and in the absence of any bid at an auction for that particular tract, the lease shall be awarded to the person who filed an application with next priority in time. (10-11-88)~~

~~**03. Simultaneous Filings.** Applications received by the Department over the counter or by mail on the same day shall be considered as simultaneous filings and shall be resolved by competitive bidding at an auction at a time and place designated by the director. (10-11-88)~~

~~**026. AUCTIONS—SCHEDULE.**~~

~~**01. Time.** Public auctions shall be scheduled as needed by the director. Public auctions will normally be held in Boise and commence at 9:30 a.m. (10-11-88)~~

~~**02. Notice.** A notice of lease auction shall be published no less than thirty (30) days prior to the date of the auction in two (2) newspapers of general circulation in Idaho and in one (1) or more major trade journals of the Department's choice, and mailed to persons on the Department mailing list. The notice shall be posted in the offices of the Department in Boise and in the county courthouse at the county seat of the county where the land is located. The notice shall state the date, time and place of auction, information concerning the tracts offered and special lease stipulations, if any. All tracts on the competitive tract list will be open for competitive bidding. (10-11-88)~~

~~**027. DESIGNATING TRACTS BY APPLICATION.**~~

~~**01. Application for Auction.** Any person who desires that a tract of state land be offered for oil and gas leasing at the next scheduled auction shall make application in compliance with Sections 022 and 023 at least sixty (60) days prior to the date set for auction. Each application shall be deemed an offer to lease the lands described in the amount of the minimum required first year's rental and shall constitute an undertaking to pay, within ten (10) business days after the auction, the required first year's rental for the lease. (10-11-88)~~

~~**02. Designation of Other Tracts.** The director may also designate tracts to be offered at an auction. (10-11-88)~~

~~**03. Filing.** Applications for purposes of priority in time for purposes of Subsection 025.02 made after publication of a notice of lease offering shall be filed with the Department in Boise at least ten (10) business days prior to the date of the auction. (10-11-88)~~

~~**04. Withdrawal of Application.** Any application may be withdrawn by the applicant if a request for such withdrawal is received by the Department in Boise at least seven (7) business days prior to the date fixed for the auction, but the twenty-five dollars (\$25) application fee will not be refunded. (10-11-88)~~

~~**028. AUCTION PROCEDURE.**~~

~~**01. Oral Auction.** For oral auction, all bidders shall register with the Department during the seven (7) business days prior to the auction or during a ninety (90) minute period immediately preceding the auction. Registration shall include the name, address and signature of the bidder, the assignment of a bidding number, the submission of either a power of attorney or a designation of agent executed by the applicant, and payment of the ten dollars (\$10) bidding fee; provided that persons who have timely filed an application and paid the twenty-five dollars (\$25) application fee for a tract to be offered at a particular auction do not need to pay the bidding fee for that auction. Immediately after completion of the auction, each winning bidder shall supplement his registration by listing the name and address of the applicant for the lease, and if the bidder is not an employee of the applicant, he shall submit a copy of a power of attorney executed by the applicant. A qualified applicant pursuant to Section 020 or a designated agent may bid for a competitive lease. (10-11-88)~~

~~**02. Cash Bonus Bid.** The method of bidding will generally be by cash bonus bid at oral auction. The minimum opening bid shall be a twenty-five cent (\$.25) bonus per acre. The successful bonus bid for an offered tract at auction shall be the number of dollars bid multiplied by the number of acres in the offered tract plus the first year's rental per Subsection 041.03. The Board reserves the right to specify in the notice of offering any other method of competitive bidding that, in its discretion, it determines to be in the best interests of the state. (10-11-88)~~

~~03. **Right to Reject Bids.** The director reserves the right to reject any or all bids. The Board and Department expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. (10-11-88)~~

~~04. **Winning Bidder Payments.** Winning bidders who have not previously submitted an application for the tract bid upon shall submit by check or money order to the Department's representative immediately after the completion of an oral auction, the application fee for each lease per Section 120. Within ten (10) business days thereafter, winning bidders shall submit to the Department a completed, signed application for each section, if not previously filed, and the bonus bid by check or money order, and the pro-rata share of the cost of advertising based upon the percentage of acreage acquired, computed from the total acres leased. A check that is subsequently not honored for any reason other than error by a bank may disqualify the applicant from leasing under these rules until the dishonored check is paid and for one (1) year thereafter. (10-11-88)~~

~~05. **Execution of Lease.** The completed lease shall be executed by the lessee within thirty (30) days from the date of mailing, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a lease on behalf of another person shall submit a power of attorney which outlines his delegated authority. (10-11-88)~~

~~029. **Competitive Tract List.**~~

~~A list of available state lands will be published for distribution. This list shall contain a tract number for each tract designated by the Department, the legal description of each tract and the number of acres per tract. (10-11-88)~~

~~030.—039. (RESERVED)~~

~~040. **TERM.**~~

~~01. **Ten Year Lease.** All leases shall have a term of ten (10) years from the anniversary date. The anniversary date of the lease shall be the first day of the month after final Board approval. The lease shall have a primary term consisting of lease years one (1) through five (5), inclusive, and a secondary term consisting of lease years six (6) through ten (10), inclusive. At the expiration of the tenth year, the lease shall continue in force so long as production of oil and gas continues in paying quantities, or as long as the lessee conducts diligent and continuous drilling operations at a depth of one thousand (1,000) feet or deeper, or at a lesser depth than one thousand (1,000) feet if approved by the director, or the lessee reworks a former well under authorized permit from the commission on the leased land. (10-11-88)~~

~~02. **Diligent Drilling.** Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the director. The director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. (10-11-88)~~

~~03. **Notification at End of Lease Period.** The lessee shall notify the director in writing prior to the expiration of the tenth year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Rental payment, in the amount required by Section 041 for the eleventh and each succeeding year, shall be received by the Department prior to the expiration date and shall entitle the lessee to hold the lease only so long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental. (10-11-88)~~

~~04. **Abandonment.** During the eleventh or succeeding year of any lease, cessation of production for a period of six (6) months shall be considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the director determines that such cessation of production is justified or the well meets the requirements of a shut-in gas well under Subsection 040.05. (10-11-88)~~

~~05. **Suspension of Production.** The director may grant a suspension of production not to exceed two (2) years upon a written request showing that the lessee is unable to market oil or gas. If such well is shut-in and the director approves suspension of production requirements after expiration of the ten (10) year term, the lease shall be considered as if the well was producing in paying quantities under Subsection 040.01. The lessee shall pay rental for~~

~~each year during which the well is shut pursuant to Section 041. The lessee may request continuation of this suspension, provided such request is received in writing by the director at least thirty (30) days prior to the expiration date of the period of suspension. (10-11-88)~~

041. RENTALS:

~~01. **Advance Annual Rental.** The lessee shall pay to the state of Idaho an advance annual rental for each acre under lease. The annual rental and bonus bid for the first year shall be due and payable within ten (10) business days after the auction pursuant to Subsection 028.04. Subsequent rental payments must be received in the Department in Boise on or before the anniversary date of the lease. Rental payments shall be made directly to the Department and not through any bank or depository. Failure to pay the exact rental due may result in cancellation of the lease. (10-11-88)~~

~~02. **Delinquent Rental.** Rental is delinquent if not paid on or before the due date. Should rental be delinquent, the Department will send a single notice of delinquent payment by certified mail to the lessee. If payment is not received by the Department within thirty (30) days from the date of mailing, the Department may cancel the lease without further notice to the lessee or may assess the greater of the following: either a twenty five (\$25) late payment charge or interest at the rate of one percent (1%) for each calendar month or fraction thereof, compounded monthly, for late payments from the date the rental is due. The Department is not responsible for notifying lessees of rentals due prior to the due date notwithstanding any billing practices of the Department. (10-11-88)~~

~~03. **Bonus Bid.** The lessee shall pay the offered bonus bid and the first year's rental of one dollar (\$1) per acre of the lease. For the second year through the tenth year, lessee shall pay in advance an annual rental one dollar (\$1) for each acre or part thereof under lease. For leases extended into the eleventh year and/or longer, the advanced annual rental shall be three dollars (\$3) for each acre or part thereof under lease, unless the lease is producing in paying quantities. In such instances the annual rental shall be one dollar and fifty cents (\$1.50) for each acre or part thereof under the lease. (10-11-88)~~

022. LEASE ACQUISITION PROCESS.

01. **Acquiring a Lease.** A lease shall be acquired for the exclusive right and privilege to explore for and produce oil and gas by oral auction, online auction, or such other method of competitive bidding authorized by the Board, in its discretion, determined to be in the best interest of the state, and shall be awarded to the winning bidder at close of auction. The winning bidder at auction shall be issued the lease by the Department on the first day of the month following Final Board Approval. The Board and Department reserve the right to reject any or all nominations or bids, and expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. ()

02. **Lease Provisions.** ()

a. **Term.** All oil and gas leases shall have a term as provided by Idaho Code 47-801 as amended and shall continue from year to year thereafter for so long as production of oil and gas continues in paying quantities, or as long as the lessee conducts diligent and continuous drilling operations. ()

b. **Advance Annual Rental.** The lessee shall pay to the state of Idaho an advance annual rental for each lease of \$3.00 per acre with a minimum of \$250.00 per lease. ()

c. **Diligent Drilling.** Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the Director. The Director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. ()

d. **Notification at End of Lease Period.** The lessee shall notify the Director in writing prior to the expiration of the final year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Advance Annual Rental, in the amount required by Section 022 for any additional and each succeeding year, shall be received by the Department prior to the expiration date and shall entitle the lessee to hold the lease only so long as drilling or rework operations are pursued in accord with these rules. There will be no

refund of unused rental. ()

e. Abandonment. During any additional or succeeding year of any lease, cessation of production for a period of six (6) months shall be considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the Director determines that such cessation of production is justified or the well meets the requirements of a shut in well under Subsection 022f. ()

f. Suspension of Production. The Director may grant a suspension of production not to exceed one (1) year upon a written application showing that the lessee is unable to market oil or gas from a well located on the leased premises capable of oil and gas production in paying quantities due to a lack of suitable production facilities or a suitable market for the oil or gas and such conditions are outside the reasonable control of lessee and the lease is not being otherwise maintained in force and effect. If such well is shut in and the Director approves the application for suspension of production requirements prior to the expiration or termination of the lease then the lease shall be extended in accordance with the terms of Idaho Code § 47-801 for a period of one year if the lessee timely submits an application in a form approved by the Director and, upon approval of said application, pays a shut-in royalty in the amount equal to double the annual rental provided for by these rules for each well capable of producing oil or gas in paying quantities. The lessee must remit the shut-in royalty payment while the lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the lease will not revive or extend the lease. The lessee may request continuation of this suspension of production, provided such request is received in writing by the Director at least thirty (30) days prior to the expiration date of the period of suspension. ()

03. Nominating a Tract for Auction. A tracts may be nominated for auction either by application to the Department at least 90 days prior to a Department defined close of auction date, or by Department nomination at least 90 days prior to a Department defined close of auction date. Any qualified Person may nominate a tract for lease auction by submitting a nomination to the Department in Boise, and paying the nomination fee in an amount determined by the Board, during regular business hours (8:00 a.m. to 5:00 p.m.) on the Department nomination form. Each nominated tract shall be a maximum size of 640 acres or one section. The nominating Person may propose that multiple tracts be included in a single lease. Each nomination for a tract for auction shall be deemed an offer by the nominating Person to lease the tract for the advance annual rental amount as defined in Subsection 02 above. ()

04. Withdrawing a Tract for Auction. Any Person nominating a tract for auction may withdraw their nomination if a request for such withdrawal is received by the Department in Boise in at least ten (10) business days prior to the opening date of auction. The nomination fee shall not be refunded. ()

05. Auction Conditions. The Department shall determine the conditions associated with the auction, including, but not limited to: when or if a tract will be offered for auction; whether the tract is to be removed from the auction; whether multiple tracts will be combined in a single lease at the discretion of the Department; and any disclaimers, additional information, and any other such terms and conditions associated with the auction of the tracts. Any such terms and conditions, disclaimers, and additional information shall be posted on the Department's website. ()

06. Lease Information for Auction. For each lease to be auctioned, the Department shall provide on the website: a lease number designated by the Department; the legal description; the lease length; the number of acres; a minimum bid per acre; a lease template; any lease stipulations; any other lease information; a specific date designated for the beginning and ending dates that a bidder may conduct due diligence; a specific date designated for the opening of auction; and a close of auction date. A notice of lease auction shall be published at least once per week for the four consecutive weeks prior to the date of auction in a newspaper in general circulation in the county in which the nominated lease is located and in a newspaper in general circulation in Ada County. ()

07. Auction Procedure. The Department shall determine the procedures associated with the auction, including, but not limited to place of auction, time of auction, and bidder registration procedure. Additional auction procedures are as follows. ()

a. Bid Increments. The minimum bid increment shall be \$1.00. ()

b. Winning Bid. At close of auction, the winning bid for a Lessee shall be the number of dollars bid multiplied by the number of acres in the Lease, with fractions of an acre rounded up to the next whole acre. If, at close

of auction, a bid for a Lease has not been submitted by a bidder, then the Lease shall be awarded to the nominating applicant. The entry of a bid constitutes an enforceable contractual obligation. ()

c. Amount Due. The amount due for a lease shall be the winning bid, plus the first year's annual rental amount as per Subsection 02 above, plus the nomination fee. If the winning bid was submitted by the nominator of the tract(s), then the nomination fee will already have been submitted to the Department and shall not be included in the amount due. The nominator will be refunded the nomination fee if they are not the winning bidder. ()

d. Transfer of Funds. Unless otherwise required in the notice of auction, the winning bidder for each lease shall have five (5) full business days after close of auction to complete the transfer of funds to the Department. Failure of the winning bidder to transfer funds within the period specified constitutes a breach of contract, and the state may pursue any action or remedy at law or in equity against the winning bidder. ()

08. Execution of Lease. The completed Lease shall be executed by the winning bidder within thirty (30) days from the date of mailing after close of auction, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a Lease on behalf of another Person shall submit a power of attorney which outlines his delegated authority. ()

~~0423.~~ -- 044. (RESERVED)

045. ROYALTIES.

01. **Royalty Payments.** Unless otherwise specified by the Board, the lessee shall pay to the state of Idaho in money or in kind to the state at its option a royalty of no less than twelve and one-half percent (12-1/2%) of the oil and/or gas or natural gas plant liquids produced and saved. The lessee shall make payments in cash unless written instructions for payment in kind are received from the state. Royalty shall be due on all production from the leased premises except that consumed for the direct operation of the producing wells and that lost through no fault of the lessee. (10-11-88)()

02. **Royalty Not Reduced.** Where royalties are paid in cash, costs of marketing, transporting and processing oil and/or gas or natural gas plant liquids or all of them produced shall be borne entirely by the lessee, and such cost shall not reduce the lessor's royalty directly or indirectly. If the director elects to take royalty in kind, the state shall reimburse the lessee for reasonable additional storage and transportation costs. (10-11-88)()

~~03. **Oil Royalty Calculation.** When paid in cash, the royalty shall be calculated upon the reasonable market value of the oil at the well which shall not be less than the price actually paid or agreed to be paid to the lessee at the well by its purchaser; in no event shall the royalties be based upon a market value at the well less than the posted price in the field for such oil, or upon a market value at the well less than the prevailing price received by other producers in the field for oil of like grade and gravity at the time such oil is run into pipelines or storage tanks.~~ (10-11-88)

~~04. **Gas Royalty Calculation.** On gas, including casinghead gas or other gaseous substances, the royalty shall be calculated upon the reasonable market value at the well or on the price received by lessee at the well, whichever is greater, of all gas produced and saved from the leased premises. Where gas is sold under a contract that has been approved by the state of Idaho, the reasonable market value of such gas for determining the royalties payable shall be the price at which such gas is sold under such contract; provided, however, that no approval by the state of Idaho of the terms of any such agreement shall operate to make the state a party thereto or obligate it in any way except as herein provided, and the lessee agrees to hold the state harmless from any such obligation.~~ (10-11-88)

~~05. **Due Date.** Royalties shall be due and payable monthly in the Department in Boise on or before the last day of the calendar month following the month in which the oil and/or gas was produced. Each royalty payment shall be accompanied by the production report described in Section 056.~~ (10-11-88)

03. **Oil, Gas, and Natural Gas Plant Liquids Royalty Calculation and Reporting.** All royalty owed to the Lessor hereunder and not paid in kind at the election of the Lessor shall be paid to the Lessor in the following manner: ()

a. Payment of royalty on production of oil shall be due and must be received by the Lessor on or before the 65th day after the month of production: ()

b. Payment of royalty on production of gas and natural gas plant liquids shall be due and must be received by the Lessor on or before the 95th day after the month of production: ()

c. All royalty payments must be completed in the form and manner approved by the Department, including but not limited to, the gross amount and disposition of all oil, gas, and natural gas plant liquids produced and the market value of the oil, gas, and natural gas plant liquids: ()

d. Lessee must maintain, and make available to the Lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records which the Lessor may require to verify the gross production, disposition and market value; and ()

e. Each royalty payment shall be accompanied by a check stub, schedule, summary or other remittance advice showing, by the assigned Lessor lease number, the amount of royalty being paid on each lease. ()

~~065.~~ **04. Overriding Royalty.** All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease shall be filed with the Department in Boise with the recording processing fee within ninety (90) days from the date of execution; provided that it shall be the lessee's responsibility and not the Department's, to record process such assignments by third parties. Any assignment which creates an overriding royalty, ~~which when added to overriding royalties previously created and to the royalty payable to the state aggregates in excess of seventeen and a half percent (17 1/2%) exceeds the royalty previously~~ payable to the state by greater than five percent (5%), shall be deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty shall be suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. (10-11-88)()

(BREAK IN CONTINUITY OF SECTIONS)

051. DILIGENT EXPLORATION REQUIRED.

The lessee shall perform diligent exploration during the entire term of a lease. Diligent exploration means that the lessee shall provide continuing efforts as a reasonably prudent operator toward achieving production, including, without limitation, performing geological and geophysical surveys and/or the drilling of a test well. ~~To qualify as diligent exploration for each year of the secondary term the lessee shall:~~ (10-11-88)()

~~01. Drill One Well. Drill at least one (1) well upon the leased premises or upon adjacent state leases or upon unitized lands in which the leasehold is included pursuant to Section 090, of such diameter and to such depth as may be necessary to make a reasonable test for oil and gas; or (10-11-88)~~

~~02. Pay in Advance. Pay in advance a delayed drilling penalty of one dollar (\$1) per acre per year for the remainder of the secondary term. (10-11-88)~~

(BREAK IN CONTINUITY OF SECTIONS)

056. PRODUCTION REPORT:

~~The lessee shall file with the Department on a Department form or on a reasonable facsimile a sworn monthly report on all production for each lease. The report must be received by the Department no later than the end of the calendar month following the month for which the report is prepared. If production should cease during any month, the reason for cessation shall be explained on the report. (10-11-88)~~

~~057. EXPLORATION AND OPERATIONS RECORDS—CONFIDENTIALITY.~~

~~All production reports filed with the director and information obtained pursuant to Subsection 050-09 shall be held confidential for one (1) year, unless otherwise directed by the lessee; provided that the Board may utilize such information in asserting or defending its rights under these rules in litigation or administrative hearings. (10-11-88)~~

~~058~~**6. WATER RIGHTS.**

The lessee shall comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the lessee in conjunction with operations under a lease shall be sold, assigned or otherwise transferred without written approval of the director. Upon surrender, termination or expiration of the lease, the lessee shall take all actions required by the director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. (10-11-88)

~~057. --~~ **059. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

~~061. --~~ **064. (RESERVED)**

~~065. OVERRIDING ROYALTY.~~

~~All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease shall be filed with the Department in Boise with the recording fee within ninety (90) days from the date of execution; provided that it shall be the lessee's responsibility and not the Department's, to record such assignments by third parties. Any assignment creating an overriding royalty, which when added to overriding royalties previously created and to the royalty payable to the state aggregates in excess of seventeen and a half percent (17 1/2%), shall be deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty shall be suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. (10-11-88)~~

~~066~~**1. -- 069. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

071. TERMINATION - CANCELLATION OF LEASE.

01. Cause. Except as otherwise provided in these rules, the director may terminate the lease for any substantial violation of these rules, the lease, or the rules of the commission, ninety (90) days after notice of the violation has been given to lessee by personal service or by certified mail to the lessee, unless: (10-11-88)

a. The violation has been corrected; or (10-11-88)

b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and proceeds diligently to complete corrective action within a time period set by the director. If sent by certified mail, such notice shall be deemed served upon mailing. (10-11-88)

02. Failure to Pay Rental. ~~The director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing of notice of delinquent rental~~ **Failure to pay rent on or before the due date shall result in the termination of the Lease without notice or opportunity to cure. Time is of the essence for payment of rent and it is a material term of the Lease.** (10-11-88)()

03. Surrender After Termination. Upon the expiration or termination of the lease, the lessee shall quietly and peaceably surrender possession of the premises to the state. Thereafter, lessee's obligations under these

rules that have accrued prior to the date of expiration or termination shall continue in full force and effect. (10-11-88)

04. Other Wells. Default by the lessee in the performance of any of the conditions or provisions of the lease concerning a well or wells on any legal subdivision of the leasehold shall not affect the right of the lessee to continue the possession or operation of any other well or wells, situated upon any other legal subdivision of the leasehold. The term "legal subdivision" as herein used shall mean a subdivision as established by the United States land survey that most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, "legal subdivision" shall mean the parcel upon which such well is located, but in any event not less than forty (40) acres surrounding such well. Where such a default involving one (1) or more wells results in cancellation, and the lessee has other wells on the lease not in default, such cancellation shall result in the division of the defaulting acreage from the lease and resultant reduction in the size of the lease held by the lessee. (10-11-88)

05. Equipment Removal. Upon the expiration of the lease, or its earlier termination or surrender pursuant to these rules, the lessee shall, within a period of ninety (90) days, remove from the premises all materials, tools, appliances, machinery, structures; equipment subject to removal, but not removed within the ninety (90) day period, or any extension that may be granted because of adverse climatic conditions during that period, shall, at the option of the director, become property of the state of Idaho; or the director may cause the property to be removed at the lessee's expense. (10-11-88)

(BREAK IN CONTINUITY OF SECTIONS)

~~081. -- 084. (RESERVED)~~

~~**085. PREFERENTIAL RIGHTS UPON DISCOVERY OF UNLEASED GEOTHERMAL RESOURCES AND OTHER MINERALS.**~~

~~A lessee who shall discover any mineral, including geothermal resources, on the leasehold shall have a right of first refusal to a state lease covering such minerals, including geothermal resources; provided they are not included within a mineral location under Section 47-703, Idaho Code, a mineral lease, or mineral lease application. The right shall continue for a period of sixty (60) days after discovery of minerals, provided the lessee shall notify the director within thirty (30) days after the discovery and shall make application to lease the minerals within sixty (60) days after the date of discovery. Notwithstanding, nothing herein shall require the Board to issue a mineral lease or geothermal resource lease. (10-11-88)~~

~~086. -- 089. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

120. FEES.

~~The following are the fees established under these rules: (10-11-88)~~

~~**01. Exploration Permit.** One hundred dollars (\$100) per linear mile or a minimum of one hundred dollars (\$100) per section. (10-11-88)~~

~~**02. Nonrefundable Application Nomination Fee.** Twenty five dollars (\$25) per application for lease
The nomination fee shall be set by the Board at a minimum of two hundred and fifty dollars (\$250.00) per Tract.
~~(10-11-88)()~~~~

~~**03. Bidding Fee.** Ten dollars (\$10) per auction (unless an application has been timely filed for the scheduled auction).
~~(10-11-88)~~~~

~~**04. Application for Approval.** Application for approval twenty dollars (\$20) per lease involved of assignment in the assignment.
~~(10-11-88)~~~~

053. ~~Record~~**Processing** Fee. ~~Recording fee five dollars (\$5)~~ The processing fee shall be set by the Board at a minimum of one hundred dollars (\$100) per each document. ~~(10-11-88)~~()

064. **Fee Adjustment.** The Board may annually adjust these fees without formal rule-making procedures. (10-11-88)

IDAPA 20 - IDAHO DEPARTMENT OF LANDS

20.07.02 - RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS IN THE STATE OF IDAHO

DOCKET NO. 20-0702-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 47-317(8), Idaho Code, 47-319(8), Idaho Code.

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

Wednesday, October 12th, 2016 - 2:00 pm

**Capitol Building Room WW02
Lincoln Auditorium
700 W. Jefferson 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:

Consistent terminology is added throughout the rules. Role of Commission and Department is aligned with statutes. The appeals process is modified to conform to current statutory authorities. Incorporations by Reference are updated. Contact information is updated. Public records act compliance is modified to conform to statute. Several definitions are added, and some definitions are deleted because they are in statute. The protection of correlative rights is clarified. Notice requirements are modified. Permit requirements and processing are modified throughout to conform to statute. Seismic exploration is better defined and requirements are clarified. Requirements for spacing units are modified for clarity, to better explain how exceptional wells and spacing unit changes are handled, and to better protect correlative rights. Integration, unitization, and several other processes are modified to conform to statute and to clarify the process. Drill pad construction prior to permit approval is conditionally authorized. A setback of wells from occupied structures is added. Other permit requirements are modified to ensure compliance with Commission authorities. Application and processing for recompletions and plug backs is added. Sundry notices are authorized. Permit transfer process is modified to make sure new operator is registered and in good standing with the State of Idaho. Inventory of wellhead equipment is added. Well logging and reporting requirements are modified to improve information gathering and retention. Production reporting requirements are modified to get the information to the Department sooner and reduce the need for corrected reports. Gas-oil ratio is increased to 10,000:1 for gas well classification. Meter calibration is modified to increase transparency. Tank battery and processing facility standards are modified to add flexibility. Reporting requirements for active wells are increased to provide information critical to Commission authorities.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, [Volume 16-5, pages 51-52](#).

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:

Several documents incorporated by reference in 2012 have been updated since that time, so the new editions are

being incorporated by reference. These updates will have a minimum impact on Idaho operations, and they are the standard used by industry in other states. These include:

- API SPEC 5CT, Specifications for Casing and Tubing. 9th edition dated July, 2011 and the amendments and Errata through September 2012.
- ASTM D698-12e2, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m<sup>3- ASTM D1250-08(2013)e1, Standard Guide for Use of the Petroleum Measurement Tables. 2013 revision.
- ASTM D1557-12e1, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m^{3- OSHA Standard 1910.1200 (Hazard Communication). Last revised 2012.}</sup>

One additional document is being incorporated by reference to accompany the guidance document ASTM D1250-08(2013)e1. This should have no impact on Idaho operations, as these tables are the standard used in the industry and give all operators and jurisdictions a common frame of reference for determining volumes of oil and gas. The new document is:

Adjunct to D1250-04 Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils. 2004 revision.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or email oilandgasconservationrulemaking@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above email or the undersigned and must be delivered on or before Wednesday, October 26, 2016.

DATED this 2nd day of September 2016.

Eric Wilson, Bureau Chief
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720
Phone: (208) 334-0261 / Fax: (208) 334-3698

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 20-0702-1601
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, Title 47, Chapter 3, Idaho Code, ~~and IDAPA 20.07.01, "Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission."~~ (4-11-15)()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-29-12)

01. API Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document. 1st Edition, January 1993 and Reaffirmed June 2000 available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-29-12)

02. API SPEC 5CT, Specifications for Casing and Tubing. The ~~8~~⁹th edition dated July, ~~7~~²⁰⁰⁵~~11~~ and the amendments ~~dated March, 31, 2006 and April, 7, 2006~~ and ~~Errata through September 2012~~ are available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (~~3-29-12~~)()

03. API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24th Edition dated December, 2010 is available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-29-12)

04. ASTM D698-~~07e1~~^{12e2}, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)). 20~~07~~¹² revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (~~3-29-12~~)()

05. ~~ASTM D1250-08, Standard Guide for Use of the Petroleum Measurement Tables~~ ASTM D1250-08(2013)e1, Standard Guide for Use of the Petroleum Measurement Tables, 2013 revision. ~~2008 revision.~~ Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (~~3-29-12~~)()

06. Adjunct to D1250-04 Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils. 2004 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

07. ASTM D1557-~~09~~^{12e1}, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³)). 20~~09~~¹² revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (~~3-29-12~~)()

08. EPA SW-846 Method 9090A, Compatibility Test for Wastes and Membrane Liners. Revision 1, July 1992. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/9090a.pdf> <https://www.epa.gov/sites/production/files/2015-12/documents/9090a.pdf>. (~~3-29-12~~)()

09. OSHA Standard 1910.1200 (Hazard Communication). Last revised ~~1996~~²⁰¹². Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099. (~~3-29-12~~)()

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

The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho and it is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-~~2339~~³⁶⁹⁸. The Idaho Oil and Gas Conservation Commission's official website is <http://www.idl.idaho.gov/oil-gas/commission/index.html>. (~~3-29-12~~)()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code. ~~Upon request in any application or material submitted to the Department, confidentiality protection shall be provided for information by law exempt from disclosure, and only those parts of an application or other materials that are by law exempt from disclosure can be held as confidential~~ All claims of exemption from disclosure must include a specific citation under which the Department should withhold the information from a public records request, and how the information meets the standards for being withheld from disclosure. When a portion of a record or a portion of a page in that record is subject to disclosure and the other portion is subject to a claim that it is a trade secret from disclosure under Title 74, Chapter 1, Idaho Code, the person making the claim must clearly identify the two portions at the time of submittal. (~~4-11-15~~)()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. (10-21-92)
02. **k Well.** A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. (3-29-12)
- ~~03.~~ **Annulus.** The void between any piping, tubing or casing and the piping, tubing, casing or borehole immediately surrounding it. ()
- ~~04.~~ **ASTM D1250 Tables.** Adjunct to D1250-04 Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils, and ASTM D1250-08(2013)e1, Standard Guide for Use of the Petroleum Measurement Tables, all published by ASTM International. ()
- ~~0305.~~ **Barrel.** Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure and 14.696 psi. ~~(10-21-92)~~()
- ~~046.~~ **Blowout.** An unplanned sudden or violent escape of fluids from a well. (3-29-12)
- ~~057.~~ **Blowout Preventer.** A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. (4-11-15)
- ~~068.~~ **Bonus Payment.** Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. (4-11-15)
- ~~09.~~ **Borehole.** The hole created by the drill bit during drilling prior to casing being placed. ()
- ~~0710.~~ **Casing Pressure.** The pressure within the casing or between the casing, tubing, or drill pipe. (3-29-12)
- ~~0811.~~ **Casinghead.** A metal flange attached to the top of the conductor pipe that ~~is the~~ serves several purposes including, but not limited to, the following: ()
- ~~a.~~ The primary interface for the diverter system during drilling ~~on~~ for surface casing; ~~(3-29-12)~~()
- ~~b.~~ The adapter between the conductor pipe and the blowout preventer stack; and ()
- ~~c.~~ The adapter between the conductor pipe and the wellhead after completion. ()
- ~~09.~~ **Casinghead Gas.** ~~Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil.~~ ~~(3-29-12)~~
- ~~102.~~ **Commission.** The Oil and Gas Conservation Commission of the state of Idaho. (10-21-92)
- ~~113.~~ **Common Source of Supply.** The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlain, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlain by a common pool or accumulation of oil or gas or both oil and gas. ~~(3-29-12)~~()
- ~~124.~~ **Completion.** A single operation involving the installation of equipment in and on a well, after drilling and evaluating the well, to bring the well into production from one or more zones. An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well shall be considered completed when

the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. ~~(3-29-12)~~()

~~135.~~ **Conductor Pipe.** The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. (3-29-12)

~~146.~~ **Cubic Foot of Gas.** The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be ~~fourteen and seventy-three hundredths (14.73) pounds per square inch absolute~~ **14.696 psi** and the standard temperature base shall be sixty (60) Degrees F. ~~(3-29-12)~~

~~157.~~ **Day.** A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following day. (3-29-12)

~~168.~~ **Department.** The Idaho Department of Lands ~~or its designee.~~ ~~(3-29-12)~~()

~~179.~~ **Development.** Any work which actively promotes bringing in production. (10-21-92)

~~1820.~~ **Director.** The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. (3-29-12)

~~19.~~ **Drilling Logs.** ~~The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole.~~ ~~(3-29-12)~~

~~20.~~ **Field.** ~~The general area underlaid by one (1) or more pools.~~ ~~(10-21-92)~~

21. Drill Cuttings. Rock chips and ground up rock materials obtained through the drilling process and screened out of the drilling mud. ()

22. Drill Pad. The constructed or leveled area upon which an oil and gas well is drilled. ()

23. Drilling Mud. A mixture of fluids and additives that are used in the drilling process to cool, lubricate, and clean the drilling bit; transport drill cuttings to the surface; form a mudcake on the inside of the borehole to prevent caving and fluid interactions with the surrounding formations; and provide for well control. ()

24. Exceptional Well Location. An oil or gas well that does not meet the well location requirements in Section 120.01 of these rules or any field spacing order. ()

245. Fresh Water. All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. (3-29-12)

~~226.~~ **Gas-Oil Ratio.** The **ratio of the** volume of gas produced in standard cubic feet to each barrel of oil ~~or condensate~~ produced concurrently during any stated period. ~~(3-29-12)~~()

~~237.~~ **Gas Processing Facility.** A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. (4-11-15)

~~248.~~ **Gas Well.** (10-21-92)

a. A well which produces primarily natural gas; (3-29-12)

b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or (10-21-92)

- c. Any well classed as a gas well by the Commission for any reason. (10-21-92)
- ~~25. **Geophysical or Seismic Operations.** Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot hole locations, necessary clearing of vegetation, shot hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot holes, and vibroseis. (3-29-12)~~
- ~~29. **Geophone.** Receiving device for ground vibrations used in seismic surveys. ()~~
- ~~2630. **Hydraulic Fracturing, or Fracing.** A method of stimulating or increasing the recovery of hydrocarbons by perforating the *production* casing and injecting fluids or gels with proppant into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. (3-29-12)()~~
- ~~2731. **Inactive Well.** An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. (3-29-12)~~
- ~~2832. **Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. (3-29-12)~~
- ~~2933. **Junk.** Debris or any unwanted object in a hole that impedes drilling or completion. (3-29-12)()~~
- ~~304. **Lease.** A tract(s) of land which by virtue of one of the following: an oil and gas lease; fee or mineral ownership; a drilling, pooling, or other agreement; a rule, regulation or order of a governmental authority; or *otherwise* other means constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. (10-21-92)()~~
- ~~315. **Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. (3-29-12)~~
- ~~36. **Mudlog.** The record and evaluation of natural gas in drilling mud and crude oil in well cuttings, lithology of the formation drilled, and drilling parameters for a well being drilled. ()~~
- ~~37. **Occupied Structure.** A building with walls and a roof within which individuals live or customarily work. ()~~
- ~~328. **Oil and Gas.** Oil or gas or both. (10-21-92)~~
- ~~339. **Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. (3-29-12)~~
- ~~34. **Operator.** *Any duly authorized person who is in charge of the development of a lease or the operation of a producing well.* (10-21-92)~~
- ~~35. **Owner.** *The person who has the right to drill into and produce from a pool and to appropriate the oil or gas that produces there from either for himself and/or others.* (10-21-92)~~
- ~~36. **Person.** *Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter gender.* (10-21-92)~~

~~3740.~~ **Pit.** Any excavated or constructed depression or reservoir used to contain produced water or reserve, drilling, well treatment, ~~produced water~~, or other fluids. Pits can be located at the drill site or at centralized facilities that collect these fluids for disposal, storage, or treatment. ~~This does not include e~~ Enclosed, mobile, or portable tanks used to contain fluids are not pits. (3-29-12)()

41. Plug Back. Plugging the bottom section of a well when a recompletion is done at a higher interval. ()

~~3842.~~ **Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. (3-29-12)

~~39.~~ **Pool or Reservoir.** ~~An underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.~~ (3-29-12)

403. Pressure Maintenance. The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. (10-21-92)

~~414.~~ **Produced Water.** Water that is produced along with oil or gas. (3-29-12)

~~42.~~ **Producer.** ~~The owner of a well(s) capable of producing oil or gas or both.~~ (10-21-92)

~~435.~~ **Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. (3-29-12)

~~446.~~ **Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. (3-29-12)

47. Recompletion. Completing a well in a higher or lower interval than the initial completion. ()

458. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (3-29-12)

49. Sample Envelope. Three (3) inch by five (5) inch envelope with metal fold top or clasp. Envelope is labeled with the following information: ()

a. Company Name: ()

b. Well Name and Number: ()

c. U.S. Well Number (Vertical wells use 11 digit number, horizontal wells use 15 digit number): ()

d. Legal Description using Subsection, Section, Township, and Range: ()

e. County: ()

f. State; and ()

g. Sample interval measured depth from surface. ()

50. Seismic Operations. Any geophysical method performed on or near the surface of the land utilizing instruments operating under the laws of physics respecting vibration or sound. These methods are used to determine conditions below the surface of the earth where oil or gas may be located. Seismic operations include, but are not limited to, the preliminary line survey, acquiring necessary permits, selecting and marking shot hole locations.

selecting and surveying source point and receiver locations, clearing vegetation, drilling shot holes, implanting charges, placing geophones, detonating and backfilling shot holes, surface shots, and vibroseis. ()

51. Shot Hole. Shallow hole drilled for explosive charges used in seismic operations. ()

52. Spacing Unit. The geographic area allocated by rule or order that can be efficiently and economically drained by one (1) well. ()

4653. Spud. To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit. (4-11-15)

4754. Surface Casing. The first casing which is run after the conductor pipe to anchor blow out prevention equipment and to seal out fresh water zones. (3-29-12)

55. Surface Shot. Explosive charges set off on, or just above, the surface for seismic operations. ()

4856. Surface Water. Rivers, streams, lakes, and springs when flowing in their natural channels. (4-11-15)

4957. Systems Approach. The disclosure of chemical information by chemical abstract service name only, without disclosing component percentages or chemical relationships. (4-11-15)

5058. Tank. A concrete, metal, or plastic stationary vessel used to contain fluids. (4-11-15)

519. Tank Battery. One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and which serves as the point of collection and disbursement of oil or gas from a well(s). (4-11-15)

5260. Tank Dike. An impermeable man-made structure constructed around a tank to contain leakage from the tank. (4-11-15)

5361. Tubing. Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. (3-29-12)

62. U.S. Well Number. Well numbering convention used in U.S. to provide a unique, permanent, numeric identifier for each oil and gas well. This number is assigned by the Department when a drilling permit is under review. The number has up to 14 digits that are grouped and ordered to provide specific information about the well (SS-CCC-NNNNN-WW-XX). The meaning of the different parts is as follows: ()

a. The first two digits, represented by "SS" in the above example, are a state code. Idaho is 11. ()

b. Digits 3 through 5, represented by "CCC" in the above example, are a county code. ()

c. Digits 6 through 10, represented by "NNNNN" in the above example, are the well code corresponding to the well number in each respective county. ()

d. Digits 11 and 12, represented by "WW" in the above example, are the well bore codes given to each well bore from that surface location. The first wellbore is assigned 00 and may not appear if no other well bores have been made from that same surface location. A subsequent sidetrack, deepening, or lengthening of the well is given another number. ()

e. Digits 13 and 14, represented by "XX" in the above example, are used for plugbacks, recompletions, deepening, or any other well conversion that requires additional work in the same well bore. These

digits may not appear if only one completion has been made. ()

63. Vibroseis. Source of ground vibrations used in seismic surveys, and generated by specially designed trucks. ()

564. Volatile Organic Compound. Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. (3-29-12)

565. Waterflooding. The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. (3-29-12)

~~56. Waste as Applied to Oil.~~ ~~Underground waste; inefficient, excessive, improper use, or dissipation of reservoir energy, including gas energy and water drive; surface waste, open pit storage, and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use, and sale; the locating, drilling, equipping, operating, or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations.~~ (10-21-92)

~~57. Waste as Applied to Gas.~~ ~~The escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing, and testing of wells and in furnishing power for the production of wells.~~ (10-21-92)

66. Well Logs. The recorded description of the lithologic sequence encountered in drilling a well, and the graphical display of one or more physical properties in or around a well versus depth or time, or both. The recorded descriptions include, but are not limited to, drill cutting sample logs and mud logs. The physical properties include, but are not limited to, electric, gamma ray, geophysical, and acoustic. ()

5867. Well Report. The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, mud weight and viscosity records, directional surveys, etc., as is usually recorded in normal procedure of drilling; also, it includes the daily drilling report, electrical radioactivity, or other similar logs run, lithologic description or other scientific analyses of all whole or sidewall cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. (3-29-12)()

5968. Well Site. The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well drill pad. (4-11-15)()

609. Well Treatment. Actions performed on a well to acidize, fracture, or stimulate the target reservoir. (3-29-12)

6170. Wildcat Well. An exploratory well drilled in an area of unknown subsurface conditions. (3-29-12)

71. Workover. The repair or stimulation of an existing producing zone or zones in a producing well for the purpose of restoring, prolonging, or enhancing the production of hydrocarbons, but does not include hydraulic fracturing. ()

011. ABBREVIATIONS.

01. API. American Petroleum Institute. (3-29-12)

- | | | |
|-----|---|------------|
| 02. | ASTM. American Society for Testing and Materials. | (3-29-12) |
| 03. | BBL. Oilfield Barrel. | (4-11-15) |
| 04. | BOP. Blowout Preventer. | (3-29-12) |
| 05. | CAS. Chemical Abstracts Service. | (3-29-12) |
| 06. | EPA. United States Environmental Protection Agency. | (3-29-12) |
| 07. | F. Fahrenheit. | (3-29-12) |
| 08. | GPS. Global Positioning System. | (3-29-12) |
| 09. | HDPE. High Density Polyethylene. | (3-29-12) |
| 10. | IDAPA. Idaho Administrative Procedure Act. | (3-29-12) |
| 11. | IDEQ. Idaho Department of Environmental Quality. | (3-29-12) |
| 12. | IDWR. Idaho Department of Water Resources. | (3-29-12) |
| 13. | MCF. One thousand cubic foot. | (4-11-15) |
| 14. | MSDS. Material Safety Data Sheet. | (3-29-12) |
| 15. | OSHA. Occupational Safety & Health Administration. | (3-29-12) |
| 16. | PSI. Pounds per Square Inch. | (3-29-12) |
| 17. | PVC. Polyvinyl Chloride. | (4-11-15) |
| 18. | <u>U.S. United States.</u> | <u>()</u> |

012. -- 014. (RESERVED)

015. PROTECTION OF CORRELATIVE RIGHTS.

The Commission and the Department should ~~afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense~~ protect correlative rights by administering these rules to not require an owner to drill unnecessary wells or incur unnecessary expenses to recover or receive ~~such~~ oil or gas or its equivalent. ~~(3-29-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

030. NOTICES - GENERAL.

01. Written Authorization Required. Any written notice of intention to do work or to change plans previously approved must be filed with the Department, unless otherwise directed, and must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department operator in writing. Written notices may be submitted to the Department by e-mail or facsimile. ~~(4-11-15)~~()

02. Emergency Authorization. In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given to the Department may be given orally or by ~~wire email, and if~~ approval is obtained, the ~~transaction shall be confirmed~~ Department will confirm the

notification in writing, as a matter of record.

~~(3-29-12)~~()

03. Publication of Legal Notices. Whenever these rules require a legal notice to be published in a newspaper, the notice must be published once a week for two (2) consecutive weeks. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

040. ~~PUBLIC COMMENT~~PERMIT PROCESSING.

Applications submitted under Sections 100, 200, 201, 210, 211, 230, ~~and~~ 330, and 502 of these rules will be ~~posted on the Department's website for a fifteen-day (15) written comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department's website following the comment period.~~ processed as follows: (4-11-15)()

01. General Review Process. Permit review and approval will follow the procedure in Idaho Code § 47-320. The Department may post an application on its website after the Department determines that the application is complete; ()

02. Resubmittal. The applicant may modify incomplete or denied applications. The applicant does not have to pay an additional application fee if they resubmit within fifteen (15) business days of receiving notice of an incomplete application or a denial. The applicant must pay a new fee if the Department receives the revised application past that fifteen (15) business days; ()

02. Denial If Incomplete. The Department may deny applications if the applicant does not resubmit within thirty (30) business days of receiving notice of an incomplete application; and ()

03. Appeals. The applicant may appeal the Department's decision to the Commission pursuant to Idaho Code § 47-324(d), (e), (f) and (g). ()

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER B - EXPLORATION AND DEVELOPMENT

100. ~~GEOPHYSICAL OPERATIONS~~SEISMIC OPERATIONS.

01. Permit Required. Before beginning seismic operations ~~in the state of Idaho, a representative of the client company and the seismic contractor shall meet with the staff of the Department, file an application for a permit to conduct seismic operations, and pay an application fee for oil and gas a person must obtain a permit from the Department.~~ No seismic operation shall be conducted without such a permit. ~~The Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the Department for failure to comply with the Commission's rules, statutes, and orders.~~ The Department may revoke, suspend, or deny ~~the application for~~ a seismic permit without a hearing; provided that the seismic contractor shall be given an opportunity for a hearing at the next regularly scheduled Commission meeting. ~~The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more.~~ The application for a ~~permit for~~ seismic operations ~~permit~~ must include all of the following: ~~(3-29-12)~~()

a. The For two dimensional surveys, the proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, density of the seismic source points and receiver lines and Section, Township, and Range lines. The map must also show additional area as needed for any

alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; ~~and.~~ (3-29-12)()

b. For three dimensional surveys, the intended orientation and density of the seismic source points and receiver lines on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. ()

bc. The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. (3-29-12)

ed. The approximate number, depth, and location of the seismic shot holes and the size of the explosive charges. The application shall be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shot holes. (10-21-92)()

de. The name and permanent address of the client company the Department may contact about the seismic operation. (3-29-12)

ef. The name, permanent address, and phone number of the seismic contractor and his local representative whom the Department may contact about the seismic activity. (3-29-12)

fg. The name, phone number, and permanent address of the shot hole plugging contractor, if different from the seismic contractor. (10-21-92)()

gh. A detailed description of the shot hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. (3-29-12)()

hi. The anticipated starting date of seismic operations. (3-29-12)

ji. The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or shot hole plugging. (3-29-12)()

jk. A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic shot hole. (10-21-92)

l. A bond meeting the requirements of Subsection 03 below. ()

m. An application fee as described in Idaho Code § 47-320. ()

02. Operating Requirements. All geophysical seismic operations must comply with the following requirements: (3-29-12)()

a. All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. (3-29-12)

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. (3-29-12)

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

DISTANCE TO STRUCTURE (Feet)*	MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*
50	0.5
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0
<i>*Based upon a charge weight of seventy (70) Foot/Pound½</i>	

(3-29-12)()

d. The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. (3-29-12)

e. All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. (3-29-12)

f. All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. (3-29-12)

g. Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. (3-29-12)

h. All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

i. All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

j. All debris associated with the seismic activity shall be removed and properly disposed. (3-29-12)

03. Bond Required. (3-29-12)

a. ~~Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a~~ **The bond for seismic exploration will be** in the amount of at least ten thousand dollars (\$10,000). The Department may increase this ~~bonding requirement amount~~ **amount** for ~~geophysical seismic~~ **geophysical seismic** contractors based on the amount of potential damage from the ~~contemplated proposed~~ **operation**. The ~~condition of such~~ **bond** shall comply with the Act, the ~~rules and orders of the~~ **Commission's rules and orders**, and ~~orders of the Department's~~ **orders**. The obligation of the bond shall not be discharged until one (1) year from ~~completion of the survey receipt of the final completion report described in Subsection 100.08 of these rules~~ **or until the geophysical seismic contractor has complied with the Oil and Gas Conservation Law Act, the Commission's rules, and the orders of the Commission and the Department.** (3-29-12)()

b. Persons ~~or other entities~~ who ~~engage in the plugging of seismic plug shot~~ **plug shot** holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the ~~Oil and Gas Conservation Law Act~~ **and**

the regulations and orders of the Commission and the Department.

~~(3-29-12)~~()

04. Newspaper Notice. Before a geophysical seismic operation contractor conducts the geophysical operation, the contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice will conform with Subsection 030.03 of these rules, and shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well ~~or conducted by aerial surveys.~~

~~(3-29-12)~~()

05. Owner Agreement and Occupant Notification. No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first ~~given notice at least thirty (30) calendar days prior to commencement of field seismic operations.~~ obtained a written agreement with the surface owner and provided written notice to the following parties:

~~(3-29-12)~~()

~~a. The notice shall be in writing and given either personally or by certified United States mail to the following persons:~~

~~(3-29-12)~~

~~i. Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records;~~

~~(3-29-12)~~

~~ii.a. Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and~~

~~(3-29-12)~~

~~ii.b. Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records.~~

~~(3-29-12)~~

~~b06.~~ The notice provided for in Subsection 100.05 of these rules shall contain the following:

~~(3-29-12)~~()

~~ia.~~ Name of the person ~~or entity~~ that is conducting the seismic operations;

~~(3-29-12)~~()

~~ii.b.~~ Proposed location of the seismic operations; and

(3-29-12)

~~iii.c.~~ Approximate date the person ~~or entity~~ proposes to commence seismic operations.

~~(3-29-12)~~()

~~067.~~ **Department Notifications.**

(3-29-12)

~~a.~~ The permit holder shall also notify the Department within five (5) business days of ~~the commencement and completion of beginning~~ each seismic operation. The permit holder will also notify the Department within five (5) business days of completing each seismic operation. These notifications may be done with a sundry notice.

()

~~b.~~ ~~Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project.~~

~~(3-29-12)~~

~~078.~~ **Reports and Notices Required.**

(10-21-92)

~~a.~~ Activity Report. Upon completion of the seismic activity operations or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project report. The final completion report shall be in affidavit form and shall include a map, and must be submitted to the Department within thirty (30) days of completing the seismic operations. The map in the completion report must be on a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet for the seven and one-half (7.5) minute map or one (1) inch equals four thousand (4,000) feet that shows approximately one (1) mile for the fifteen (15) minute map, and each showing section, township, and range) and the location of each

survey so that the shot holes and other potential impacts can be easily located. Maps must be dated and labeled with the permit number and the names of the contractor and client companies. The final completion report shall also include a statement that all work ~~has been~~ performed ~~in compliance~~ has complied with the ~~application for a seismic permit to perform seismic activity,~~ and Section 100 of these rules, ~~and permit provisions.~~ Said ~~The permit,~~ maps, ~~applications,~~ and reports shall be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations, the Act, and the orders of the Commission or the Department. Also, the ~~owner of the~~ Department may advise the surface ~~of the land may be advised~~ owner of the location of seismic lines, source points, receiver locations, or seismic shot holes on his land and of the exploration method used. (4-11-15)()

b. Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours advance notice of shot hole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday. (3-29-12)

~~089.~~ **Client-Contractor Responsibility.** The client company may be held responsible along with the seismic contractor for ~~conducting the operation in compliance~~ any failure to comply with the Commission's rules and orders, the Department's orders, and the Act ~~for the seismic contractor's failure to comply with such rules, statutes, and orders.~~ The hats used ~~in the plugging of seismic~~ to plug shot holes shall be imprinted with the name of the contractor ~~responsible for the plugging of~~ who plugged the hole. (3-29-12)()

~~0910.~~ **Plugging.** Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shot hole operations shall be conducted in the following manner: (3-29-12)()

a. When water is used in conjunction with the drilling of seismic shot holes and artesian flow is not encountered at the surface, seismic shot holes ~~are to~~ must be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are ~~to be~~ measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with Paragraph 100.~~0910.~~f. of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department shall be used as a plugging material. (4-11-15)()

b. The hole will be filled with the slurry from the bottom up to ~~a depth of three (3) feet~~ (three (3) feet below ground level). A nonmetallic plug will ~~then~~ be set at this depth ~~of three (3) feet~~, and the remaining hole will be filled and tamped to the surface with cuttings and native soil. (10-21-92)()

c. When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in Paragraph 100.~~0910.~~a., supra. (4-11-15)()

d. When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per Paragraph 100.~~0910.~~b. above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. (4-11-15)()

e. ~~The foregoing seismic~~ All shot holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the Department. (3-29-12)()

f. Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic shot hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. (10-21-92)()

g. The requirements of Paragraphs 100.~~0910.~~a. through 100.~~0910.~~f. of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner. (4-11-15)()

h. If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic shot hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately. (3-29-12)()

i. After ~~completing the plugging of seismic~~ shot holes are plugged and ~~spreading the~~ cuttings ~~as required by this rule~~ are spread, the seismic contractor shall record the GPS location of the seismic shot hole, and the contractor shall provide the location data to the Department. (3-29-12)()

101. Forfeiture of ~~Geophysical Exploration~~ Seismic Operation Bond. The Department may forfeit the bond submitted under Subsection 100.03 of this rule upon failure of the ~~owner or operator~~ seismic contractor or client company to conduct the seismic survey and complete reclamation in conformance with Section 100 of this rule. The ~~owner or operator~~ seismic contractor or client company will be given an opportunity to address compliance issues prior to the Department taking action against the bond. (4-11-15)()

101. -- 109. (RESERVED)

110. SURFACE OWNER PROTECTIONS.

01. Surface Use Agreement. If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the surface owner will be compensated for lost agricultural income and lost value of improvements directly caused by oil and gas exploration and production. The owner or operator may rely on the tax records of the respective county assessor to identify the surface owner. (3-29-12)

02. Surface Owner Notification. If a surface use agreement cannot be negotiated, then the owner or operator must notify the surface owner of the intent to drill by certified mail at least sixty (60) days prior to the commencement of surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount, and a copy must be sent to the Department. (3-29-12)

03. Surface Owner Objection. If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to the Department within thirty (30) days of receiving the notification from the owner or operator. The objection must contain the owner's or operator's proposed surface use bond amount. Any objection filed will not delay the owner's or operator's proposed start of surface disturbing activities. (3-29-12)

04. Surface Use Bond. The minimum surface use bond in all instances with no surface use agreement will be five thousand dollars (\$5,000), and will be paid in cash to the Department. If the surface owner objects to the owner's or operator's proposed bond amount, the Department will determine a surface use bond based on the information received from both the owner or operator and the surface owner. The Department will then request that the owner or operator submit this bond. The Department may issue the permit to drill and authorize the commencement of drilling operations after this bond has been received. The purpose of this bond is to safeguard the surface owner's loss of agricultural income and improvement values pending the results of a hearing on the final bond. (3-29-12)()

05. Hearing to Determine Surface Use Bond. When the owner, operator, or surface owner objects to the Department's proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount. The owner, operator, surface owner, and Department may offer testimony to the hearing officer. The hearing officer will recommend a final bond amount to the Commission Director. After the Commission Director's final order, the owner or operator and surface owner will have twenty-eight (28) days to file a request for judicial review. (3-29-12)()

06. Release of Surface Use Bond. The Department will hold the bond pending either a surface use agreement between the two (2) parties that negates the need for a surface use bond, or reclamation of the surface disturbance. (3-29-12)

07. Forfeiture of Surface Use Bond. The Department may forfeit this bond upon failure of the owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations. (3-29-12)

111. -- 119. (RESERVED)

120. WELL SPACING.

01. Standard Spacing Units and Well Locations. In the absence of an order ~~by the Commission~~ setting spacing units for a pool, or a unit operation as described in Section 14035, the following rules shall apply: (4-11-15)()

~~**01a. Wells Drilled for Oil; Standard Spacing Unit and Well Location.** Every well drilled for oil must be located in the center of on a spacing unit consisting of a forty (40) acre governmental quarter quarter section, lot or tract, or combination of lots or tracts substantially equivalent thereto as shown by the most recent governmental survey, with a tolerance of two hundred (200) feet in any direction from the center location; provided that no oil well shall be drilled less than nine hundred twenty (920) feet from any other well drilling to or capable of producing oil from the same pool, or no oil well shall be completed in a known pool unless it is located more than nine hundred twenty (920) feet from any other well completed in and capable of producing oil from the same pool. An oil well must have a minimum setback of three hundred thirty (330) feet from the Section's quarter quarter lines.~~ (10-21-92)()

~~**02b. Wells Drilled for Gas; Standard Spacing Unit and Well Location.** Every well drilled for gas must be located on a drilling spacing unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. A gas well must have a minimum setback of three hundred thirty (330) six hundred sixty (660) feet from the governmental section line.~~ (4-11-15)()

02. Meaning of Well Location for Spacing.

a. For vertical wells, well location for the purposes of this Section means where the producing interval is pierced by the well. If casing perforations in the producing interval extend for more than ten (10) feet along the length of the casing, then the mid-point of the producing casing perforations is the well location. ()

b. For non-vertical wells, well location for the purposes of this Section means the entire length of the perforated interval. ()

03. Well Locations Adjacent to Spaced Areas. The Commission shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the Commission, or under application for spacing where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spacing order or application, and the uniformity of spacing patterns is necessary to insure orderly development of the reservoir pool. (10-21-92)()

04. Exceptions to Well Locations of Wells and Well-Spacing Orders. Upon proper application therefore, the Department may approve, as an administrative matter, an exception to Subsections 120.01 and 120.02 or any order of the Commission establishing well spacing for a pool. An operator may apply for an exceptional well location, and the application will be processed as described in Idaho Code § 47-324(c). The application for an exceptional well location shall state fully the reasons why such an exception is necessary or desirable, include the consent of the owners of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and shall be accompanied by a plat showing include the following: (4-11-15)()

a. Affidavit that the applicant has a lease for the drilling location; ()

b. A list of names and addresses of applicant's lessors and uncommitted owners in the proposed unit, and a list of names and addresses of lessees, uncommitted owners, and applicant's lessors in offset units: ()

c. Affidavit that the applicant has notified applicant's lessors and uncommitted owners in the proposed unit, and lessees, uncommitted owners, and applicant's lessors in offset units. This notice must include a copy of the application, instructions for responding to the application, and instructions for participating in the hearing. ()

d. A statement explaining fully the reasons why the exceptional well location is necessary or desirable: ()

e. All geologic evidence, if any, that supports the exceptional well location: ()

f. A map showing: ()

g.i. The location at which an oil or gas well could be drilled in compliance with Subsections 120.01 ~~or 120.02~~ or the applicable order; (4-11-15)()

g.ii. The location at which the applicant requests permission to drill an oil or gas well and the location of the proposed spacing unit; and (4-11-15)

g.iii. The location at which oil or gas wells have been drilled or could be drilled, in agreement with Subsections 120.01 ~~or 120.02~~ or the applicable order, directly or diagonally offsetting the proposed exception. No exceptional well location shall prevent any owner or operator from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exceptional well location, at locations permitted by Subsections 120.01 ~~or 120.02~~ or any applicable order ~~of the Commission~~ establishing oil or gas well-spacing units for the pool involved. (4-11-15)()

iv. The operator's existing leases in all spacing units directly or diagonally offsetting the spacing unit. ()

05. Applicant Notification of Exceptional Location. After the Department determines the application is complete, the applicant will send any notice of hearing and response deadline as follows: ()

a. In offset units, send to lessees, uncommitted owners, and the applicant's lessors: ()

b. In the proposed spacing unit, send to the applicant's lessors and uncommitted owners. ()

06. Exceptional Well Location Combined With Integration. An operator who applies for an exceptional well location and does not have the proposed spacing unit under lease may simultaneously apply for integration of unleased tracts within the proposed spacing unit. The exceptional well location and integration applications can be processed together under Sections 130 and 140 of these rules. ()

057. Spacing Unit Changes. The Commission will review applications to change the size or shape of spacing units. An operator may apply for changes to the size or shape of spacing units established by Subsections 120.01 ~~or 120.02~~ of these rules or an order by the Commission. Changes to spacing units may be authorized if the change would assist in preventing waste of oil or gas, avoid the drilling of unnecessary wells, or protect correlative rights. Spacing units will be rectangular in shape and described using geographic boundaries in the United States Public Land Surveys. The size and shape of the units may be adjusted as reasonably required due to geologic or other circumstances affecting the orderly development of a pool. (4-11-15)()

a. The spacing of wells as described in Subsection 120.01 of these rules is temporary as stated in Idaho Code § 47-321(2)(a). A temporary spacing unit must remain in effect until superseded by an order that establishes spacing units. Production and reservoir information will be used to establish spacing units. ()

b. An application to change the size or shape of a spacing unit must include an affidavit that the

applicant has notified applicant's lessors and uncommitted owners in the proposed unit, and lessees, uncommitted owners, and applicant's lessors in offset units. This notice must include a copy of the application, instructions for responding to the application, and instructions for participating in the hearing. ()

c. Applications will be processed according to the procedures in Section 140 of these rules. After the Department determines the application is complete, the applicant will send any notice of hearing and response deadline as follows: ()

i. In offset units, send to lessees, uncommitted owners, and the applicant's lessors; ()

ii. In the proposed spacing unit, send to the applicant's lessors and uncommitted owners. ()

d. Spacing units must result in the efficient and economic development of the pool as a whole. In establishing spacing units, the Department determines the unit's acreage and shape based upon evidence introduced at the hearing. The Department may divide a pool into zones and establish spacing units for each zone if necessary. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well. ()

e. A spacing order may permit only one well to be drilled and completed in the common source of supply on any spacing unit. The well must be drilled at a location authorized by the order. An exceptional well location may be included in the request to establish spacing units if, upon application, notice, and hearing, the Department finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or that the required well location on the spacing unit would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling the well, or for other good cause shown. The Department will act to offset any advantage that the person securing the exceptional well location may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool. ()

f. An order establishing spacing units for a pool must cover all lands determined or believed to be underlain by the pool and may be modified by order of the Department to include additional areas subsequently determined to be underlain by the pool. ()

121. -- 129. (RESERVED)

130. INTEGRATION.

When two (2) or more separately owned tracts or interests are within a spacing unit, the owners of the tracts or interests may voluntarily integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration and upon an application by an owner within a proposed spacing unit, the ~~Commission may, either before or after drilling a well, make an~~ Department will order integration ~~on of~~ all tracts or interests within the spacing unit for the development and operation of the spacing unit. (4-11-15)()

01. Integration Application Requirements. ~~Integration applications must be filed with the Commission in hard copy and electronic formats~~ Applicants must submit one (1) paper copy and one (1) electronic copy of the application. The application must ~~contain~~ be accompanied by the following ~~information~~ items: (4-11-15)()

a. ~~Name and address of the applicant~~ Information listed in Idaho Code § 47-322(d); and (4-11-15)()

b. ~~Description of the spacing unit to be integrated~~ An application fee as described in Idaho Code § 47-320; and (4-11-15)()

c. ~~Plat of the subject spacing unit identifying the location of the well site, tank battery, gas processing facility, pipelines, roads, and the ownerships of tracts and interests within the spacing unit;~~ Affidavit that certifies the applicant published a notice of the application as required by Idaho Code § 47-322(e). (4-11-15)()

- ~~d. A geologic statement explaining the likely presence of hydrocarbons; (4-11-15)~~
- ~~e. A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator; (4-11-15)~~
- ~~f. A proposed joint operating agreement and a proposed lease form; (4-11-15)~~
- ~~g. A list of all mineral interest owners in the spacing unit and a list of the owners to be integrated under the application, including names, addresses, and respective acreages within the spacing unit; (4-11-15)~~
- ~~h. Affidavits indicating that at least fifty five percent (55%) of the mineral interest owners in the spacing unit support the integration application by leasing or participating as a working interest owner; (4-11-15)~~
- ~~i. An affidavit stating the highest bonus payment paid to leased mineral interest owners prior to filing the integration application; and (4-11-15)~~
- ~~j. A resume of efforts documenting the applicant's good faith efforts on at least three (3) separate occasions within a period of time no less than sixty (60) days to inform mineral interest owners of the applicant's intentions to develop the mineral resources in the spacing unit and reach an agreement with owners in the spacing unit. At least one (1) contact must be by certified U.S. mail return receipt requested sent to an owner's last known address. If an owner of a tract cannot be found, the applicant must publish a legal notice in a newspaper in the county where the tract is located. The resume of efforts must show the applicant has exhausted all reasonable efforts to reach an agreement with owners in a spacing unit. (4-11-15)~~

~~02. **Response to the Application and Hearing** **Processing Integration Applications.** At the time the integration application is filed with the Commission, the applicant must certify that a copy of the integration application and supporting information was served on all mineral interest owners in the spacing unit to be integrated under the application. The affected mineral interest owners in the spacing unit will have twenty one (21) days from the date of service of the application to file a response to the application with the Commission. The Commission will schedule a hearing on the application for integration. The applicant will give notice of the hearing to all mineral interest owners in the unit to be integrated under the application in the manner required by Section 47-324(b), Idaho Code. **Applications will be processed as per Section 140 of these rules. Actual mailing costs include, but are not limited to, postage, envelopes, copying, and staff time for preparing application copies for mailing.** (4-11-15)()~~

~~**131. INTEGRATION ORDERS:**~~

~~The Commission will issue an integration order if the Commission approves an application for integration. The integration order will authorize the drilling and operation of a well in a spacing unit, prescribe the time and manner in which all owners in the spacing unit may elect to participate therein, and prescribe the manner for the payment of the costs of drilling and operating the well upon terms that are just and reasonable pursuant to Section 47-322, Idaho Code. (4-11-15)~~

~~**01. Participation Terms.** Upon issuance of an integration order by the Commission, the operator of the integrated spacing unit must issue an elections form to all non-leased owners in the spacing unit by certified U.S. mail, return receipt requested. The election form must clearly identify the participation terms, the course of action if an owner does not respond to the election form, and a response deadline. The terms in Subsections 131.02, 03, and 04 of these rules are available to non-leased owners in an integrated spacing unit. (4-11-15)~~

~~**02. Working Interest Owner.** An owner who elects to participate as a working interest owner will pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Prior to the drilling operations, working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. (4-11-15)~~

~~**03. Nonconsenting Working Interest Owner.** An owner who refuses to share in the risk and actual costs of drilling and operating the well is a nonconsenting working interest owner. Nonconsenting working interest owners are entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until~~

~~the operator of the integrated spacing unit has recovered up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner owns the proportionate share in the well, surface facilities, and production, and will be liable for further costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. (4-11-15)~~

~~**04. Lease.** An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner will receive one-eighth (1/8) royalty. The operator of an integrated spacing unit must pay a leasing mineral owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. (4-11-15)~~

~~1321. -- 1394. (RESERVED)~~

14035. UNIT OPERATION AGREEMENTS.

Any person desiring to obtain the benefits of Section 47-323, Idaho Code, relating to any method of unit, cooperative development, or operation of a field or pool or a part of either, shall file an application with the Department ~~for approval of such agreement which shall have attached a copy of such agreement. Notice of the hearing of such application shall be given by publication of a legal notice in a newspaper of general circulation in Ada County, Idaho, and the county of the unit operation. (4-11-15)()~~

~~**01. Unit Operation Application.** Applicants must submit one (1) paper copy and one (1) electronic copy of the application. The application must be accompanied by the following items: ()~~

~~**a. Information listed in Idaho Code § 47-323(3): ()**~~

~~**b. An application fee as described in Idaho Code § 47-320: ()**~~

~~**02. Processing Unit Operation Applications.** Applications will be processed as per Section 140 of these rules. ()~~

~~136. -- 139. (RESERVED)~~

~~**140. PROCESSING APPLICATIONS NOT LISTED IN IDAHO CODE § 47-320(1).**~~

~~**01. Applications Covered By This Section.** Applications not processed under Section 040 of these rules must be processed as described in this Section. ()~~

~~**02. Preapplication Meeting.** The Department staff may require a preapplication meeting at least five (5) but no more than twenty (20) business days prior to filing an application. The purpose of this meeting is to coordinate potential hearing dates. ()~~

~~**03. General Review Process.** Applications will be processed as per Idaho Code § 47-324(c). ()~~

~~**04. Resubmittal.** The applicant may modify incomplete applications. The applicant may resubmit the modified application within fifteen (15) business days of the applicant receiving notice of an incomplete application. No additional application fee will be required within that fifteen (15) days, but new fees may be required if the Department receives the revised application past that fifteen (15) day dead line and the operator does not request an extension for good cause. ()~~

~~**05. Reimbursement for Mailing Costs.** For integration and unitization applications, the Department will send the applicant an invoice after mailing copies of the application. The applicant must pay the invoice within thirty (30) days of receipt. ()~~

141. -- 199. (RESERVED)

SUBCHAPTER C - DRILLING, WELL TREATMENT, AND PIT PERMITS

200. PERMIT TO DRILL, DEEPEN, OR ~~PLUG-BACK~~ RE-ENTER.

01. **Permits Required.** ~~Prior to the commencement of~~ The Department must receive an application and approve a permit before an operator begins operations to drill, deepen, or ~~plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Department of intention to drill, deepen, or plug back~~ re-enter any well for oil or gas, ~~and approval obtained.~~ Drill pad construction may proceed prior to permit approval if a surface use agreement or lease is in place, and a sundry notice is submitted to the Department. No drilling or casing may occur until the permit to drill is approved by the Department. (3-29-12)()

02. **Fees** Application Processing. ~~An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired~~ Applications will be processed as described in Section 040 of these rules. (3-29-12)()

03. **Time Required to Commence Operations; Term of Permit.** ~~On~~ A permit will expire on the first anniversary of the date of issuance of a permit to drill, deepen, or ~~plug back, said permit will expire and be of no further force or effect,~~ or re-enter unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time, six-month extension ~~if work has not started.~~ If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires ~~due to the failure to commence operations,~~ then ~~reapplication is required prior to commencing~~ an operator must reapply before beginning operations. (3-29-12)()

04. **Location of Wells.** No oil or gas wells may be drilled within three hundred (300) feet of existing occupied structures without express written permission from the owner of the structure(s). ()

~~045.~~ **Application.** The Application for Permit to Drill shall include a Department approved form and the following: (3-29-12)

a. ~~An accurate plat~~ A map with a surveyed well location at a scale of one (1) inch to one thousand (1,000) feet showing the location of the proposed well with reference to the nearest lines of an established public survey and with reference to the boundaries of the proposed spacing unit that conforms to the requirements in Subsection 120.01, or any spacing requirement in a Commission Order. (3-29-12)()

b. The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. (3-29-12)

c. Information on the type of tools to be used and the proposed logging program. (3-29-12)

d. Proposed total depth to which the well will be drilled, estimated depth to the top of the important geologic markers, and the estimated depth to the top of the target formations. (3-29-12)

e. A schematic diagram of the BOP and well head assembly. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. ()

ef. The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. (3-29-12)

fg. The proposed type ~~and amount,~~ number of sacks, and total volume of cement to be used, and the intervals cemented. (3-29-12)()

g. Information on the drilling plan, including proposed type of mud. (3-29-12)()

- ~~h.~~ Best management practices to be used for erosion and sediment control. (3-29-12)
- ~~i.~~ Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection 310.16 and Section 510 of these rules. (4-11-15)
- ~~j.~~ Applications that include the following actions must also provide the information ~~from the required~~ in each respective Section of these rules: ~~(3-29-12)~~ ()
 - i. Well treatments require the submittal of the information in Section 210. (4-11-15)
 - ii. Pit construction and use requires the submittal of the information in Section 230. (4-11-15)
 - iii. Directional or horizontal drilling requires the submittal of the information in Section 330. (4-11-15)
- ~~l.~~ Affidavit that the applicant has a lease for the drilling location. ()
- ~~m.~~ An application fee as described in Idaho Code § 47-320. ()
- ~~n.~~ Bond meeting the requirements of Section 220 of these rules. ()
- ~~k.~~ Any other information which may be required by the Department based on site specific reasons. (3-29-12)
- ~~056.~~ **Permit Denial.** Applications may be denied ~~for the following reasons:~~ (3-29-12)
 - ~~a.~~ Application fee was not submitted. (3-29-12)
 - ~~b.~~ Application is incomplete. (3-29-12)
 - ~~c.~~ Failure to post required bonds. (3-29-12)
 - ~~d.~~ Proposed if the proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12) ()

201. MULTIPLE ZONE COMPLETIONS.

01. Requirements of the Owner or Operator; Request for Approval. A multiple zone completion may be approved by the Department upon application by the owner or operator ~~and payment of an application fee, as herein provided.~~ The application shall ~~be accompanied by an~~ contain the following items:

- ~~a.~~ eExhibit showing the location of wells on applicant's lease and all offset wells on leases; ;
- ~~b.~~ ~~and shall set forth a~~ All material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well; ;
- ~~c.~~ The An application fee ~~may not exceed that required by Subsection 200.02 of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed.~~ as described in Idaho Code § 47-320; (4-11-15) ()

02. ~~Conditions for Approval; Cause for Hearing~~ Application Processing. ~~In the event the Department is in agreement with the application and that no offset operator files a written objection to the application with the Department within fifteen (15) days of the date of the offset operator's receipt of application, the application shall be~~

~~approved as an amendment to the drilling permit. If any offset operator shall file in writing with the Department an objection to such multiple completion, or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department~~ Applications will be processed as described in Section 040 of these rules. (3-29-12)()

03. Zone Effectiveness; Requirement for Production Testing. The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. (3-29-12)

04. Commingling Production. The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. (3-29-12)

202. -- 20~~4~~. (RESERVED)

205. RECOMPLETIONS AND PLUG BACK.

01. Application Processing. An application for a recompletion or plug back in a well with an exception location that does not meet the spacing requirements in Subsection 120.01 will be processed under Section 140 of these rules. ()

02. Application. Applications for recompletion or plug back must include the following: ()

a. The applicable U.S. well number; ()

b. A detailed statement of the proposed work, including: ()

i. Description of proposed plugging materials, volumes, plug lengths, and methods as described in Subsection 502.05, as applicable to the intervals being plugged; ()

ii. The proposed plug's depth from surface; ()

iii. Depth and number of perforations proposed in the new target interval. ()

206. SUNDRY NOTICES.

Any person giving the Department a notice that does not require an approval or order will submit a sundry notice. These notices are required when the condition of a well is temporarily modified, such as, but not limited to, flow testing, starting production, workovers, etc. ()

207. --209. (RESERVED)

210. WELL TREATMENTS.

01. Application Required. An Application for Permit to Drill required by Section 200 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then ~~an application to amend the permit must be made~~ the operator must submit an application for well treatment to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but operators must notify the Department when such actions occur. Applications for well treatments must include the ~~permit~~ U.S. well number, well name, well location, as-built description if drilling has been completed, and the following: (4-11-15)()

a. Depth to perforations or the openhole interval; (3-29-12)

b. The source of water or type of base fluid; (3-29-12)

c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; (3-29-12)

- d.** Type of proppant(s); (3-29-12)
- e.** Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); (3-29-12)
- f.** Estimated pump pressures; (3-29-12)
- g.** Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; (3-29-12)
- h.** Size and design of storage pits, if proposed, in conformance with Section 230 of these rules; (4-11-15)
- i.** Information specific to hydraulic fracturing as described in Section 211 of these rules; (4-11-15)
- j.** Summary identifying all water bearing zones from the surface down to the bottom of the well; (3-29-12)
- k.** Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: (3-29-12)
- i.** Ground water and storm water best management practices; (3-29-12)
 - ii.** Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; (3-29-12)
 - iii.** A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; (3-29-12)
- l.** and **iv.** A brief description of the structural geology that may influence ground water flow and direction; (3-29-12)
- v.** The general hydrogeological characteristics of the treatment area and surrounding land. (3-29-12)
- l.** Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; (3-29-12)
- m.** Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; (3-29-12)
- n.** Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in Paragraph 210.01.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and (4-11-15)
- o.** Additional information as required by the Department. (3-29-12)

02. Master Drilling/Treatment Plans. Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. (3-29-12)

03. Application Processing. Applications will be processed as described in Section 040 of these rules. ()

034. Application Denial. The Department may deny well treatment applications for one (1) or more of the following reasons: (3-29-12)

- a. Application does not contain the information in Subsection 210.01 of these rules; (4-11-15)
- b. Application fee was not submitted. (3-29-12)
- c. Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12)

045. Time Limit. If a treatment approved in a ~~drilling permit or amended drilling~~ permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six-month (6) extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. (3-29-12)()

056. Inspections. The Department may conduct inspections prior, during, and after well treatments. (3-29-12)

067. Reporting Requirements. A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: (3-29-12)

- a. The daily production of oil, gas, and water both prior to and after the operation. (3-29-12)
- b. The size and depth of perforations. (3-29-12)
- c. Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. (3-29-12)
- d. Documentation demonstrating the chemicals used in the well treatment have been reported to the website www.fracfocus.org, its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. (4-11-15)
- e. Information specific to hydraulic fracturing, as described in Section 211 of these rules. (4-11-15)
- f. Static pressure testing results before and after the well treatment. (3-29-12)
- g. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or authorized lined pits as described in Section 230 of these rules. (4-11-15)
- h. Any other information related to operations which alter the performance or characteristics of the well. (3-29-12)

07. Fresh Water Protections for Well Treatments. (3-29-12)

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. (3-29-12)

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh water aquifers. (4-11-15)

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: (3-29-12)

i. Location of proposed monitoring sites; (3-29-12)

ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and *drilling well* log. For existing wells, the operator must make every reasonable attempt to locate this information; (~~3-29-12~~)()

iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; (3-29-12)

iv. List of proposed analytes, testing methods, and their detection limits; (3-29-12)

v. Additional tests such as stable isotopic analysis; and (3-29-12)

vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. (3-29-12)

d. The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. (3-29-12)

e. Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. (3-29-12)

211. HYDRAULIC FRACTURING.

01. Application Requirements. In addition to the information required by Subsection 210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: (4-11-15)

a. The geological names and descriptions of the formation into which well stimulation fluids are to be injected; (3-29-12)

b. Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: (3-29-12)

i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); (3-29-12)

ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); (3-29-12)

iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and (3-29-12)

iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. (3-29-12)

c. A detailed description of the proposed well stimulation design that shall include: (3-29-12)

i. The anticipated surface treating pressure range; (3-29-12)

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; (4-11-15)

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. (3-29-12)

02. Volatile Organic Compounds and Petroleum Distillates. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. Volatile organic compounds or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of volatile organic compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. (3-29-12)

03. Well Integrity. Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. (3-29-12)

04. Pressure Monitoring. During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. (3-29-12)

05. Post Treatment Report. In addition to the information required by Subsection 210.067 of this rule, the owner or operator shall provide the following post-treatment reporting: (4-11-15) ()

a. The actual total well stimulation treatment volume pumped; (3-29-12)

b. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; (3-29-12)

- c. The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; (3-29-12)
- d. A continuous record of the annulus pressure during the well stimulation; (3-29-12)
- e. A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy Paragraphs 211.05.a. through 211.05.d. of this rule. (4-11-15)
- f. A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection 211.04 of this rule. The report shall include corrective actions taken, if necessary. (4-11-15)
- g. Results of post treatment fluid analysis used to help determine where the fluid can be disposed. (3-29-12)

212. -- 219. (RESERVED)

220. BONDING.

01. Individual Bond. The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department. (4-11-15)

02. Blanket Bond. In lieu of the bond in Subsection 220.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. The bond, or a bond rider, must list all the wells covered by the bond. The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: ~~(4-11-15)~~()

- a. Up to ten (10) wells, fifty thousand dollars (\$50,000); (3-29-12)
- b. Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or (3-29-12)
- c. More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). (3-29-12)

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus eight dollars (\$8) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection 220.02 of this rule. (4-11-15)

04. Additional Bonding. The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. (3-29-12)

05. Authorized Bonds. The bond(s) referred to in Section 220 must be by a corporate surety

authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the general fund. (4-11-15)

221. TRANSFER OF DRILLING PERMITS.

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: (10-21-92)

01. Prior to Drilling Well. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. (3-29-12)

02. During Drilling or After Completion. If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. (3-29-12)

03. Terms for Acceptance of Transfer. Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit ~~a written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond.~~ the following: (3-29-12)()

a. A written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law; ()

b. If a bond is required, the person acquiring such well must furnish the bond; and ()

c. An Organization Report and Designation of Agent as required by Sections 032 and 033 of these rules if they have not been previously submitted. ()

222. -- 229. (RESERVED)

230. PIT REQUIREMENTS.

01. Plans Required. If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then ~~a~~ pit application ~~to amend the permit~~ must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit applicable U.S. well number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. (3-29-12)()

02. Application Processing. Applications will be processed as described in Section 040 of these rules. ()

023. Location. (3-29-12)

a. Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. (3-29-12)

b. Pits located in a one hundred-year floodplain must ~~be in conformance~~ conform with any applicable floodplain ordinances pertaining to activities within the one hundred-year floodplain. (3-29-12)()

c. Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. (3-29-12)

034. Site Preparation. All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. (3-29-12)

045. Pit Sizing Criteria. (3-29-12)

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." (3-29-12)

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. (3-29-12)

c. Snowmelt events shall be considered in determining the containment capacity. (3-29-12)

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. (3-29-12)

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the *impoundment pit*. (3-29-12)()

056. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits. Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections 230.023 through 230.045 of this rule and the following: (4-11-15)()

a. A prepared sub-base, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; (3-29-12)

b. Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; (3-29-12)

c. A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; (3-29-12)

d. Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; (3-29-12)

e. Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; (3-29-12)

f. Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and (3-29-12)

g. A closure plan including the following: (3-29-12)

i. Testing of residual fluids and any accumulated solids, if anything other than water based drilling

fluid was placed in the pit; (3-29-12)

ii. Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; (3-29-12)

iii. Regrading plan, replacement of topsoil, and erosion control measures; and (3-29-12)

iv. Reseeding and Revegetation. (3-29-12)

067. Minimum Plans and Specifications for Long Term Pits. Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections 230.023 through 230.056 of this rule and the following: (4-11-15)()

a. A quality control/quality assurance construction and installation plan; (3-29-12)

b. Type of fluids to be contained in the pit; (3-29-12)

c. Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of 10^{-9} cm/sec, or comparable liners approved by the Department; (3-29-12)

d. Leak detection and collection systems. The plans and specifications shall: (3-29-12)

i. Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; (3-29-12)

ii. Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; (3-29-12)

iii. Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and (3-29-12)

iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. (3-29-12)

e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of PVC Schedule 80 and be designed to: (4-11-15)

i. Withstand chemical attack from oil field waste or leachate; (3-29-12)

ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and (3-29-12)

iii. Facilitate clean-out and maintenance. (3-29-12)

f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; (3-29-12)

g. Plans for erosion control during and immediately following construction; and (3-29-12)

h. Operating and maintenance plans. (3-29-12)

078. Time Limits for Short Term Pits. Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time

extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. (3-29-12)

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension ~~for~~ of up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. (3-29-12)()

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. (3-29-12)

089. Emergency Pits. Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections 230.023 through 230.056 of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. (4-11-15)()

0910. Operating Requirements. (3-29-12)

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. (3-29-12)

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. (3-29-12)

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. (3-29-12)

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. (3-29-12)

101. Closure of Pits. (3-29-12)

a. The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. (3-29-12)

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. (3-29-12)

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. (3-29-12)

d. The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. (3-29-12)

e. After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections 510.04 through 510.08 of these rules. (4-11-15)

~~172.~~ **Condemnation Due to Improper Impoundment.** The Department shall have authority to condemn any pit that does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (3-29-12)

231. -- 299. (RESERVED)

SUBCHAPTER D - WELL SITES AND DRILLING

300. IDENTIFICATION OF WELLS.

01. **Signs; Lease Access Roads.** To identify all producing leases the owner or operator thereof shall cause a sign to be placed where the principal lease road enters the lease and such sign shall show the name of the lease and the owner or operator thereof and the section, township, and range. (10-21-92)

02. **Signs; Well Sites.** Prior to spud activity, a legible sign must be placed near the well to identify the operator, ~~permit~~ U.S. well number, well name, and emergency telephone number. If a multiple completion, each well head connection shall be identified. (4-11-15)()

301. WELL SITE OPERATIONS.

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. (4-11-15)

01. **Fencing.** Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the ~~landowner~~ surface owner and owner or operator. (4-11-15)()

02. **Storage.** All chemicals must be stored and maintained in accordance with the applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. (4-11-15)

03. **Vegetation.** All well sites must be kept free of excessive vegetation. (4-11-15)

04. **Trash.** All trash, debris, and scrap metal must be removed from the well site. Pending removal, any trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. (4-11-15)

05. **Wellhead Equipment.** After a well is completed, the operator will send a scaled drawing of the as built pad with all wellhead equipment to the Department. If equipment is added or removed during subsequent workovers or other activity, a revised sketch will be submitted with a sundry notice. ()

(BREAK IN CONTINUITY OF SECTIONS)

310. GENERAL DRILLING RULES.

01. **General Design Requirements for Casing and Cementing.** Casing and cementing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards

for cementing in API SPEC 10A. (3-29-12)

02. Wildcat and High-Pressure Conditions. When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. (3-29-12)

03. High Temperature Conditions. Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. (3-29-12)

04. Conductor Pipe or Casing Requirements. A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. (3-29-12)

05. Surface Casing Requirements. (3-29-12)

a. The Department must be notified in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy of the notice to the county where the well is located. (4-11-15)

b. Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. (3-29-12)

c. Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or **if** rapidly increasing thermal gradients or formation pressures are encountered. ~~(4-11-15)~~()

d. All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence. (3-29-12)

e. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. (4-11-15)

06. Requirements for BOP Equipment. Unless altered, modified, or changed for a particular pool(s) upon hearing before the ~~Commission~~ Department, BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: ~~(3-29-12)~~()

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. (10-21-92)

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. (10-21-92)

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other

with blind rams, and sufficient valving to permit fluid circulation at the surface. (10-21-92)

b. All BOP equipment, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. (4-11-15)

c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. (3-29-12)

d. The working pressure rating of all BOP and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. (4-11-15)

e. All ram-type BOP and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type BOP and related equipment must be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type BOP shall be checked for physical operation at least once per week and all components, again with exception of the annular-type BOP, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater. (4-11-15)

f. The Department will require an affidavit covering the initial pressure tests after installation signed by the owner, operator, or contractor attesting to the satisfactory pressure tests. The Department must be advised at least twenty-four (24) hours in advance of all tests. The Department may inspect and witness all BOP operations and testing. (4-11-15)

~~**g.** A schematic diagram of the BOP and well head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. (3-29-12)~~

~~**h.** Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. (10-21-92)~~

~~**i.** A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. (3-29-12)~~

~~**ii.** A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. (3-29-12)~~

07. Intermediate Casing. (3-29-12)

a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. (3-29-12)

b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)

c. Such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)

d. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. (4-11-15)

08. Production Casing; Cementing and Testing Requirements. (3-29-12)

a. If and when it becomes necessary to run a production casing, such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)

b. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. (4-11-15)

c. When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)

d. If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. (3-29-12)

09. Step-off. An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned in accordance with Section 502 of these rules. (4-11-15)

10. Well Control (Rotary Tools); Reserve Mud Tanks. When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of loss of well control. (4-11-15)

11. Mud Pits. Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must conform to the standards in Section 230 of these rules. If tanks will be used, then mud pits may not be required. (4-11-15)

12. Well Control (Cable Tools); Fluid Containment. Natural gas or oil which may be encountered in a substantial quantity in any section of a cable tool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the Department. The use of cable tools for drilling activities requires written approval by the Department prior to spud activities. A request to use cable tools must include the following: (4-11-15)

a. Proposed pressure control measures; (4-11-15)

b. Diversion and disposal methods for stray gas; (4-11-15)

c. Safety protocols for mud weights and well controls; and (4-11-15)

d. Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. (4-11-15)

13. Drilling Mud Disposal. Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. (3-29-12)

14. Report of Water Encountered; Owner's or Operator's Duties. It shall be the duty of any owner or operator drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the Department all potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section 340 of this rule. (4-11-15)

15. Spill Prevention, Control, and Countermeasures Plan. The owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be updated as needed when facilities or activities change. (3-29-12)

16. Interim Drill Site Clean Up. If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: (3-29-12)

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. (3-29-12)

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections 510.04 through 510.07 of these rules, shall apply. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

314. VACUUM PUMPS PROHIBITED.

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. Applications will be processed as described in Section 140 of these rules. (~~3-29-12~~)()

315. PULLING OUTSIDE STRINGS OF CASING.

Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. Applications will be processed as described in Section 140 of these rules. (~~3-29-12~~)()

(BREAK IN CONTINUITY OF SECTIONS)

330. WELL DIRECTIONAL CONTROL.

01. General Restrictions; Allowable Deviation. The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. (10-21-92)

02. Controlled Directional Drilling. Except for the purposes recited in Subsection 330.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof shall first file an application ~~and application fee to amend the drilling permit~~ and receive approval from the Department. Such application may be included with a drill permit application and shall contain the following information: (~~4-11-15~~)()

a. Name and address of the owner or operator. (3-29-12)

b. Lease Well name, well U.S. number, name of field and reservoir, and county. (~~10-21-92~~)()

c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). (10-21-92)

d. Reason for intentional deviation. (10-21-92)

~~e.~~ *List of offset operators and statement that each has been furnished a copy of the application by registered mail.* (10-21-92)

~~f.~~ Signature of representative of owner or operator. (3-29-12)

~~g.~~ *Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application.* (3-29-12)

~~h.~~ *The application shall be accompanied by a Δ neat, accurate plat map or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat Map shall be drawn to a scale which will permit facile observation of all pertinent data.* (10-21-92)()

~~g.~~ An application fee as described in Idaho Code § 47-320. ()

~~03.~~ *Copy of Application to Offset Operators. At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled.* (3-29-12)

03. Application Processing. Applications will be processed as described in Section 040 of these rules. ()

~~04.~~ *Department Action. Upon receipt, the Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting fifteen (15) days.* (3-29-12)

054. Angular Deviation and Directional Survey. Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports when the well report is submitted. (3-29-12)()

~~065.~~ Application for Exceptions. In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made ~~to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval~~ as described in Section 120 of these rules. (3-29-12)()

331. -- 339. (RESERVED)

340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon reservoir(s); ~~if a multiple completion,~~ from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. (3-29-12)()

341. DRILLING WELL LOGS.

01. Minimum Required Logs. All wells shall have a lithologic mud log from the bottom of the hole to

the top, to the extent practicable. The log must show the operator's best estimate of formation tops. (3-29-12)()

02. Bottom Hole Survey. All wells shall have a bottom hole location survey. (3-29-12)

03. Cement Bond Log. All wells that are cased and cemented shall have a cement bond log run across the casing. When cement bond logs are inconclusive, the Department may require other integrity testing methods as described in Section 320. (3-29-12)()

04. Other Logs. ~~If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results~~ The operator will run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice. The operator will also run a gamma ray log from total depth to ground level elevation. The Director may waive or postpone the obligation to log in this Subsection if he determines the log is unnecessary or impractical. The Director can condition the waiver upon appropriate terms and conditions. (3-29-12)()

05. Log Submittal. ~~The~~ Final processed versions of the above logs shall be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of at least one (1) inch per one hundred (100) for correlation logs and five (5) inches per one hundred (100) feet for detail logs. ()

06. Other Records. Operators must submit to the Department any copies of drill stem test reports and charts, formation water analyses, results of analyses for porosity and permeability, and non-interpretive lithologic logs or sample descriptions. ()

07. Cuttings and Sidewall Cores. ()

a. For all wells drilled for oil or gas exploration, the operator will collect duplicate samples when cutting samples are taken. The operator will wash and dry the cuttings, and package each sample in standard sample envelopes. These envelopes will be placed in order by depth in a corresponding standard sample box that is labeled with the same information required for the envelopes. The operator will send the box to the Department within thirty (30) days after drilling operations are complete. ()

b. The operator of any well drilled for oil or gas must inform the Director of all intervals that are to be sidewall cored, or have been cored. The operator will provide this notice while the well is being drilled or immediately following the well's completion. Unless specifically exempted by the Director, all sidewall cores taken will be preserved, labeled for identification and depth, and forwarded to the Department within one (1) year after completion of drilling operations. The Director may grant an extension of the one (1) year time period for good reason. If an exemption is granted, the operator will advise the Director of the final disposition of the core. This section does not prohibit the operator from taking such samples of the core as the operator may desire for testing. The operator will submit to the Department all test results when the core is submitted. ()

08. Whole Core. If whole core is taken, and if the operator in possession of the core intends to dispose of it, the operator will notify the Department at least sixty (60) days prior to disposal. The Department will then have the option of obtaining the core prior to disposal. ()

342. -- 399. (RESERVED)

SUBCHAPTER E - PRODUCTION

400. PRODUCTION REPORTS.

01. Required Content. An owner or operator must report production on a form created by the Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). (4-11-15)

02. **Frequency.** ~~Initial production reports must be submitted to the Department no later than the twenty-first (21st) day of the month following the sixth month after the beginning of production. After the initial production report, operators must report production monthly to the Department.~~ Monthly **production** reports must be submitted to the Department no later than ~~the twenty-first (21st) day of the following month. In the event the twenty-first (21st) day of the month falls on a non-business day, the report is due the next business day~~ **ninety (90) days following the month of production.** (4-11-15)()

03. **Annual Production Report.** By ~~January 31~~ **April 1** of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. (4-11-15)()

401. MEASUREMENT OF OIL.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: (10-21-92)

01. **Correction for Impurities.** The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. (3-29-12)

02. **Temperature Correction.** The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Tables ~~7~~, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. (3-29-12)()

03. **Gravity Determination.** The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Tables ~~5~~, or any revisions thereof and any supplements thereto approved by the Department. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of ~~five~~ **ten** thousand (~~5~~**10**,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. (4-11-15)()

404. GAS-OIL RATIO LIMITATION.

01. **Waste Prevention; Conditions for Emergency Order.** To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The **emergency** order shall ~~specify a date for the hearing described~~ **be in effect until a final order can be processed as described** in Subsection 404.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. (4-11-15)()

02. ~~Notice and Cause for Hearing~~**Final Orders.** ~~A final order regarding inefficient oil and gas ratios will be processed as described in Idaho Code § 47-324.~~ The Department will ~~notify~~ **consider** all offset operators and owners or operators in the common source of supply ~~of the hearing date~~ **as interested parties in Idaho Code § 47-324(b).** ~~A hearing~~ **An order** regarding waste due to inefficient gas-oil ratios ~~will held~~ **is required** for any of the following reasons: (3-29-12)()

- i. If an emergency order is issued as described in Subsection 404.01 of these rules. ~~The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order.~~ (4-11-15)()
- ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. ~~The hearing shall be held within thirty (30) days of the Department receiving the application.~~ (3-29-12)()
- iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may ~~schedule a hearing~~ request an order regarding potential waste due to inefficient gas-oil ratios. (3-29-12)()

03. Determination of Inefficient Ratios; Power to Limit Production. If the Department ~~after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find~~ determines that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool ~~The production will be limited~~ can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

410. METERS.

01. General Requirements. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. (3-29-12)

02. Meter Calibration. All required meters ~~shall~~ must be calibrated by an independent third party at least once per calendar year. The records of such calibration ~~shall~~ must be maintained ~~or made available~~ by the owner or operator of the well and ~~shall~~ copies must be available for inspection by submitted to the Department. Such records shall be maintained by the owner or operator for a period of at least five (5) years. (3-29-12)()

03. Visibility. All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

420. TANK BATTERIES.

Tank batteries must meet the following requirements. (4-11-15)

01. Location of Tank Batteries. No tank batteries may be constructed within three hundred (300) feet of existing occupied structures, water wells, canal, ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the tank dike. ~~The owner of a water well or existing occupied structure may provide express written permission to construct a tank battery closer than three hundred (300) feet, but in no event may a tank battery be constructed within one hundred (100) feet of a water well or existing occupied structure.~~ The following exceptions may apply: (4-11-15)()

a. ~~The owner of a water well or existing occupied structure may provide express written permission to construct a tank battery closer than three hundred (300) feet, but in no event may a tank battery be constructed within one hundred (100) feet of these features.~~ ()

b. The owner of a canal, ditch, or surface water may provide express written permission to construct a tank battery closer than three hundred (300) feet, and the Department may approve this location upon the operator showing good cause, but in no event may a tank battery be constructed within one hundred (100) feet of these features. ()

02. Containment Requirements. All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements: (4-11-15)

a. Tank dikes must be designed to have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds. (4-11-15)

b. The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10^{-9} cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test. (4-11-15)

c. All piping and manmade improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement. (4-11-15)

d. Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike unless adequate catchment guards are installed and maintained to catch incidental spillage. (4-11-15) ()

e. Vegetation on the top and outside surface of tank dike must be properly maintained so as to not pose a fire hazard. (4-11-15)

f. A ladder or other permanent device must be installed over the tank dike to access the containment reservoir. (4-11-15)

g. The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed which must remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (4-11-15)

421. -- 429. (RESERVED)

430. GAS PROCESSING FACILITIES. Gas processing facilities must meet the following requirements. (4-11-15)

01. Location of Gas Processing Facilities. No gas processing facility may be constructed within three hundred (300) feet of existing occupied structures, water wells, canals and ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the gas processing facility. ~~The owner of a water well or existing occupied structure may provide express written permission to construct a gas processing facility closer than three hundred (300) feet, but in no event may a gas processing facility be constructed within one hundred (100) feet of a water well or existing occupied structure.~~ The following exceptions may apply: (4-11-15) ()

a. The owner of a water well or existing occupied structure may provide express written permission to construct a gas processing facility closer than three hundred (300) feet, but in no event may a gas processing facility be constructed within one hundred (100) feet of these features. ()

b. The owner of a canal, ditch, or surface water may provide express written permission to construct a

gas processing facility closer than three hundred (300) feet, and the Department may approve this location upon the operator showing good cause, but in no event may a gas processing facility be constructed within one hundred (100) feet of these features. ()

02. Operations. Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with the requirements in Sections 301 and 302 of these rules. (4-11-15)

03. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility, a facility design plan must contain at the minimum: (4-11-15)

- a. Site layout; (4-11-15)
- b. Piping and instrumentation diagram; (4-11-15)
- c. Process Flow schematics; (4-11-15)
- d. Electronic controls and sensing schematic; (4-11-15)
- ~~e. Equipment operations and maintenance manuals for pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; (4-11-15)~~
- ~~f. Periodic maintenance schedule for critical equipment; (4-11-15)~~
- ~~g. Troubleshooting metric; and (4-11-15)~~
- ~~h.e.~~ Other information or documentation necessary for the safe and continued operation of a gas processing facility. (4-11-15)

04. Operational Details. The operator must also provide the Department access to the following documentation upon request: ()

- ~~a. Equipment operations and maintenance manuals for pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; ()~~
- ~~b. Periodic maintenance schedule for critical equipment; and ()~~
- ~~c. Troubleshooting metric. ()~~

045. Flaring. Flaring at gas processing facilities must be in conformance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and any permit issued by the IDEQ. (4-11-15)

056. Inspections. Gas processing facilities must have site specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff during the inspections of gas processing facilities. During inspections, gas process facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. ~~The Department will conduct quarterly inspections of facilities.~~ (4-11-15)()

067. Reports. A quarterly report must be submitted to the Department accounting for receipt, processing, and disposition of all gas by the gas processing facility within the reporting period. The report is due to the Department ~~by the twenty first (21st)~~ ninety (90) days following the end of the reporting period. (4-11-15)()

431. -- 499. (RESERVED)

SUBCHAPTER F - WELL ACTIVITY AND RECLAMATION

500. ACTIVE WELLS.

01. **Gas Storage Wells.** Gas storage wells are to be considered active at all times unless physically plugged. (3-29-12)

02. **Extension of Active Status.** An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. (3-29-12)

03. **Annual Reports for Active Wells.** The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. Failure to submit the annual report may result in the Department declaring the well inactive. (4-11-15)

04. **Quarterly Reporting.** All wells will be tested at least quarterly for daily production potential. Test results will be entered on a Department form and submitted to the Department within thirty (30) days of the test. These test results must include the following: ()

a. **A daily steady flow report of oil, gas, and water production if available;** ()

b. **Choke size and tubing pressures. Both flowing and shut in pressures will be provided if available;**
and ()

c. **Interim bottom-hole pressure surveys if available.** ()

(BREAK IN CONTINUITY OF SECTIONS)

502. WELL PLUGGING.

01. **Plugging Required.** The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. If plugging will occur within one (1) year of the permit issuance for the well, then an additional application and fee as per this section of the rules is not needed. (10-21-92)()

02. ~~**Notice of Intention to Abandon Well**~~ **Application Required.** ~~Before~~ An operator must file an application and the Department must approve a permit before beginning abandonment work on an oil or gas well, ~~a Notice of Intention to Abandon shall be filed with the Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information that was approved by the Department more than a year prior to the abandonment. Applications will be processed as described in Section 040 of these rules.~~ (3-29-12)()

03. **Application Contents.** Applications must contain the following: ()

a. **The reason for abandonment;** ()

b. **A detailed statement of the proposed work, including;** ()

- i. Kind, location, and length of plugs by depths: ()
- ii. Plans for mudding, cementing, shooting, testing, and removing casing: ()
- iii. Any other information which may be required by the Department based on site specific reasons. ()
- c. An application fee as described in Idaho Code § 47-320. ()

034. Plugging Dry Holes. If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the ~~written notification~~ plugging permit referenced in Subsection 502.02 of these rules. The standards in Subsections 502.04 through 502.06 of these rules will still apply. (4-11-15)()

045. Plugging of Wells. The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. (3-29-12)

056. Plugged Intervals. The following plugging standards shall be followed for all wells: (3-29-12)

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. (3-29-12)

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. (3-29-12)

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. (3-29-12)

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: (3-29-12)

i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. (3-29-12)

ii. Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. (3-29-12)

e. The top of all cement plugs will be tagged to verify their depth. (3-29-12)

f. The owner or operator shall have the option as to the method of placing cement in the hole by: (3-29-12)

- i. Dump bailer; (3-29-12)
 - ii. Pumping a balanced cement plug through tubing or drill pipe; (3-29-12)
 - iii. Pump and plug; or (3-29-12)
 - iv. Equivalent method approved by the Director prior to plugging. (3-29-12)
- g.** Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. (3-29-12)

h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. (3-29-12)

067. Subsequent Report of Abandonment. If a well is plugged or abandoned, a subsequent record of work done must be filed with the Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. (3-29-12)

078. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit). (3-29-12)

a. Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: (3-29-12)

i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; (3-29-12)

ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; (3-29-12)

iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and (3-29-12)

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. (3-29-12)

b. The Department's bond may not be released, and the oil and gas permit canceled, until all requirements in Paragraph 502.078.a. of these rules are met. (4-11-15)()

503. -- 509. (RESERVED)

510. SURFACE RECLAMATION.

01. Timing of Reclamation. After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The

Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. Drill pads constructed prior to drill permit approval are subject to the reclamation requirements of this Section. ~~(3-29-12)~~()

02. General Clean Up. All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. (3-29-12)

03. Road Removal. All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. (3-29-12)

04. Regrading. Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. (3-29-12)

05. Compacted Areas. All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. (3-29-12)

06. Topsoiling. Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. (3-29-12)

07. Revegetation. (3-29-12)

a. The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. (3-29-12)

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. (3-29-12)

c. Unless otherwise specified in the approved permit, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: (3-29-12)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; (3-29-12)

ii. Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; (3-29-12)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species; (3-29-12)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by

the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation; and (3-29-12)

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. (3-29-12)

d. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-reclamation land use, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (3-29-12)

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-29-12)

f. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (3-29-12)

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. (3-29-12)

h. Tree stocking of forestlands should meet the following criteria: (3-29-12)

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; (3-29-12)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (3-29-12)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (3-29-12)

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. (3-29-12)

j. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) or the mean annual rainfall is less than twelve (12) inches. When used, straw, or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-29-12)

08. Reclamation Under a Surface Use Agreement. Notwithstanding the requirements of Subsections 510.03 through 510.07 of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. (4-11-15)

511. -- 999. (RESERVED)

IDAPA 22 - BOARD OF MEDICINE

22.01.03 - RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS

DOCKET NO. 22-0103-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized Pursuant to Sections 54-1806(2), 54-1806(4), (11), 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

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

Wednesday, November 2, 2016 -- 12:00 - 1:30 pm

**Idaho State Board of Medicine
1755 Westgate Drive, Suite 140
Boise, ID 83704**

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:

This rule update clarifies the educational requirements for licensure, clarifies the national certification requirements for licensure and renewal of licensure, adds the ability of a physician assistant to order controlled substances for office use, and other small housekeeping items.

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

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

N/A - This rule change is budget neutral and there is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, a notice of intent to promulgate was not published, and therefore, formal Negotiated Rulemaking was not conducted. However, several meetings were conducted informally with stakeholders, including the state association and their members, other interested parties, and future licensees. Such negotiations shall continue through the comment period and hearing. The Rules draft is available on the Board of Medicine website for review and comment.

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 Anne K. Lawler, Executive Director, at (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 1, 2016. Written comments will also be accepted at the scheduled public hearing.

DATED this 2nd day of September, 2016.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
1755 Westgate Drive Suite 140
PO Box 83720, Boise, Idaho 83720-0058
Phone (208) 327-7000 / Fax (208) 327-7005

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 22-0103-1601
(Only Those Sections With Amendments Are Shown.)

007. FILING OF DOCUMENTS -- NUMBER OF COPIES.

All documents in rule-making or contested case proceedings must be filed with the office of the Board. ~~The original and ten (10) copies of all documents must be filed with the office of the Board.~~ (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Alternate Supervising Physician. A physician registered with the Board, as set forth in IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians," under an agreement as defined in these rules, who is responsible for supervising the physician assistant or graduate physician assistant in the temporary absence of the supervising physician. The alternate supervising physician shall accept full medical responsibility for the performance, practice, and activities of such licensee being supervised. An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)

02. Approved Program. A course of study for the education and training of physician assistants which is accredited by ~~the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs,~~ the Accreditation Review Commission on Education for Physician Assistants (ARC-PA) or predecessor agency or equivalent agency recognized by the Board as recommended by the Committee. (3-16-04)()

03. Board. The Idaho State Board of Medicine established pursuant to Section 54-1805, Idaho Code. (3-16-04)

04. Delegation of Services (DOS) Agreement. A written document mutually agreed upon and signed and dated by the licensed physician assistant or graduate physician assistant and supervising and alternate supervising physician that defines the working relationship and delegation of duties between the supervising physician and the licensee as specified by Board rule. The Board shall review the written delegation of services agreement and may review job descriptions, policy statements, or other documents that define the responsibilities of the physician assistant or graduate physician assistant in the practice setting, and may require such changes as needed to achieve compliance with these rules, and to safeguard the public. (4-9-09)

05. Graduate Physician Assistant. A person who is a graduate of an approved program for the education and training of physician assistants and who meets all the requirements in this chapter for Idaho licensure, but: (3-16-04)

a. Has not yet taken and passed the certification examination and who has been authorized by the Board, as defined in Subsection 036.01 of these rules, to render patient services under the direction of a supervising physician for a period of six (6) months; or (3-16-04)

b. Has passed the certification examination but who has not yet obtained a college baccalaureate degree and who has been authorized by the Board, as defined in Subsection 036.02 of these rules, to render patient services under the direction of a supervising physician for a period of not more than five (5) years. (3-16-04)

06. Physician. A physician who holds a current active license issued by the Board to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restrictions upon or actions taken against his license. (3-16-04)

07. Physician Assistant. A person who is a graduate of an approved program and who is qualified by specialized education, training, experience and personal character, as defined in Section 021 of these rules, and who has been licensed by the Board to render patient services under the direction of a supervising and alternate supervising physician. (4-9-09)

08. Physician Assistant Trainee. A person who is undergoing training at an approved program as a physician assistant and registered with the Board. (3-16-04)

09. Supervision. The direction and oversight of the activities of and patient services provided by a physician assistant or graduate physician assistant by a supervising physician or alternate supervising physician who accepts full medical responsibility with respect thereto. The constant physical presence of the supervising or alternate supervising physician is not required as long as the supervisor and such licensee are or can be easily in contact with one another by radio, telephone, or other telecommunication device. The scope and nature of the supervision shall be outlined in a delegation of services agreement, as defined in Subsection 030.034 of these rules. (4-9-09)()

10. Supervising Physician. A physician registered by the Board, as set forth in IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians," and under an agreement as defined in Subsection 030.034 of these rules, who is responsible for the direction and supervision of the activities of and patient services provided by the physician assistant or graduate physician assistant. The supervising physician accepts full medical responsibility for the activities of and patient services provided by such licensee. A supervising physician shall not supervise more than a total of three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATION.

01. License Applications. All applications for licensure as physician assistants and graduate physician assistants shall be made to the Board on forms supplied by the Board and include the nonrefundable application fee. The application form shall be verified and shall require the following: (4-9-09)

a. Certificate of graduation from an approved program as defined in Subsection 010.032 and evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board. (4-9-09)()

b. Proof of current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board; ()

b.c. The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (4-9-09)

d. The current mental and physical condition of the applicant, together with disclosure of any previous physical or mental illness which may impact the applicant's ability to render patient services as a physician assistant or graduate physician assistant; (4-9-09)

d.e. The disclosure of any past or pending medical malpractice actions against the applicant, and the judgments or settlements, if any, of such claims exceeding fifty thousand dollars (\$50,000); (4-9-09)

ef. The disclosure of any disciplinary action by any country or state board of medicine, medical society, professional society, hospital or institution staff; (4-9-09)

fg. The disclosure of the refusal to issue or renew a license to render patient services as a physician assistant or graduate physician assistant by any state, Canadian or foreign licensing authority; (4-9-09)

gh. References to include one (1) letter of recommendation signed by a licensed physician who have known the applicant professionally for at least one (1) year; (4-9-09)

hi. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (4-9-09)

ji. A certified copy of a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (4-9-09)

jk. The employment history and past practice locations of the applicant; (4-9-09)

li. Each state or country in which the applicant has applied for a license to practice as physician assistant or graduate physician assistant; (4-9-09)

lm. Each state or country wherein the applicant is licensed to practice as physician assistant or graduate physician assistant; and (4-9-09)

nn. Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (4-9-09)

02. Reapplication. If more than two (2) years have elapsed since a licensed physician assistant or graduate physician assistant has actively engaged in practice, reapplication to the Board as a new applicant is required. The Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

03. Application Expiration. An application for licensure that is not granted or license not issued within one (1) year from the date the application is received by the Board shall expire. However, the applicant may ~~make a written request to the Board to consider his application on an individual basis~~ file an application to the Committee for an extension. In its discretion, the Committee may make a determination if extraordinary circumstances exist that justify extending the one (1) year time period up to an additional one (1) year. The Committee can recommend to the Board to grant the request for such extension of time. The Board shall make all final decisions with respect thereto. (3-16-04)()

021. REQUIREMENTS FOR LICENSURE.

01. Residence. No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse to issue a license or renew a license if the applicant is not lawfully present in the United States. (4-9-09)

02. English Language. Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. (4-9-09)

03. Educational Requirement. Applicants for licensure shall have completed an approved program as defined in Subsection 010.032 and shall provide evidence of having received a college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board. (3-16-04)()

~~04. **National Certifying Examination.** Satisfactory completion and passage of the certifying examination for physician assistants, administered by the National Commission of Certification of Physician Assistants (NCCPA) or such other examinations, which may be written, oral or practical, as the Board may require. (4-9-09)~~

04. **Certification.** Current certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board. ()

05. Personal Interview. The Board may at its discretion, require the applicant or the supervising physician or both to appear for a personal interview. (3-19-99)

06. Completion of Form. (3-16-04)

a. If the applicant is to practice in Idaho, he must submit payment of the prescribed fee and a completed form provided by the Board indicating: (3-16-04)

i. The applicant has completed a delegation of services agreement signed by the applicant, supervising physician and alternate supervising physicians; and (3-16-04)

ii. The agreement is on file at each practice location and the address of record of the supervising physician and at the central office of the Board; or (3-16-04)

b. If the applicant is not to practice in Idaho, he must submit payment of the prescribed fee and a completed form provided by the Board indicating the applicant is not practicing in Idaho and prior to practicing in Idaho, the applicant will meet the requirements of Subsections 021.046.a.i. and 021.046.a.ii. (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

028. SCOPE OF PRACTICE.

01. Scope. The scope of practice of physician assistants and graduate physician assistants shall be defined in the delegation of services and may include a broad range of diagnostic, therapeutic and health promotion and disease prevention services. (3-16-04)

a. The scope of practice shall include only those duties and responsibilities delegated to the licensee by their supervising and alternate supervising physician and in accordance with the delegation of services agreement and consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician. (4-9-09)()

b. The scope of practice may include prescribing, administering, and dispensing of medical devices and drugs, including the administration of a local anesthetic injected subcutaneously, digital blocks, or the application of topical anesthetics, while working under the supervision of a licensed medical physician. ~~Physician assistants and graduate physician assistants shall not administer or monitor general or regional block anesthesia during diagnostic tests, surgery, or obstetric procedures.~~ (3-16-04)()

c. Physician assistants and graduate physician assistants are agents of their supervising and alternate supervising physician in the performance of all practice-related activities and patient services. (4-9-09)

d. A supervising physician shall not supervise more than a total of three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize a supervising physician to supervise a total of six (6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. An alternate supervising physician shall not supervise more than three (3) physician assistants or graduate physician assistants contemporaneously. The Board, however, may authorize an alternate supervising physician to supervise a total of six

(6) such licensees contemporaneously if necessary to provide adequate medical care and upon prior petition documenting adequate safeguards to protect the public health and safety. (3-16-04)

~~02. Practice. Initiate appropriate laboratory or diagnostic studies, or both, to screen or evaluate the patient's health status and interpret reported information in accordance with knowledge of the laboratory or diagnostic studies, provided such laboratory or diagnostic studies are related to and consistent with the licensee's scope of practice. The scope of practice shall be limited to patient services under the supervision of the supervising or alternate supervising physician. (4-9-09)~~

~~a. Within the education, training and experience of the physician assistant or graduate physician assistant; and (4-9-09)~~

~~b. Consistent with the expertise and regular scope of practice of the supervising and alternate supervising physician. (4-9-09)~~

029. CONTINUING EDUCATION REQUIREMENTS.

01. Continuing Competence. A physician assistant or graduate physician assistant may be required by the Board at any time to demonstrate continuing competence in the performance of any practice related activity or patient service. (3-16-04)

02. Requirements for Renewal. (4-9-09)

~~a. Every other year, and prior to renewal of each license as set forth by the expiration date on the face of the certificate, physician assistants and graduate physician assistants will be required to present evidence of having received one hundred (100) hours of continuing medical education over a two year period. The courses and credits shall be subject to approval of the Board. (3-16-04)~~

~~b.a. Every other year, and p~~**P**~~rior to renewal of each license as set forth by the expiration date on the face of the certificate, physician assistants shall submit verified evidence and/or shall require the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board of NCCPA certification maintenance and passage of the Physician Assistant National Recertifying Exam (PANRE) <http://www.nccpa.net> attest to maintenance of certification by the National Commission on Certification of Physician Assistants or similar certifying agency approved by the Board, which certification requires a minimum of one hundred (100) hours of continuing medical education over a two-year period. (4-9-09)()~~

(BREAK IN CONTINUITY OF SECTIONS)

030. PRACTICE STANDARDS.

01. Identification. The physician assistant, graduate physician assistant and physician assistant trainee must at all times when on duty wear a placard or plate so identifying himself. (3-16-04)

02. Advertise. No physician assistant, graduate physician assistant or physician assistant trainee may advertise or represent himself either directly or indirectly, as a physician. (3-16-04)

03. Supervising Physician. Each licensed physician assistant and graduate physician assistant shall have a Board-approved supervising physician prior to practice. ()

034. Delegation of Services Agreement. Each licensed physician assistant and graduate physician assistant shall maintain a current copy of a Board-approved Delegation of Services (DOS) Agreement between the licensee and each of his supervising and alternate supervising physicians. The delegation of services agreement, made upon a form provided by the Board, shall include a listing of the licensee's training, experience and education, and defines the patient services to be delegated. It is the responsibility of the licensee and supervising physician to maintain a current delegation of services agreement. All specialized procedures that need prior review and approval

by the Board will be listed on the delegation of services agreement form supplied by the Board. Prior to provision, all licensees requesting to provide any of the listed services will be required to send their delegation of services agreement to the Board for approval. The Board may require the supervising physician to provide written information, which will include his affidavit attesting to the licensee's qualifications and clinical abilities to perform the specific procedures listed in the delegation of services agreement. This agreement shall be sent to the Board and must be maintained on file at each practice location and at the address of record of the supervising and alternate supervising physician. The Committee will review this agreement in conjunction with and make recommendations to the Board. The Board may require such changes as needed to achieve compliance with this chapter and Title 54, Chapter 18, Idaho Code, and to safeguard the public. This agreement shall include: ~~(4-9-09)~~ ()

- a. Documentation of the licensee's education, training, and experience and a listing of the specific patient services which will be performed by the licensee; (4-9-09)
- b. The specific locations and facilities in which the licensee will function; and (3-16-04)
- c. The written plans and methods to be used to ensure responsible direction and control of the activities and patient services rendered by the licensee which shall provide for: (3-16-04)
 - i. An on-site visit at least monthly; (3-19-99)
 - ii. Regularly scheduled conferences between the supervising physician and the licensee; (3-16-04)
 - iii. Periodic review of a representative sample of records and a periodic review of the patient services being provided by the licensee. This review shall also include an evaluation of adherence to the delegation of services agreement; (3-16-04)
 - iv. Availability of the supervising and alternate supervising physician to the licensee in person or by telephone and procedures for providing backup and supervision in emergency situations; and (4-9-09)
 - v. Procedures for addressing situations outside the scope of practice of the licensee. (3-16-04)
- d. The drug categories or specific legend drugs and controlled drugs, Schedule II through V that will be prescribed provided that the legend drugs and controlled drugs shall be consistent with the regular prescriptive practice of the supervising physician. (3-15-02)

05. Notification of Change or Addition of Supervising or Alternate Supervising Physician. A physician assistant or graduate physician assistant must notify the Board when adding, changing, or deleting a supervising physician or alternate supervising physician. Such notification shall include: ()

- i. The name, business address and telephone number of the new or additional supervising physician(s) or alternate supervising physician(s); ()
- ii. The name, business address, and telephone number of the physician assistant or graduate physician assistant; and ()
- iii. Comply with the requirements of Subsection 030.04. ()
- iv. All supervising physicians and alternate supervising physicians must comply with the requirements of IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians." ()

046. On-Site Review. The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of physician assistants or graduate physician assistants and the locations and facilities in which the licensees practice at such times as the Board deems necessary. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

036. GRADUATE PHYSICIAN ASSISTANT.

01. Licensure Prior to Certification Examination -- Board Consideration. Any person who has graduated from an approved program and meets all Idaho requirements, including achieving a college baccalaureate degree, but has not yet taken and passed the certification examination, may be considered by the Board for licensure as a graduate physician assistant for six (6) months when: (3-16-04)

a. An application for licensure as a graduate physician assistant has been submitted to the Board on forms supplied by the Board and payment of the prescribed fee. (3-16-04)

b. The applicant shall submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination. The applicant shall also submit to the Board, within ten (10) business days of receipt, a copy of the national certification examination results. (4-9-09)

c. After the graduate physician assistant has passed the certification examination, the Board must receive verification of national certification directly from the certifying entity. Once the verification is received by the Board, the graduate physician assistant's license will be converted to a permanent license and he may apply for prescribing authority pursuant to Section 042 of these rules. (3-16-04)

d. The applicant who has failed the certification examination one (1) time, may petition the Board for a one-time extension of his graduate physician assistant license for an additional six (6) months. (3-16-04)

e. If the graduate physician assistant fails to pass the certifying examination on two (2) separate occasions, the graduate physician assistant's license shall automatically be canceled upon receipt of the second failing certification examination score. (3-16-04)

f. The graduate physician assistant applicant shall agree to execute an authorization for the release of information, attached to his application as Exhibit A, authorizing the Board or its designated agents, having information relevant to the application, including but not limited to the status of the certification examination, to release such information, as necessary, to his supervising physician. (3-16-04)

02. Licensure Prior to College Baccalaureate Degree -- Board Consideration. Licensure as a graduate physician assistant may also be considered upon application made to the Board on forms supplied by the Board and payment of the prescribed fee when: (3-16-04)

a. All application requirements have been met as set forth in Section 021, except receipt of documentation of a college baccalaureate degree. A college baccalaureate degree from a nationally accredited school with a curriculum approved by the United States Secretary of Education, the Council for Higher Education Accreditation, or both, or from a school accredited by another such agency approved by the Board shall be completed within five (5) years of initial licensure in Idaho; (3-16-04)

b. A personal interview with the applicant or the supervising physician or both may be required and will be conducted by a designated member of the Board; and (3-16-04)

c. A plan shall be submitted with the application and shall be approved by the Board for the completion of the college baccalaureate degree. (3-16-04)

03. No Prescribing Authority. Graduate physician assistants shall not be entitled to issue any written or oral prescriptions ~~and shall be required to have a weekly record review by their supervising physician unless granted an exemption by the Board. Application for an exemption must be in writing and accompany documentation of a minimum of five (5) years of recent practice in another state.~~ (4-9-09) ()

04. Weekly Record Review. Graduate physician assistants shall be required to have a weekly record review by their supervising physician, unless subject to an exemption as granted in Subsection 036.03. ()

037. DISCIPLINARY PROCEEDINGS AND NOTIFICATION OF CHANGE.

01. Discipline. Every person licensed as a physician assistant or graduate physician assistant is subject to discipline pursuant to the procedures and powers established by and set forth in Section 54-1806A, Idaho Code and the Administrative Procedures Act. (3-16-04)

02. Grounds for Discipline. In addition to the grounds for discipline set forth in Section 54-1814, Idaho Code and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Section 101, persons licensed under these rules are subject to discipline upon the following grounds if that person: (3-16-04)

- a. Held himself out, or permitted another to represent him, to be a licensed physician; (3-16-04)
- b. Had in fact performed otherwise than at the discretion and under the supervision of a physician licensed by and registered with the Board; (3-16-04)
- c. Performed a task or tasks beyond the scope of activities allowed by Section 028; (3-16-04)
- d. Is a habitual or excessive user of intoxicants or drugs; (3-16-04)
- e. Demonstrated manifest incapacity to carry out the functions of a physician assistant or graduate physician assistant; (3-16-04)

~~fg.~~ Failed to ~~notify the Board of a change or addition of a supervising or alternate supervising physician within two (2) weeks of the change as specified by Subsection 037.03~~ have a Board-approved supervising physician prior to practice; (3-16-04)()

~~fg.~~ Failed to complete or maintain a current copy of the Board-approved delegation of services agreement as specified by Section 030; (3-16-04)()

h. Aided or abetted a person not licensed in this state who directly or indirectly performs activities requiring a license; (3-16-04)

i. Failed to report to the Board any known act or omission of a licensee, applicant, or any other person, which violates any provision of these rules; or (3-16-04)

j. Interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action. (3-16-04)

k. Failed to submit to the Board, within ten (10) business days of receipt, a copy of acknowledgment of sitting for the national certification examination, and failed to submit a copy of the national certification examination results within ten (10) business days of receipt. (4-9-09)

03. Notification of Change or Addition of Supervising or Alternate Supervising Physician. A physician assistant or graduate physician assistant must notify the Board ~~within two (2) weeks upon~~ prior to changing supervising physicians or alternate supervising physicians or adding an additional supervising physician. Such notification shall include: (3-16-04)()

a. The name, business address and telephone of the new or additional supervising physician or alternate supervising physician(s); (3-16-04)

b. The name, business address, and telephone number of the physician assistant or graduate physician assistant; and (3-16-04)

c. Comply with the requirements of Subsection 030.03. (3-16-04)

d. All supervising physicians and alternate supervising physicians must comply with the requirements

of IDAPA 22.01.04, "Rules of the Board of Medicine for Registration of Supervising and Directing Physicians."
(3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

042. PRESCRIPTION WRITING.

01. Approval and Authorization Required. A physician assistant may issue written or oral prescriptions for legend drugs and controlled drugs, Schedule II through V only in accordance with approval and authorization granted by the Board and in accordance with the current delegation of services agreement and shall be consistent with the regular prescriptive practice of the supervising or alternate supervising physician. (4-9-09)

02. Application. A physician assistant who wishes to apply for prescription writing authority shall submit to the Board an application for such purpose on forms supplied by the Board. In addition to the information contained in the general application for physician assistant approval, the application for prescription writing authority shall include the following information: (3-16-04)

a. Documentation of all pharmacology course content completed, the length and whether a passing grade was achieved (at least thirty (30) hours). (7-1-93)

b. A statement of the frequency with which the supervising physician will review prescriptions written or issued. (3-16-04)

c. A signed affidavit from the supervising physician certifying that, in the opinion of the supervising physician, the physician assistant is qualified to prescribe the drugs for which the physician assistant is seeking approval and authorization. (3-16-04)

d. The physician assistant to be authorized to prescribe Schedule II through V drugs shall be registered with the Federal Drug Enforcement Administration and the Idaho Board of Pharmacy. (3-15-02)

03. Prescription Forms. Prescription forms used by the physician assistant must be printed with the name, address, and telephone number of the physician assistant and of the supervising physician. A physician assistant shall not write prescriptions or complete or issue prescription blanks previously signed by any physician. (3-16-04)

04. Record Keeping. The physician assistant shall maintain accurate records, accounting for all prescriptions issued and medication delivered. (3-16-04)

05. Pharmaceutical Samples. The physician assistant who has prescriptive authority may request, receive, sign for and distribute professional samples of drugs and devices in accordance with his current delegation of services agreement and consistent with the regular prescriptive practice of the supervising physician. (3-16-04)

06. Prescriber Drug Outlet. The physician assistant who has prescriptive authority may dispense prescriptive drugs or devices directly to patients under the direction of the supervising physician and in accordance with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy." (3-20-14)

07. Controlled Substances for Office Use. The physician assistant who has prescriptive authority may order controlled substances for office use or distribution in accordance with the regulations of the Drug Enforcement Administration and the Idaho Board of Pharmacy and under the direction of the supervising physician. (____)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1601 (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 54-1404, 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 rulemaking is needed for several reasons. First, the Board wants to provide nurses with the flexibility and convenience of providing an e-mail address for use in notifications and communications from the Board. A change to this rule will also permit the Board to implement authority granted by the IDAPA 11.04.01, "Idaho Rules of Administrative Procedure of the Attorney General," to use e-mail communication, in appropriate circumstances, for service of process in contested cases. Second, the rulemaking deletes unnecessary provisions requiring renewal and payment of renewal fees for an emeritus nursing license. Third, there is a need to update language in rules related to nurses with substance use and mental health disorders who may be eligible for a limited license, as well as corresponding provisions in the Board rule regarding the Program for Recovering Nurses Advisory Committee. Finally, recent statutory changes support related minor rule changes and deletion of the fee regarding prescriptive authority for advanced practice nurses.

The proposed rulemaking adds language to Section 008 to expressly permit broadened use of e-mail in correspondence with licensees as well as in service of certain Board documents in contested case proceedings. The rulemaking, along with statutory changes, will eliminate the current requirements in Sections 060 and 900 that nurses who are on emeritus status periodically renew those licenses and pay renewal fees. The rulemaking will replace antiquated language in Sections 132 and 133 that describe or are applicable to individuals with impairments, with more modern-usage terminology. Rules provisions regarding issuance of limited licenses and a Board advisory committee are updated and clarified. The rulemaking will delete unnecessary provisions and the required fee in Section 315 related to prescriptive authority for advanced practice nurses. Finally, the rulemaking corrects a term in Section 641.

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

This rulemaking will eliminate the current requirements in Board Rule 900 that nurses who are on emeritus status pay renewal fees. IDAPA 23.01.01.900.04 - This fee, authorized pursuant to Section 54-1410, Idaho Code, is being deleted. IDAPA 23.01.01.901.05 - This fee, authorized pursuant to Section 54-1409, Idaho Code, is being deleted.

FISCAL IMPACT: The following is a specific 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:

Deletion of IDAPA 23.01.01.900.04, Emeritus license biennial renewal fee, will result in an estimated loss of less than \$1,000/year. Deletion of IDAPA 23.01.01.901.5, APRN Prescriptive Authorization fee, will result in an estimated loss of less than \$5,000/year.

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 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 76](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief

synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482 or at sandra.evans@ibn.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 26, 2016.

DATED this 16th day of August, 2016.

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) 577-2482
Fax: (208) 334-3262

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 23-0101-1601
(Only Those Sections With Amendments Are Shown.)

008. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.

01. Change of Name. Whenever a change of licensee name occurs, the Board must be immediately notified of the change. Documentation confirming the change of name must be provided to the Board on request. (3-30-01)

02. Change of Address. Whenever a change of licensee *mailing* address occurs, the Board must be immediately notified of the change. ~~(3-30-01)~~ ()

03. Address for Notification Purposes.

a. The most recent mailing *or electronic* address on record with the Board will be utilized for purposes of all written communication with the licensee ~~including, but not limited to, notification of renewal and notices related to disciplinary actions.~~ (3-30-01) ()

b. In a contested case proceeding, the service of process of Board documents (including notices, summonses, complaints, subpoenas and orders) will be made by (1) personal service, (2) mailing to the licensee's mailing address on record, or (3) e-mailing to the licensee's electronic address on record, if authorized. Service on an electronic address is authorized when the licensee has already appeared in the proceeding or has agreed in writing to service by e-mail. ()

(BREAK IN CONTINUITY OF SECTIONS)

060. LICENSE RENEWAL.

All licenses must be renewed as prescribed in ~~the~~ Section 54-1411, Idaho Code. ~~(3-30-01)~~ ()

01. Renewal Notice -- Licensed Registered Nurse. A notice of renewal will be ~~mailed~~ **provided** to every currently licensed registered nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (4-7-11)()

02. Renewal Notice -- Licensed Practical Nurse. A notice of renewal will be ~~mailed~~ **provided** to every currently licensed practical nurse, at the address on record with the Board, on or before July 1 of every even-numbered year. (4-7-11)()

03. Renewal Notice -- Advanced Practice Registered Nurse. A notice of renewal will be ~~mailed~~ **provided** to every currently licensed advanced practice registered nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (4-7-11)()

~~**04. Renewal Notice -- Emeritus Licensure.** A notice of renewal will be mailed to every holder of a current emeritus license, at the address on record with the Board, on or before July 1 of the renewal year that applied to the applicant's license at the time emeritus status was granted. If the applicant was an RN or APRN at the time emeritus status was granted, renewal will take place in odd-numbered years. If the applicant was an LPN at the time emeritus status was granted, renewal will take place in even-numbered years. (4-7-11)~~

~~**054. Renewal Applications.** Renewal applications may be obtained by contacting the Board. (4-7-11)~~

065. Final Date to Renew. The original completed renewal application and renewal fee as prescribed in Section 900 of these rules, must be submitted to the Board and post-marked or electronically dated not later than August 31 of the appropriate renewal year. (4-7-11)

076. Date License Lapsed. Licenses not renewed prior to September 1 of the appropriate year will be lapsed and therefore invalid. (11-28-84)

087. Effective Period. Renewed licenses shall be effective for a two (2) year period, from September 1 of the renewal year. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

132. LIMITED LICENSES.

Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and ~~impairment-related disability~~ **substance use and mental health disorders**. Failure to comply with the terms and conditions of a limited license will be cause for summary suspension. (3-30-07)()

01. Following Disciplinary Action. (3-30-07)

a. After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. (3-15-02)

b. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. (3-15-02)

02. Non-Practicing Status. (3-15-02)

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. (3-15-02)

b. The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. (3-15-02)

c. The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents

the individual from engaging in the active practice of nursing. (3-15-02)

03. Restricted Status. (3-15-02)

a. Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. (3-15-02)

b. In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. (3-15-02)

c. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: (3-15-02)

i. Notifying the Board of changes in employment status. (3-15-02)

ii. Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. (3-15-02)

iii. Meeting with Board representatives. (3-15-02)

iv. Specific parameters of practice, excluding the performance of specific nursing functions. (3-15-02)

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. (3-15-02)

04. Disability Due to ~~Alcohol or Drug~~ Substance Use ~~or Emotional~~ Disorder or Mental Impairment Health Disorder. (3-15-02)(____)

a. Individuals ~~disabled~~ whose practice is or may be impaired due to ~~alcohol or drug~~ substance use disorder or to ~~emotional or~~ mental ~~impairment~~ health disorder may qualify for issuance of a limited license as an alternative to discipline. (3-15-02)(____)

b. The executive director may issue a limited license for a period not to exceed five (5) years to an individual who voluntarily surrenders his license by reason of a ~~disability relating to alcohol or drug~~ substance use disorder or relating to ~~emotional or~~ mental ~~impairment~~ health disorder and who: (3-15-02)(____)

i. Holds a current license to practice in Idaho as a registered ~~nurse, advanced practice registered nurse~~ or licensed practical nurse or is otherwise eligible and is in the process of applying for licensure; (3-30-07)(____)

ii. ~~Abused drugs or alcohol, or both, or~~ Has a demonstrated ~~or diagnosed~~ substance use disorder or mental ~~disability~~ health disorder such that ability to safely practice is, or may be, impaired; (3-15-02)(____)

iii. Sign a written statement admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (3-15-02)

iv. Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing. (3-15-02)

c. If required, the applicant shall satisfactorily complete a treatment program accepted by the Board. (3-30-07)

d. The applicant must agree to participation in the Board's monitoring program to include: (3-15-02)

- i. Evaluation ~~and diagnosis~~ of ~~disability~~ the disorder; (5-21-89)()
 - ii. Approval of treatment program regimen; (5-21-89)
 - iii. Monitoring of progress; (5-21-89)
 - iv. Determination of when return to the workplace will be allowed. (7-1-96)
 - e. Admission to the Program for Recovering Nurses or issuance of a limited license, or both, may be denied for any reason including, but not limited to the following: (3-15-02)
 - i. The applicant diverted controlled substances for other than self-administration; or (3-15-02)
 - ii. The applicant creates too great a safety risk; or (3-15-02)
 - iii. The applicant has been terminated from this, or any other, alternative program for non-compliance. (3-15-02)
 - f. Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. (3-30-07)
- 05. Compliance Required.** Limited licensure shall be conditioned upon the individual's prompt and faithful compliance with ~~the following terms and conditions, which may include:~~ (3-30-07)()
- a. Satisfactory progress in any required continuing treatment or rehabilitation program. (3-15-02)
 - b. Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)
 - c. Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)
 - d. Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)
 - e. Submission of ~~written~~ self-evaluations and personal progress reports at specified intervals and at any time upon request. (7-1-93)()
 - f. Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)
 - g. Meeting with the Board's professional staff or advisory committee at any time upon request. (7-1-93)()
 - h. Working only in approved practice settings. (7-1-96)
 - i. Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)
 - j. Obedience to Compliance with all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent ~~or proper~~ nursing

service.

(7-1-93)()

- k. Compliance with other specific terms and conditions as may be required by the executive director. (3-15-02)

06. Summary Suspension - Lack of Compliance. (3-30-07)

a. Summary Suspension. Any failure to comply with the terms and conditions of a limited license shall be deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure, summarily suspend the limited license. (3-30-07)

i. Summary suspension of a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board rules governing the practice of nursing. (3-30-07)

ii. Upon summary suspension of a limited license, the executive director shall provide prompt written notice to the licensee stating the reason for the suspension, setting forth the evidence relied upon and notifying the licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-1413(3)(a), Idaho Code. (3-30-07)

b. Right to Hearing. An individual whose limited license has been summarily suspended by the executive director may request a hearing regarding the suspension by certified letter addressed to the Board. If the individual fails to request a hearing within twenty (20) days after service of the notice of suspension by the executive director, the right to a hearing is waived. If a hearing is timely requested, after the hearing the Board shall enter an order affirming or rejecting summary suspension of the limited license and enter such further orders revoking, suspending, or otherwise disciplining the nursing license as may be necessary. The above provisions do not limit or restrict the right of Board staff to bring any summary suspension order before the Board for further proceedings, even if the licensee has not requested a hearing. (4-2-08)

c. Other Orders. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. (3-30-07)

133. ADVISORY COMMITTEE.

The Board shall appoint a committee of at least six (6) persons to provide guidance to the Board on matters relating to nurses ~~disabled whose practice is or may be impaired~~ due to ~~alcohol or drug~~ substance use disorder or ~~to emotional or mental impairment~~ health disorder, and advise the Board on the direction of the program. Committee members shall include a member of the Board who shall serve as the chairperson and other members as established by the Board, but shall include persons who are knowledgeable about ~~disabilities~~ mental health and substance use disorders. (7-1-96)()

(BREAK IN CONTINUITY OF SECTIONS)

315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.

01. Initial Authorization. An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-13)

a. An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice role, shall: (7-1-13)

- ~~i.~~ ~~Be currently licensed as an advanced practice registered nurse in Idaho;~~ (7-1-99)
- ii. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, related to advanced nursing practice. (7-1-13)
- iii. Submit a completed, notarized application form provided by the Board; and (7-1-99)
- ~~iv.~~ ~~Remit fees prescribed in Section 901 of these rules.~~ (7-1-13)
- b. Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)
- c. Prescriptions written by authorized advanced practice registered nurses shall comply with all applicable state and federal laws and be signed by the prescriber with the abbreviation for the applicable role of advanced nursing practice, the identification number assigned by the Board and where applicable, the Idaho Board of Pharmacy controlled substance registration number and the federal Drug Enforcement Agency registration number. (7-1-13)

02. Temporary Authorization. The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

03. Expiration of Temporary Prescriptive Authorization. Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

04. Prescribing and Dispensing Authorization. All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws. (7-1-13)

05. Valid Advanced Practice Registered Nurse/Patient Relationships. (7-1-13)

a. An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient's medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-13)

b. A valid advanced practice registered nurse/patient relationship is not required when dispensing or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. (7-1-13)

(BREAK IN CONTINUITY OF SECTIONS)

641. FACULTY.

01. Numbers Needed. There shall be sufficient faculty with educational preparation and nursing expertise to meet the objectives and purposes of the nursing education program. (4-5-00)

a. Number of faculty shall be sufficient to design and implement the curriculum necessary to prepare students to function in a rapidly changing healthcare environment. (4-5-00)

b. Number of faculty in the clinical setting shall be sufficient in number to assure patient safety and meet student learning needs. (4-5-00)

02. Faculty-Student Ratio. There shall be no more than ten (10) students for every faculty person in

the clinical agencies. Deviations may be presented for approval with the program's annual report to the Board with written justification assuring client safety and supporting accomplishment of learner program objectives.

~~(4-5-00)~~()

(BREAK IN CONTINUITY OF SECTIONS)

900. RENEWAL AND REINSTATEMENT FEES.

Fees will be assessed for renewal of licensure or for reinstatement of a lapsed, disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked or electronically dated later than August 31 shall be considered delinquent and the license lapsed and therefore invalid: (4-7-11)

01. Licensed Registered Nurse Renewal Fee. Licensed registered nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. (3-30-06)

02. Licensed Practical Nurse Renewal Fee. Licensed practical nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each even-numbered year. (3-30-06)

03. Advanced Practice Registered Nurse Renewal Fee. Licensed advanced practice registered nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. ~~(3-30-06)~~()

~~**04. Emeritus License.** Emeritus status nurses will be assessed a renewal fee of twenty dollars (\$20) due by August 31 of the renewal year. (4-2-03)~~

054. Reinstatement Fee. Nurses requesting reinstatement of a lapsed, disciplined, limited, or emeritus license, or reinstatement of an emeritus license to active status, will be assessed the records verification and renewal fees. (3-30-07)

065. Delay in Processing. Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks through the licensee's bank. (3-30-01)

901. LICENSURE FEES.

Fees will be assessed for licensure of registered and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state. (6-1-78)

01. Licensure by Examination. A fee will be assessed applicants for licensure by examination as follows: (3-30-01)

a. Registered nurse applicants: ninety dollars (\$90). (3-30-01)

b. Practical nurse applicants: seventy-five dollars (\$75). (3-30-01)

02. Advanced Practice Registered Nurses. Advanced practice registered nurse applicants: ninety dollars (\$90). (3-30-01)

03. Licensure by Endorsement. The fee assessed for licensure by endorsement of licensed registered and licensed practical nurses will be one hundred ten dollars (\$110). (3-30-06)

04. Verification of Licensure Fee. Licensed registered and licensed practical nurses requesting verification of licensure to another state will be assessed a fee of thirty dollars (\$30) which will be due upon request. (3-30-01)

~~**05. Authorization Fee.** Advanced practice registered nurses will be assessed an authorization fee of fifty dollars (\$50) which will be due upon application. (3-30-01)~~

065. **Emeritus License Fee.** Applicants requesting emeritus status will be assessed a fee of twenty-five dollars (\$25), which will be due upon application. (4-2-03)

076. **Temporary License Fee.** Registered and practical nurses requesting a temporary license will be assessed a fee of twenty-five dollars (\$25) which will be due upon application. (3-30-01)

087. **Limited License Fee.** Persons who are issued a limited license following disciplinary action or temporary voluntary surrender of a license will be assessed a fee of one hundred dollars (\$100) which will be due upon issuance of the limited license. (3-30-01)

098. **Records Verification Fee.** Thirty-five dollars (\$35). (3-30-07)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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

Clinical preceptors may be used to enhance clinical learning experiences for practical, registered and advanced practice registered nurse students enrolled in approved nursing education programs. Board of Nursing Rules Sections 010 and 640 currently limit clinical preceptors for students enrolled in nursing programs in the state to include only nurses credentialed for nursing practice at or above the license level for which the student is preparing. This is acceptable for students in registered and practical nursing programs; however, it creates a serious and unnecessary impediment for students in advanced practice registered nurse (APRN) educational programs who often participate in primary care clinical experiences in healthcare clinics where a licensed APRN may not be present and instead a physician (MD, DO) or physician assistant (PA) may be the only licensed primary care provider available to serve as the APRN student preceptor.

APRN student clinical learning experiences are limited due to competing demands from other disciplines (e.g., medicine, pharmacy) and from both in and out-of-state APRN, MD and PA educational programs. This rulemaking is necessary to remove this Board-created obstacle in order to allow APRN students to participate in valuable clinical opportunities.

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

It is imperative that this Board-created obstacle be removed in order to immediately open more clinical learning opportunities for APRN students as early as the 2016 fall semester and then beyond.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 23-0101-1601 in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 76](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482 or at sandra.evans@ibn.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 26, 2016.

DATED this 16th day of August, 2016.

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) 577-2482
Fax: (208) 334-3262

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 23-0101-1602
(Only Those Sections With Amendments Are Shown.)**

010. DEFINITIONS.

01. Abandonment. The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to a qualified provider or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. (4-4-13)

02. Accreditation. The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

03. Administration of Medications. The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. Only persons authorized under Board statutes and these rules may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (4-7-11)

04. Approval. The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

05. Assist. To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

06. Assistance With Medications. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)

07. Board. The Idaho Board of Nursing. (7-1-93)

08. Board Staff. The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)

09. Charge Nurse. A licensed nurse who bears primary responsibility for assessing, planning,

prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

10. Clinical Preceptor. A licensed registered nurse or other qualified individual as defined in these rules who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. ~~(5-3-03)~~(8-1-16)T

11. Competence. Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

12. Curriculum. The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)

13. Delegation. The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)

14. Disability. Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)

15. Emeritus License. A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)

16. Licensing Examination. A licensing examination that is acceptable to the Board. (5-3-03)

17. License in Good Standing. A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)

18. Limited License. A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)

19. Nursing Assessment. The systematic collection of data related to the patient's health care needs. (5-3-03)

20. Nursing Diagnosis. The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)

21. Nursing Intervention. An action deliberately selected and performed to support the plan of care. (5-3-03)

22. Nursing Jurisdiction. Unless the context clearly denotes a different meaning, when used in these rules, the term nursing jurisdiction shall mean any or all of the fifty (50) states, U.S. territories or commonwealths, as the case may be. (4-4-13)

23. Nursing Service Administrator. A licensed registered nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)

24. Organized Program of Study. A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)

25. Patient. An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)

26. Patient Education. The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)

27. Plan of Care. The goal-oriented strategy developed to assist individuals or groups to achieve

optimal health potential. (5-3-03)

28. Practice Standards. General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)

29. Probation. A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)

30. Protocols. Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)

31. Revocation. Termination of the authorization to practice. (5-3-03)

32. Scope of Practice. The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

33. Supervision. Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)

34. Suspension. An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

35. Technician/Technologist. These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)

36. Universal Standards. The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

640. FACULTY QUALIFICATIONS.

01. Programs for Unlicensed Assistive Personnel. Primary instructors shall be approved by the Board and shall have: (4-5-00)

a. A current unencumbered license to practice as a registered nurse in this state; (4-5-00)

b. Evidence of three (3) years experience working as a registered nurse; (4-5-00)

c. Evidence of two (2) years experience in caring for the elderly or chronically ill of any age; and (4-5-00)

d. Evidence of completion of a course in methods of instruction or a Train-the-Trainer type program. (4-5-00)

e. Licensed practical nurses with a minimum of two (2) years experience in caring for the elderly or chronically ill of any age may assist with skills supervision under the supervision of an approved primary instructor. (4-5-00)

02. Practical Nurse Program Faculty Qualifications. Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a practical nurse shall have: (4-5-00)

- a. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- b. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
- c. Evidence of nursing practice experience. (4-5-00)
- 03. Registered Nurse Program Faculty Qualifications.** There shall be sufficient faculty to achieve the purpose of the program. (4-5-00)
- a. Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a registered nurse shall have: (4-5-00)
- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a master's degree with a major in nursing; and (4-5-00)
- iii. Evidence of nursing practice experience. (4-5-00)
- b. Additional support faculty necessary to accomplish program objectives shall have: (4-5-00)
- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
- iii. A plan approved by the Board for accomplishment of the master's of nursing within three (3) years of appointment to the faculty position. (4-5-00)
- 04. Advanced Practice Registered Nurse Program Faculty Qualifications.** There shall be sufficient faculty to achieve the purpose of the program. Faculty in an advanced practice registered nurse program shall have: (4-5-00)
- a. A current, unencumbered license to practice as a registered nurse in this state; and (4-5-00)
- b. A master's degree and an earned doctoral degree, one (1) of which is in nursing; or (4-5-00)
- c. A master's degree with a major in nursing and an appropriate advanced practice registered nurse credential if responsible for courses in a specific advanced practice registered nurse category; and (4-5-00)
- d. Evidence of nursing practice experience. (4-5-00)
- 05. Clinical Preceptors in Registered Nurse, Practical Nurse, and Advanced Practice Registered Nurse Programs.** Clinical preceptors may be used to enhance clinical learning experiences. ~~Clinical preceptors shall be credentialed for nursing practice at or above the level for which the student is preparing.~~ (4-5-00)(8-1-16)T
- a. Clinical preceptors in registered and practical nurse programs shall be licensed for nursing practice at or above the license role for which the student is preparing. (8-1-16)T
- b. Clinical preceptors in advanced practice registered nurse programs shall be licensed to practice as an advanced practice registered nurse (APRN), a physician (MD or DO), or a physician assistant (PA) in an area of practice relevant to the educational course objectives. (8-1-16)T
- ~~c.~~ Student-Preceptor ratio shall be appropriate to accomplishment of learning objectives; to provide for patient safety; and to the complexity of the clinical situation. (4-5-00)
- ~~d.~~ Criteria for selecting preceptors shall be in writing. (4-5-00)

ee. Functions and responsibilities of the preceptor shall be clearly delineated in a written agreement between the agency, the preceptor, and the educational program. (4-5-00)

ff. The faculty shall be responsible to: (4-5-00)

i. Make arrangements with agency personnel in advance of the clinical experience, providing information such as numbers of students to be in the agency at a time, dates and times scheduled for clinical experience, faculty supervision to be provided, and arrange for formal orientation of preceptors. (4-5-00)

ii. Inform agency personnel of faculty-defined objectives and serve as a guide for selecting students' learning experiences and making assignments. (4-5-00)

iii. Monitor students' assignments, make periodic site visits to the agency, evaluate students' performance on a regular basis with input from the student and from the preceptor, and be available by telecommunication during students' scheduled clinical time. (4-5-00)

eg. Provide direct supervision, by either a qualified faculty person or an experienced registered nurse employee of the agency, during initial home visits and whenever the student is implementing a nursing skill for the first time or a nursing skill with which the student has had limited experience. (4-5-00)

06. Continued Study. The parent institution will support and make provisions for continued professional development of the faculty. (7-1-91)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS
DOCKET NO. 24-0101-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 change incorporates the most recent National Council of Architectural Registration Board's (NCARB) Certification Guidelines and Rules of Conduct, defines three new terms, provides the board more flexibility when deciding whom may sit for the Architectural Registration Examination (ARE), clarifies license renewal and reinstatement requirements, and removes the requirement that legal services be provided to the board by the Attorney General.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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 2015 NCARB Certification Guidelines contain current national standards of certification that protect the health, safety, and welfare of the public. The 2014 NCARB Rules of Conduct contain the latest rules of conduct that architects are required to follow. The Certification Guidelines and Rules of Conduct currently incorporated into the Rules of the Board of Architectural Examiners have been superseded by these publications.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1701-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled ~~2011–2012~~ NCARB ~~Handbook for Interns and Architects~~ Certification Guidelines, dated July 201~~4~~5, referenced in Subsection 250.01, is herein incorporated by reference. The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, Dated July 201~~4~~4, referenced in Section 750, is hereby incorporated by reference. All documents incorporated by reference can be obtained at the office of the Bureau and on the Board website. ~~(3-29-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

~~01.~~ 01. AXP. Architectural Experience Program. ()

~~042.~~ **Board.** The Board of Architectural Examiners as prescribed in Section 54-312, Idaho Code. (7-1-93)

~~023.~~ **Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-605 and 67-2602, Idaho Code. (3-15-02)

~~034.~~ **Direct Supervision.** Direct supervision of an unlicensed individual in the practice of architecture means the exercise of management, control, authority, responsibility, oversight and guidance over the unlicensed individuals work, activities and conduct. (3-27-13)

~~05.~~ 05. NAAB. National Architectural Accrediting Board. ()

~~06.~~ 06. NCARB. National Council of Architectural Registration Board. ()

~~047.~~ **Responsible Control.** Responsible control means that amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. (3-27-13)

011. -- 099. (RESERVED)

100. ORGANIZATION (RULE 100).

01. Organization of the Board. At the ~~last~~ first meeting of each calendar year, the Board shall organize and elect from its members a Chairman and Vice Chairman, who shall assume the duties of their respective offices immediately upon such selection. ~~(3-15-02)~~()

02. Board Members and Duties. (7-1-93)

a. Chairman. The Chairman shall be a voting member of the Board, and when present preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (7-1-93)

b. Vice Chairman. The Vice Chairman shall, in the absence or incapacity of the Chairman exercise the duties and possess all the powers of the Chairman. (7-1-93)

c. Bureau Chief. The Chief of the Bureau of Occupational Licenses shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Section 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

250. QUALIFICATIONS OF APPLICANTS (RULE 250).

01. **ARE Applicants.** All applicants for the Architectural Registration Examination (ARE) shall possess ~~the minimum qualifications required by the NCARB Handbook for Interns and Architects, where such handbook does not conflict with Idaho law~~ a professional degree in architecture from a program that is accredited by the National Architectural Accrediting Board (NAAB) or that is approved by the Board. All applicants for the ARE must have started or completed the ~~Intern Development~~ Architectural Experience Program (~~ID~~AXP) requirements. (4-7-11)()

02. **Experience in Lieu of Degree Applicants.** The Board may allow an applicant without an architecture degree to sit for the architecture examination upon determining that such applicant has attained the knowledge and skill approximating that attained by graduation from an accredited architecture curriculum including the submission of a record of eight (8) years or more of experience in architecture work of a character deemed satisfactory by the Board. Said experience ~~shall be in addition to~~ may include that necessary for completion of the ~~Intern Development Program (IDP) requirements~~ AXP. Two (2) years of eight (8) or more years of experience may be accepted if determined that such experience is directly related to architecture under the direct supervision of a registered engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction) or a registered landscape architect. At least six (6) years of such experience must be obtained while working under the direct supervision of a licensed architect. A person is qualified for the examination once they have met the experience requirement and started the ~~Intern Development Program (IDP)~~ AXP. (4-7-11)()

251. – 299. (RESERVED)

300. APPLICATION (RULE 300).

01. **Licensure by Examination.** (7-1-93)

a. Application for licensure by examination shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. (4-7-11)

b. Applicants shall furnish all information required by the uniform application form and shall include the following: (3-15-02)

i. Certified transcript of all subjects and grades received for all college courses taken. (7-1-93)

ii. If graduated from a college or university, furnish certification of graduation and a certified transcript of all work completed. (7-1-93)

iii. Furnish statement or statements, of all actual architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment. (7-1-93)

iv. A recent passport photograph taken within the previous year for identification purposes. (3-30-01)

v. In addition to the above required information, an applicant having credits or a degree or degrees from any college or university shall furnish the Board a certified statement from each above institution stating by what accrediting group, if any, such credits or degree or degrees are accredited. (7-1-93)

c. Application shall not be reviewed by the Board until all required information is furnished and the required fee is paid. (3-15-02)

d. To be considered by the Board, properly completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet. (3-15-02)

02. Licensure by Endorsement -- Blue Cover. (7-1-97)

~~a.~~ General requirements. Application shall be accompanied by a current blue cover dossier compiled by the NCARB certifying that the applicant has satisfactorily passed the standard NCARB examinations, or NCARB authorized equivalent and shall include letters, transcripts, and other documents substantiating all statements relative to education and experience made in said application as required by the Board. (7-1-97)()

~~b.~~ *Seismic knowledge requirements for endorsement applicants. Each applicant for license under endorsement to practice architecture in the state of Idaho shall submit evidence of his skill and knowledge in seismic design and such evidence shall be submitted and signed by the applicants acknowledged before a notary public, and shall contain one of the following statements:* (7-1-97)

~~i.~~ *"I have passed the examinations in Building Construction and Structural Design of the Western Conference of State Architectural Registration Boards in June 1963 or since and/or the NCARB in 1965 or since."* (7-1-97)

~~ii.~~ *"I am registered in the State of _____ in 20____, where competence in seismic was a requirement for registration since _____, 20____."* (7-1-93)

~~iii.~~ *Certification of the successful completion of the seismic seminar approved by the National Conference of Architectural Registration Boards.* (7-1-93)

~~e.~~ *All applicants shall attach to their statement a certification from the State architectural registration agency of the cited state attesting the adequacy of the cited seismic examination.* (7-1-93)

03. Licensure by Endorsement -- Equivalency. (7-1-97)

a. *Application shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. Applicants for licensure by endorsement 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.* (3-15-02)()

~~b.~~ *Applicant shall comply with all requirements set forth in Subsections 300.01, 300.02.b.i., 300.02.b.ii., 300.02.b.iii., and 300.02.c.* (7-1-97)

~~eb.~~ Applicants shall provide proof of holding a current and valid license issued by another state, a licensing authority recognized by the Board. (7-1-97)()

~~ec.~~ Applicants shall provide proof of satisfactorily passing the NCARB examinations or NCARB authorized equivalent examination, as determined by the Board. (7-1-97)()

301. -- 349. (RESERVED)

350. REGISTRATION EXAMINATION (RULE 350).

The Board, having found that the content and methodology of the ARE prepared by NCARB is the most practicable and effective examination to test an applicant's qualifications for registration, adopts the ARE as the single, written and/or electronic examination for registration of architects in this state, and further adopts the following rules with

respect thereto:

(7-1-97)

01. When Taken. The Board will cause the ARE, prepared by NCARB, to be administered to all applicants eligible, in accordance with the requirements of the Board, by their training and education to be examined for registration on dates scheduled by the NCARB. The Board shall cause repeat divisions of the ARE to be administered to qualified candidates on such dates as are scheduled by the NCARB. The ARE examination is a multiple part examination prepared by NCARB. Content of the examination in all of its sections is available from the Board or NCARB. (4-11-06)

02. Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB. To achieve a passing grade on the ARE, an applicant must receive a passing grade in each division. Grades from the individual division may not be averaged. Applicants will have unlimited opportunities to retake division which they fail except as set forth in these rules. The Board shall accept passing grades of computer administered divisions of the ARE as satisfying the requirements for said division(s) when such examinations are administered as prescribed by the NCARB. (4-11-06)

03. Passing (ARE). To pass the ARE, an applicant must achieve a passing grade on each division. ~~Effective July 1, 2006, and s~~Subject to certain conditions, a passing grade for any division of the ARE shall be valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. The Board may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, active duty in military service, or other like causes. Approval to take the ARE will terminate unless the applicant has passed or failed a division of the ARE within a period of five (5) years. Any applicant whose approval has so terminated must reapply for approval to take the ARE. (4-11-06)()

~~**04. Transition.** The transitional rules are as follows: (4-11-06)~~

~~**a.** For applicants who have passed all divisions of the ARE by July, 2006 regardless of the time taken, will have passed the ARE. (4-11-06)~~

~~**b.** For applicants who have passed one (1) or more but not all divisions of the ARE by July 1, 2006, such applicants will have five (5) years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five (5) years, after which time the division must be retaken if the remaining divisions have not been passed. The five (5) year period shall commence after July 1, 2006, on the date when the first passed division is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014. (3-27-13)~~

~~**c.** For applicants who have passed no divisions of the ARE by July 1, 2006, such applicants shall be governed by the five (5) year requirement outlined in Subsection 350.04.b of these rules. The five (5) year period shall commence on the date when the first passed division is administered. (3-27-13)~~

~~**d.** After July 1, 2014, approval to take the ARE shall terminate unless the applicant has passed or failed a division of the ARE within a period of five (5) years. Any applicant whose approval has so terminated must reapply for approval to take the ARE. (3-27-13)~~

(BREAK IN CONTINUITY OF SECTIONS)

375. ARCHITECTURAL INTERN (RULE 375).

An individual may represent themselves as an architectural intern only under the following conditions: (3-15-02)

01. Supervision. Each architectural intern shall be employed by and work under the direct supervision of an Idaho licensed architect. (3-15-02)

02. IDP AXP Enrollment. Each architectural intern shall be enrolled in ~~the National Council of Architectural Registration Board's (NCARB's)~~ Intern Development Program (IDP) AXP and shall maintain a record in good standing. (3-15-02)()

03. Record. Each architectural intern shall possess either: (3-15-02)

a. A record with the NCARB establishing that ~~IDP AXP~~ training ~~units are being earned in any of the IDP training settings A, B, C, D or E~~ has been started; or (3-15-02)()

b. A record establishing completion of all ~~IDP AXP~~ training regulations as specified by NCARB. (3-15-02)()

04. Prohibitions. An architectural intern shall not sign or seal any architectural plan, specification, or other document. An architectural intern shall not engage in the practice of architecture except under the direct supervision of an Idaho licensed architect. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTINUING EDUCATION (RULE 450).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. (3-20-04)

01. Continuing Education Requirement. ~~Each Idaho licensed architect must successfully complete a minimum of eight (8) hours of continuing education in architectural health, safety and welfare annually for license renewal. Effective January 1, 2014, and for each year thereafter, e~~ Each Idaho licensed architect must successfully complete a minimum of twelve (12) hours of continuing education in architectural health, safety and welfare in the calendar year prior to license renewal. (3-29-12)()

~~a. Each licensee shall submit to the Board a license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the annual CE requirements have been met during the previous twelve (12) months. Effective January 1, 2014, and for each year thereafter, each licensee shall submit to the Board a license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the annual CE requirements have been met during the previous calendar year. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (3-29-12)~~

a. Each licensee will submit to the Board their annual renewal application form and required fees, and will certify that they have complied with annual CE requirements for the previous calendar year. Each licensee will provide to the Board together with their application for reinstatement of an expired license form and required fees, proof of compliance with annual CE requirements for each year that their license was expired. A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. ()

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their initial license. Licensees who have failed to meet the annual continuing education requirement may petition the Board for additional time to complete their continuing education requirements. (3-20-04)

~~e. Prior to reinstatement of a license lapsed, canceled or otherwise non-renewed for less than five (5) years, the applicant shall provide proof of attendance consisting of eight (8) hours of continuing education for each year the license was lapsed. Effective January 1, 2014, prior to reinstatement of a license lapsed, canceled or otherwise non-renewed for less than five (5) years, the applicant shall provide proof of attendance consisting of twelve (12) hours of continuing education for each year the license was lapsed. A license lapsed, canceled or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (3-29-12)~~

~~c.~~ A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. (3-29-12)

e. One (1) continuing education hour shall be equal to one (1) learning unit, as determined by the

American Institute of Architects, or one (1) clock hour of education, as determined by the Board. (3-20-04)

02. Architectural Health, Safety and Welfare Requirement. To qualify for continuing education, a course must involve architectural health, safety and welfare, which generally relates to the structural integrity or unimpairedness of a building or building sites and be germane to the practice of architecture. Courses may include the following subject areas: ~~(3-20-04)~~ ()

a. Legal, which includes laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public. (3-29-12)

b. Building systems, which includes structural, mechanical, electrical, plumbing, communications, security, and fire protection. (3-29-12)

c. Environmental, which includes energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, and insulation. (3-29-12)

d. Occupant comfort, which includes air quality, lighting, acoustics, ergonomics. (3-29-12)

e. Materials and methods, which includes construction systems, products, finishes, furnishings, and equipment. (3-29-12)

f. Preservation, which includes historical, reuse, and adaptation. (3-29-12)

g. Pre-Design, which includes land use analysis, programming, site selection, site and soils analysis, and surveying. (3-29-12)

h. Design, which includes urban planning, master planning, building design, site design, interiors, safety and security measures. (3-29-12)

i. Construction documents, which includes drawings, specifications, and delivery methods. (3-29-12)

j. Construction contract administration, which includes contracts, bidding, contract negotiations. (3-29-12)

03. Approved Credit. Continuing education courses must be in the subject of architectural health, safety and welfare and be presented by: (3-20-04)

a. Providers approved by the National Architectural Accreditation Board (NAAB) schools of architecture; or (3-20-04)

b. Providers approved by the National Council of Architect Registration Board (NCARB); or (3-20-04)

c. Providers approved by the American Institute of Architects (AIA); or (3-20-04)

d. Providers as otherwise approved by the Board. All requests for approval or pre-approval of continuing education credits must be made to the Board in writing and must be accompanied by a statement that includes the name of the instructor or instructors, his or her qualifications, the date, time and location of the course, the specific agenda for the course, the number of continuing education hours requested, and a statement of how the course is believed to be in the nature of architectural health, safety and welfare. (3-20-04)

04. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee for a period of five (5) years and provided to the Board upon request of the Board or its agent. (3-29-12)

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for

those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-20-04)

06. Exemptions. A licensed architect shall be deemed to have complied with the CE requirements if the licensee attests in the required affidavit that for not less than ten (10) months of the preceding one (1) year period of licensure, the architect has met one (1) of the following criteria: (3-20-04)

a. Has served honorably on active duty in the military service (exceeding ninety (90) consecutive days). (3-20-04)

b. Is a government employee working as an architect and assigned to duty outside the United States. (3-20-04)

c. 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 architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

551. -- ~~569~~99. (RESERVED)

~~600. LEGAL ADVICE (RULE 600).~~

~~All legal advice shall be furnished the Board by the Office of the Attorney General of the State of Idaho or such legal advice may be furnished by private legal counsel with the approval of the Board. (7-1-93)~~

~~601. — 699. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

752. -- ~~799~~800. (RESERVED)

~~800. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 800).~~

~~ADOPTED DECEMBER 29, 1989~~

~~EFFECTIVE JANUARY 18, 1990~~

~~ADOPTED BY EMERGENCY NOVEMBER 2, 1990~~

~~EFFECTIVE APRIL 4, 1991~~

~~ADOPTED BY EMERGENCY MARCH 1, 1991~~

~~EFFECTIVE JUNE 4, 1991~~

~~SUPERSEDING ALL PREVIOUS RULES~~

~~(7-1-93)~~

~~801. — 999. (RESERVED)~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-1601 (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 54-707, 54-708, 54-709, and 54-711, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 150 is being amended to separate the application fee from the original license fee and to set the application fee at \$150 and the original license fee at \$150. 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. The Board is also amending Rule 600 to clarify the peer review process.

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

The annual renewal fee will increase from \$100 to \$150; the inactive license fee will increase from \$50 to \$100; the temporary license fee will increase from \$50 to \$100 and the intern permit fee of \$100 will be added. The inactive retired fee is being deleted. These fees or charges are being imposed pursuant to Sections 54-708, 54-709, and 54-711.

FISCAL IMPACT: The following is a specific 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 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 24-0301-1601
(Only Those Sections With Amendments Are Shown.)

150. FEES (RULE 150).

- 01. Application Fee.** Application Fee ~~(includes original license)~~ - ~~Two~~ **One** hundred fifty dollars
(~~\$2150~~). ~~(3-10-00)~~ **()**
- 02. Original License Fee.** Original License Fee – One hundred fifty dollars (\$150). **()**
- 03. Annual Renewal Fee.** Annual Renewal Fee - One hundred **fifty** dollars (\$~~1050~~). ~~(7-1-93)~~ **()**
- 04. Inactive License.** Inactive License - ~~Fifty~~ **One hundred** dollars (~~\$5100~~). ~~(7-1-93)~~ **()**
- 04. Inactive.** ~~Inactive (retired, age sixty five (65) and over) License – Five dollars (\$5).~~ ~~(7-1-93)~~
- 05. Temporary Permit Fee.** Temporary Permit Fee - ~~Fifty~~ **One hundred** dollars (~~\$5100~~). ~~(7-1-93)~~ **()**
- 06. Intern Permit Fee.** Intern Permit Fee – One hundred dollars (\$100). **()**
- 07. Non-Refundable.** All fees are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. CHIROPRACTIC PEER REVIEW (RULE 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians. (7-1-98)

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho. (7-1-98)

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause. (7-1-98)

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause. (7-1-98)

02. Definitions. (7-1-98)

a. “Board” means the Idaho State Board of Chiropractic Physicians. (7-1-98)

b. “Patient” means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho. (7-1-98)

c. “Peer Review” means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care. (7-1-98)

d. “Peer Review Committee Members” shall mean those individuals appointed by the Board to serve on the Peer Review Committee. (7-1-98)

e. “Individual Reviewers” means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter. (7-1-98)

03. Committee Criteria. (7-1-98)

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall: (7-1-98)

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction; (7-1-98)

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho. (7-1-98)

iii. Obtain such peer review training as may be required by the Board. (3-15-02)

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee. (7-1-98)

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants. (7-1-98)

ii. The Board will notify those individuals who are named to the Committee of their appointment. (7-1-98)

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not: (7-1-98)

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-98)

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-98)

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-98)

04. Standards. (7-1-98)

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, 6th Edition, Robert E. Olson, D.C. (3-30-07)

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-98)

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient’s legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-98)

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-98)

07. Fees for Review. The following fees will be assessed: (7-1-98)

a. If review is requested by a patient: no charge. (7-1-98)

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-98)

i. One hundred twenty-five dollars (\$125) for a review of claims in the amount of one thousand dollars (\$1,000) or less; (3-30-01)

ii. Two hundred fifty dollars (\$250) for a review of claims in the amount of one thousand one dollars (\$1,001) or more and not exceeding three thousand dollars (\$3,000); (3-30-01)

iii. Three hundred fifty dollars (\$350) for a review of claims in the amount of three thousand one dollars (\$3,001) or more; (3-30-01)

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-98)

08. Procedures for Review. (7-1-98)

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-98)

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-98)

c. A treating chiropractic physician shall fully cooperate with a peer review and shall respond to any inquiry and deliver all records requested by the committee or its agent within fourteen (14) days. ()

d. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-98)

e. The individual reviewers will conduct their evaluation, reach an agreement as to their recommended outcome, and report that outcome recommendation to the chairman. ~~If any of the parties desire to appeal this decision, they may within sixty (60) days of the decision notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report the outcome to the chairman. There will be no further rights to appeal.~~ Decisions The recommendation of the individual three reviewers will not be subject to challenge appeal. (4-11-06)()

f. ~~The chairman will provide regular reports to the Board liaison.~~ If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the Committee chairman will notify the Board liaison, immediately. ~~The liaison will then~~ refer the matter original request for peer review for further investigation and potential disciplinary action by the Board. The chairman will also immediately notify the Board liaison (7-1-98)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-1601 (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 54-1509, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2016 Legislature passed House Bill 333 which amended the renewal and reinstatement statute to require that renewal and reinstatement be in compliance with Section 67-2614, Idaho Code. This proposed rule reflects this change and increases the number of continuing education hours for which licensees may receive credit from six (6) to nine (9) annually.

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

This amendment lowers the license reinstatement fee from \$150 to \$35.00.

FISCAL IMPACT: The following is a specific 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 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 24-1701-1601
(Only Those Sections With Amendments Are Shown.)

250. LICENSES CANCELED FOR FAILURE TO RENEW (RULE 250).

~~Any person whose license has been canceled for failure to renew for a period of less than five (5) years may be reinstated upon payment of the renewal fee for each year the license was lapsed, payment of a one hundred fifty dollars (\$150) reinstatement fee, and upon providing documentation of having met the continuing education requirement for each year their license was lapsed.~~ A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Any person whose license to practice optometry has been canceled for failure to renew for a period ~~in excess~~ of more than five (5) years ~~may be reinstated~~ must apply for a new license in accordance with the requirements of Section 67-2614, Idaho Code, ~~subject to examination by the State Board of Examiners of the State Board of Optometry at its discretion.~~ (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).

01. Hours Required, Advance Approval. (4-11-15)

a. Until January 1, 2017, each optometrist licensed by the state of Idaho shall attend, in each twelve-month (12) period preceding the renewal of his license, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. (4-11-15)

b. Effective January 1, 2017, each optometrist licensed by the state of Idaho shall attend in each calendar year prior to license renewal, a minimum of twelve (12) full hours of approved optometric continuing education courses or meetings. (4-11-15)

c. Approved optometric continuing education courses or meetings shall be those post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses are approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (4-11-15)

02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. (4-11-15)

a. Until January 1, 2017, each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend, in each twelve-month (12) period preceding the renewal of his license, a minimum of six (6) additional full hours of approved optometric courses or meetings. (4-11-15)

b. Effective January 1, 2017, each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each calendar year prior to license renewal, a minimum of six (6) additional full hours of approved optometric courses or meetings. (4-11-15)

c. This ~~six (6)~~ nine (9) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (4-11-15)()

03. Correspondence/Home Study Courses/Observation. The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained from “home study” courses or observation. (3-30-07)

04. Waiver of Requirements. The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist’s ability to practice or inability to conform to the rules due to military duty. (3-15-02)

05. Renewal Application Form. Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

06. Audit. The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

07. Documentation of Attendance. It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures, documentation, or electronic verification from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (4-4-13)

08. Excess Hours. A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year’s continuing education requirement. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

575. FEES (RULE 575).

01. Annual Renewal Fee. Annual renewal fee for license - seventy-five dollars (\$75). (7-1-97)

02. Annual Fund Fee. Annual fund fee - seventy-five dollars (\$75). (4-4-13)

03. License Application Fee. License application fee - one hundred dollars (\$100). (7-1-93)

04. Certificate to Obtain and Use Pharmaceutical Agents Fee. Certificate to obtain and use pharmaceutical agents fee - ten dollars (\$10). (3-30-01)

05. Reinstatement Fee. Reinstatement fee is as provided in Section 67-2614, Idaho Code. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-2305 and 54-5713, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 rules are being amended to clarify who can provide on-line continuing education. Additionally, they establish that a service extender cannot provide service until after the supervisory plan is approved by the Board and creates a new category for a service extender who will be providing psychometrician services. Further, the rules are being amended to establish Telepsychology practice in accordance with the Idaho Telehealth Access Act, Title 54, Chapter 57, Idaho Code.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(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:

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Phone: (208) 334-3233
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1201-1601
(Only Those Sections With Amendments Are Shown.)

402. GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION CREDITS (RULE 402).

01. Continuing Education Credit. Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

a. Regionally accredited institutions of higher education. (7-1-93)

b. The American Psychological Association. (7-1-93)

c. A Regional Psychological Association. (7-1-93)

d. A State Psychological Association. (7-1-93)

e. Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

02. Credit for International, National and Regional Meetings of Psychological Organizations. Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and regional meetings of psychological organizations. (7-1-93)

03. Credit for Other Relevant Workshops, Classes or Training Experiences. Other relevant workshops, classes or training experiences when not offered, approved, or provided by an entity in Subsection 402.01, may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience. (4-4-13)

04. Presentation of Papers. Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event. (3-29-10)

05. Self-Study, Lectures or Public or Professional Publications and Presentations. The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year. (7-1-93)

a. Self-Study. The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board. (3-29-10)

b. Professional publications. Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents. (3-29-10)

06. Board Assessment of Continuing Education Activities. The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological

Association in assessing the appropriateness of continuing education activities. (3-29-10)

07. On-Line Education. A maximum of ten (10) on-line continuing education hours relevant to the practice of psychology may be counted during each reporting period. (3-29-10)

a. ~~On-line continuing education hours must be offered by or obtained from regionally accredited institutions of higher education or approved by the American Psychological Association~~ **Continuing education credit will be given to on-line education offered in association with or under the auspices of the organizations listed in Subsection 402.01.a-d of these rules.** ~~(3-29-10)()~~

b. The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the licensee. (3-29-10)

08. Teleconferences. To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee. (4-4-13)

a. When offered, approved, or provided by entities in Subsection 402.01, the number of hours that may be counted during each reporting period is not limited. (4-4-13)

b. When not offered, approved, or provided by an entity in Subsection 402.01, a maximum of six (6) hours may be counted during each reporting period. (4-4-13)

403. -- 449. (RESERVED)

450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (RULE 450).

The Board recognizes that licensed psychologists may choose to extend their services by using service extenders. The Board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

01. General Provisions for Licensed Psychologists Extending Their Services Through Others. (7-1-93)

a. The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)

i. Have the authority to cause termination of compensation for the service extender. (7-1-93)

ii. Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)

b. The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)

i. ~~Within thirty (30) days after~~ **Prior to** employing the service extender, formulate and provide to the Board a written supervisory plan for each service extender **and obtain approval for the plan.** The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and appropriate application fee. ~~(3-19-07)()~~

ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face

supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

c. Supervision of service extenders through electronic communications, including video conferencing, cannot replace face-to-face supervision. Psychologists will ensure that the service that they provide through the use of service extenders is provided according to all applicable laws and rules. ()

02. Qualifications for Service Extenders. (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the Board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board. (7-1-93)()

c. Category III: A service extender will be placed in Category III if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board, and the service extender will only provide psychometrician services. Such services are defined as administering, scoring, and/or summarizing psychological or neuropsychological tests and test data that require specialized training. Interpretation of the testing data must be performed by the licensed psychologist. Service extenders in Category III will not be allowed to perform psychotherapy, intake assessments, or other services outside the scope of psychometric services defined above. The licensed psychologist wishing to employ the service extender must also verify in writing to the satisfaction of the Board that the service extender has been properly trained in all of the testing instruments that the service extender will administer at the start of employment and will continue to receive proper training in any new testing instruments utilized by the service extender over the course of employment. ()

03. Conditions for Use of Service Extenders. (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist." (5-8-09)

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall

be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service extenders in the Category III may deliver as much as, but not more than seventy-five percent (75%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from the on-site provisions of Section 450 of this rule. Without notification to the Board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the Board on written request by the licensed psychologist to the Board. (5-8-09)()

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the Board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit for each service extender the appropriate fee together with certification to the Board that they possess: (3-19-07)

i. A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

iii. An updated plan for the supervision of each of his service extenders. (3-20-04)

m. Documentation of supervisory notes, hours of supervision, number of hours on-site while the service extender provided services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the Board upon request. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

601. TELEPSYCHOLOGY.

This rule supplements Title 54, Chapter 57, Idaho Code, the Idaho Telehealth Access Act, the American Psychological Association Guidelines for the Practice of Telepsychology, and all other laws and rules applicable to the practice of telepsychology in this state. ()

01. Definitions. For purposes of telepsychology services, the following terms are defined as follows: ()

a. Emergency. Emergency means a situation in which there is an occurrence that poses an imminent threat of a life threatening condition or severe bodily harm. ()

b. Information Technology. Information technology means the production, storage, and communication of information using computers and microelectronics including but not limited to telephones, mobile devices, interactive videoconferencing, email, chat, text, social media, and other Internet based services. ()

c. Telehealth Provider. Telehealth provider means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho by Title 54, Chapter 23, Idaho Code and who provides or offers to provide telepsychology services to persons who are located in or who reside in Idaho. ()

d. Telepsychology Services. Telepsychology services mean psychological services provided to a person through the use of information technology for the purpose of assessing, testing, diagnosing, treating, educating, or consulting. Telepsychology services may be synchronous or asynchronous. ()

02. General. ()

a. When telepsychology services are contemplated, a telehealth provider will document individualized potential benefits and potential risks to the service recipient(s). ()

b. Before telepsychology services are provided, a telehealth provider will document an emergency plan in the service recipient's record. The plan will specify the procedure for dealing with emergencies that will in an effective and timely way, provide for the service recipient's welfare. ()

c. Except for psychoeducational purposes, the use of avatars for telepsychology services is prohibited. ()

03. Informed Consent. Telehealth providers will, upon initial and subsequent contact with the service recipient: ()

a. Make reasonable efforts to verify the identity of the service recipient: ()

b. Provide to the service recipient alternative means of contacting the telehealth provider should communications be disrupted during the provision of services. ()

c. Except in an emergency, prior to providing telepsychology services, obtain the written, informed consent of the service recipient(s), consistent with accepted professional and legal requirements concerning: ()

i. The limitations and challenges of using information technology to provide telepsychology services; ()

ii. The potential for breaches in confidentiality of information while delivering telepsychology services; ()

iii. The risks of sudden and unpredictable disruption of telepsychology services and the alternative means by which communication may be re-established; ()

d. Discuss who, in addition to the provider and the service recipient, may have access to the content of telecommunications between the provider and service recipient; ()

e. Inform the service recipient of when and how the provider will respond to electronic messages; ()

f. Ensure that a written agreement has been executed with service recipient(s) concerning compensation, billing, and payment arrangements. ()

04. Security and Confidentiality. Telehealth providers must: ()

a. Use secure communications when providing telepsychology services whenever feasible and document consent for the use of non-secure communication means when they are necessary; ()

b. Document how electronic communications are stored and maintain confidentiality of communications with service recipients; ()

c. Ensure that unauthorized persons cannot recover or access confidential electronically-stored information when retained by the provider and after the data or equipment in which the data is stored has been discarded. ()

d. Inform service recipients how electronic communications may be sent to the provider and how the provider will store these communications. ()

05. Assessment. ()

a. When conducting psychological assessments using telepsychology services, telehealth providers must only use test and assessment procedures that are empirically supported for the patient population being evaluated. ()

b. Telehealth providers using telepsychology for assessment must ensure that the identity of service recipients remains secure, that test security is maintained, that test-taking conditions are conducive to quiet and private test administration, and that the parameters of the test(s) are not compromised. ()

c. Telehealth providers will explain to service recipients the potential limitations of conclusions and recommendations drawn from the results on online assessments and will document these limitations in the findings or report. Treatment will not be based solely upon the results of online assessments. ()

06. Interjurisdictional Practice. ()

a. Before delivering telepsychology services to recipients across state, territorial, and international boundaries, telehealth providers should familiarize themselves and ensure that they comply with all applicable laws. ()

b. Telehealth providers who are licensed to practice psychology pursuant to Title 54, Chapter 23, Idaho Code are under the jurisdiction of the Board when providing telepsychology services to Idaho residents located either within or outside of Idaho and to all recipients located within the state of Idaho. ()

c. Except when providing telepsychology services in response to an emergency, telehealth providers who are not licensed to practice psychology in this state, who do not hold a temporary license under Section 300, or who are not otherwise exempt by law, but who are nevertheless providing telepsychology services to recipients located in this state, are guilty of a misdemeanor crime under Chapter 23, Title 54, Idaho Code. ()

60~~1~~2. -- 624. (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.16.01 - RULES OF THE STATE BOARD OF DENTURITRY

DOCKET NO. 24-1601-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-3309.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 changes will allow flexibility on meeting dates, clarify the examination times and process, add supervisor requirements for the apprenticeship program, and clarify the standards of conduct.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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. 24-1601-1601
(Only Those Sections With Amendments Are Shown.)**

100. BOARD MEETINGS (RULE 100).

01. ~~Dates~~Meetings. The board shall meet ~~regularly in April and November of each year~~ at least annually and at such other times as may be determined by the chairman or by written request of two (2) members of the board. ~~(4-2-03)()~~

~~02. **Place.** Meetings shall be held at the Bureau of Occupational Licenses.~~ ~~(7-1-93)~~

~~03. **Dates and Places.** Dates and places may be changed through notification by the board at least ten (10) days prior to the regular meeting date or the date established for a meeting whichever is earlier.~~ ~~(7-1-93)~~

101. -- 149. (RESERVED)

150. EXAMINATIONS (RULE 150).

01. **Date of Licensure Examination.** The licensure examination will be held ~~at least semi-annually in June and January~~ no less than two (2) times per year and at such ~~other~~ times and places as may be determined by the Board. ~~(4-2-03)()~~

~~02. **Place.** All examinations will be administered at the time and place as designated by the board.~~ ~~(3-10-00)~~

~~03. **Content.** Examinations shall include both a written theory examination and a practical demonstration of skills.~~ ~~(4-2-03)~~

~~04. **Grading.** An applicant must obtain a score of seventy-five percent (75%) or better on each part of the examination in order to pass the examination.~~ ~~(4-2-03)~~

~~05. **Re-Examination.**~~ ~~(4-2-03)~~

a. Applicants who fail either part or all of the examination shall be required to make application and pay the required fees prior to being eligible to retake the failed part of the examination. ~~(4-2-03)~~

b. Applicants failing either part or all of the examination on the first attempt will not be required to complete any additional instruction prior to being eligible to make application and retake the examination. ~~(4-2-03)~~

c. Applicants failing either part or all of the examination on a second attempt and all subsequent attempts shall not be eligible to make application and retake the examination within one (1) year of the date of the examination failure The Board may recommend additional course work or clinical work for any applicant who has failed an examination two (2) or more times. ~~(4-2-03)()~~

151. -- 199. (RESERVED)

200. APPLICATIONS (RULE 200).

01. **Application Filing Date.** Licensure applications must be received in the Bureau of Occupational Licenses ~~ninety (90)~~ at least seven (7) business days prior to the next scheduled ~~examinations~~ meeting of the Board. Applications received after that date ~~will~~ may be held over for the board's next ~~scheduled examination~~ meeting. ~~(3-10-00)()~~

02. **Application Form for Licensure.** Applications for licensure shall be made on forms approved by the board and furnished by the Bureau of Occupational Licenses and shall include all other documents necessary to establish the applicant meets the requirements for licensure except examination and is eligible to take the licensure examination. ~~(7-1-93)~~

03. **Application Must Be Complete.** All applications must be complete in every respect and accompanied by the appropriate fees before being considered received by the Bureau of Occupational Licenses.

(7-1-93)

04. Authorization for Examination. ()

a. After the Board evaluates the applicant's qualifications to take the examination the applicant shall be notified in writing of the approval or denial, and, if denied, the reason for the denial. ()

b. At the time the Board approves an applicant to take the examination the Board shall set the date and location(s) of the next examination if it has not already been set. Approved applicants shall be notified of the date and location(s) of the next examination. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. INTERNSHIP (RULE 300).

01. Requirements and Conditions for Internship. (3-10-00)

a. To be eligible for internship the applicant must have completed: (3-10-00)

i. The educational requirements set forth in Section 54-3310(b), Idaho Code; or (3-10-00)

ii. Have dentistry experience of three (3) years within the five (5) years immediately preceding application. (3-10-00)

b. Where an internship is established based on experience, the internship is valid only while the intern is actively pursuing completion of Idaho licensure requirements. (3-10-00)

c. Application shall be made on forms provided by the Bureau of Occupational Licenses and shall: (3-10-00)

i. Document the location of practice; (3-10-00)

ii. Include the name and address of the supervising dentist or dentist; (3-10-00)

iii. Include a sworn or affirmed statement by the supervising dentist or dentist; (3-10-00)

iv. Include a sworn or affirmed statement by the supervisor accepting supervision of the intern; (3-10-00)

v. Include a sworn statement by applicant that he is knowledgeable of law and rules and will abide by all requirements of such law and rules; and (3-10-00)

vi. Include such other information necessary to establish applicant's qualifications for licensure as a dentist and establish compliance with pre-intern requirements. (3-10-00)

d. The supervising dentist or dentist must be present and directly observe any intern interaction with a patient. (3-29-10)

e. Two (2) years of internship under the supervision of a licensed dentist shall be completed in not less than twenty-four (24) months and shall not exceed thirty (30) months except as approved by the board. (4-2-08)

02. Internship Equivalency. A person shall be considered to have the equivalent of two (2) years internship under a licensed dentist who has met and verifies one (1) of the following within the five (5) years immediately preceding application: (3-10-00)

- a. Two (2) years internship as a denture lab technician under a licensed dentist; or (3-10-00)
- b. Two (2) years in the military as a denture lab technician; or (3-10-00)
- c. Three (3) years experience as a denturist under licensure in another state or Canada. (3-10-00)

03. Internship Not to Exceed One Year. Internship not to exceed one (1) year acquired through a formal training program in an acceptable school will be accepted toward the two (2) year required internship for licensure. (7-1-93)

04. Training Requirements. Each year of required internship shall consist of two thousand (2,000) clock hours of training and performance of the following minimum procedures for licensure. (7-1-93)

a. Procedures shall include all steps required in constructing a finished denture but are not limited to the following: (7-1-93)

- i. Patient charting -- thirty-six (36) minimum. (7-1-93)
- ii. Operatory sanitation -- thirty-six (36) minimum. (7-1-93)
- iii. Oral examination -- thirty-six (36) minimum. (7-1-93)
- iv. Impressions, preliminary and final (pour models, custom trays) -- thirty-six (36) minimum. (7-1-93)
- v. Bite registrations -- twelve (12) minimum. (7-1-93)
- vi. Articulations -- twelve (12) minimum. (7-1-93)
- vii. Set ups -- twelve (12) minimum. (7-1-93)
- viii. Try ins -- twelve (12) minimum. (7-1-93)
- ix. Processing (wax up, flask-boil out, packing, grind-polish) -- thirty-six (36) minimum. (7-1-93)
- x. Delivery-post adjustment -- thirty-six (36) minimum. (7-1-93)
- b. Processed relines (one (1) plate = one (1) unit) -- twenty-four (24) units. (7-1-93)
- c. Tooth repairs -- forty-eight (48) minimum. (7-1-93)
- d. Broken or fractured plates or partials -- forty-eight (48) minimum. (7-1-93)

05. Reporting Requirements. Interns must file reports, attested to by the supervisor, with the board on forms provided by the Bureau of Occupational Licenses on a monthly basis and recapped at termination or completion of the training. (7-1-93)

06. Denture Clinic Requirements. Denture clinic requirements for approved internship training: (7-1-93)

a. There shall be not more than one (1) internee per licensed denturist or dentist who is practicing at the clinic on a full time basis. (7-1-93)

b. There shall be a separate work station in the laboratory area for each intern with standard equipment, i.e. lathe, torch and storage space. The intern shall provide necessary hand tools to perform the duties of the denture profession. Use of the operatory facilities and other equipment will be shared with the intern. (7-1-93)

- 07. Internship Supervisor Requirements.** ()
- a. Supervisors. A supervisor must:** ()
- i. Be approved in advance by the Board for each internship.** ()
- ii. Not have been the subject of any disciplinary action by the Board, by the Idaho Board of Dentistry or by any other jurisdiction for five (5) years immediately prior to being approved as the supervisor.** ()
- b. Supervisor that is a denturist. A supervisor that is a denturist must:** ()
- i. Hold an Idaho denturist license that is current and in good standing and is renewed as provided in these rules; and** ()
- ii. Have actively practiced dentistry for at least five (5) years immediately prior to being approved as the supervisor.** ()
- c. Supervisor that is a dentist. A supervisor that is a dentist must:** ()
- i. Hold an Idaho dentist license that is current and in good standing and is renewed as provided in Chapter 9, Title 54, Idaho Code; and** ()
- ii. Have actively practiced general dentistry, or a dental specialty accepted by the Board, for at least five (5) years immediately prior to being approved as a supervisor.** ()
- d. Supervise only one (1) intern. A supervisor will not be approved to supervise more than one (1) intern at a time.** ()
- e. Termination of supervisor approval. Approval of the supervisor immediately terminates if the supervisor is disciplined or ceases to meet supervisor requirements.** ()

301. -- 314. (RESERVED)

315. INACTIVE LICENSURE STATUS (RULE 315).

- 01. Request License e Placed on Inactive Status.** A dentistry licensee may request the board that his license be placed upon inactive status. (3-10-00)
- 02. License Fee for Inactive Status.** A licensee shall be required to submit an annual renewal fee of fifty dollars (\$50) in order to remain on inactive status. (3-10-00)
- 03. While on Inactive Status.** A licensee on inactive status shall not provide or perform denturist services as defined in these rules. (3-10-00)
- 04. Reactivating Inactive License.** A licensee on inactive status may reactivate his license to active status by paying the renewal fee for an active license and providing proof they have completed and obtained such continuing education as required by board rule of not less than twelve (12) hours for each year of inactive licensure. (3-10-00)
- 05. License Inactive over Five Years.** No license may remain on inactive status for more than five (5) years. (3-10-00)

(BREAK IN CONTINUITY OF SECTIONS)

450. STANDARDS OF CONDUCT AND PRACTICE (RULE 450).

- 01. Sanitation.** (7-1-93)
- a.** There shall be three (3) separate rooms; a reception room, and operatory room and a laboratory. (7-1-93)
- b.** The operatory room shall have hot and cold running water, basin with approved disposal system; disinfectant soap; single-use towels, a cuspidor with running water and a closed waste receptacle. (8-24-94)
- c.** The laboratory room shall have hot and cold running water, and basin with approved disposal system. (8-24-94)
- d.** There shall be a method of sterilization and disinfection evident and in use to insure the protection of the public. (8-24-94)
- e.** All floors, walls, ceiling and benches shall be kept in a sanitary condition at all times. (8-24-94)
- f.** Every patient shall have a separate and clean bib and a disposable cup. (7-1-93)
- g.** Every dentist shall wear a clean and professional garment. (7-1-93)
- h.** The hands of every dentist shall be washed in the presence of every patient with germicidal or antiseptic soap and water. Every dentist shall wear disposable gloves. (8-24-94)
- i.** Adequate and conveniently located toilet facilities with hot and cold running water, basin with approved disposal system, soap and single use towels will be provided within the building. (8-24-94)
- j.** All dentist offices shall be open to inspection anytime during the business hours to inspection by the board or its agents. (7-1-93)
- k.** All telephones must have emergency phone numbers placed on the telephone. (7-1-93)
- 02. Office Standards.** (7-1-93)
- a.** Dentists shall take care to use proper sterilization and sanitation techniques in all phases of their work. (7-1-93)
- b.** A complete record of each patient shall be kept. (7-1-93)
- c.** All teeth and materials used shall meet ADA standards. (7-1-93)
- 03. Advertisements.** (4-2-08)
- a.** No dentist shall disseminate or cause the dissemination of any advertisement or advertising which is any way fraudulent, false, deceptive or misleading. (4-2-08)
- 04. General Conditions.** (7-1-93)
- a.** Conditions deemed by investigators to be a menace to the public health will be brought to the attention of the board for consideration and immediate action. (7-1-93)
- b.** These Standards of Conduct and Practice shall be conspicuously posted in every licensed dentist's place of business. (7-1-93)
- 05. Patient Record. A dentist must record, update and maintain documentation for each patient**

relevant to health history, clinical examinations and treatment, and financial data. Documentation must be written or computerized. Records shall be maintained in compliance with any applicable state and federal laws, rules and regulations, including the health insurance portability and accountability act (HIPAA), P.L. 104-191 (1996), and the health information technology for economic and clinical health act (HITECH), P.L. 111-115 (2009). Such records shall be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations. Records must include but are not limited to the following: ()

- a. Patient data, including name, address, date and description of examination; ()
- b. Evidence of informed consent; ()
- c. Date and description of treatment, services rendered, and any complications; ()
- d. Health history as applicable; and ()
- e. Any other information deemed appropriate to patient care. ()

06. Record Retention. Patient documentation, written or archived electronically by computer, must be retained for a minimum of seven (7) years and available upon request by the Board. ()

451. -- 474. (RESERVED)

475. REGISTRATION STATEMENT (RULE 475).

To enable the board to examine or inspect the place of business of any licensed dentist as referred to in Section 54-3314(5)(b), Idaho Code, the filing of an annual statement shall be required of all licensed dentists. (7-1-97)

01. Statement. Shall list the name and principal place of business of the dentist who is responsible for the practice of dentistry at that location. (7-1-97)

02. Other Business Locations. Any other business locations maintained by the principal dentist and all dentists employed at the business. (7-1-97)

03. Date of Filing. Shall be filed with the board ~~no later than August 15th of each year~~ **annually** or within ten (10) days of any change in either location, identity of principal dentist or dentist employees. ~~(7-1-97)~~()

04. Failure to Timely File. Failure to timely file or update this statement will constitute grounds for discipline pursuant to Section 54-3314(a), Idaho Code. (7-1-97)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 500 is being deleted as the State Board of Acupuncture does not regulate acupuncture businesses, only the individual licensees.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1701-1601 (Only Those Sections With Amendments Are Shown.)

~~500. **USE OF BUSINESS NAME OR TRADE NAME (RULE 500).**
A business name or trade name used by a practitioner shall be registered with the Board within thirty (30) business days from commencement of using such name. (3-30-01)~~

~~501.0.~~ -- 524. (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-1602 (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 54-4106 and 54-4132.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2016 Legislature passed Senate Bill 1318 which placed the registration of Appraisal Management Companies (AMC's) under the Real Estate Appraiser Board. These rules compliment the new law. Other changes are being made to clarify the qualifications for appraiser licensure, to update the renewal and reinstatement rule to align with Section 67-2614, Idaho Code, and to consolidate registered trainee supervisor requirements.

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

The proposed rules establish fees which will be deposited in the Bureau of Occupational Licenses dedicated fund. They are \$1200 for original AMC registration and \$1200 for registration renewal which includes up to \$50 as determined by the Appraisal Subcommittee of the Appraisal Foundation multiplied by the number of appraisers working for or contracting with an AMC which the state is annually required to pass through to a federal agency or instrumentality. These fees or charges are being imposed pursuant to Sections 54-4124 and 54-4132, 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: N/A

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 24-1801-1602
(Only Those Sections With Amendments Are Shown.)

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. 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)

15. 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)

16. Appraisal Management Company or AMC. Appraisal Management Company or AMC means a natural person or organization that meets the definition in Section 54-4122 and is registered under the Idaho Appraisal Management Company Registration and Regulation Act. ()

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

Fees are established in accord with Sections 54-4113, 54-4124 and 54-4134, Idaho Code as follows: ~~(7-1-93)~~()

01. Application. Application fee for License and Registration - two hundred fifty dollars (\$250). ~~(4-11-06)~~()

02. Original License. Original License - one hundred forty dollars (\$140*). (3-21-12)

03. Original AMC Registration. Original Registration – Twelve hundred dollars (\$1200)**. ()

034. License Renewal. License renewal - three hundred sixty-five dollars (\$365*). (3-21-12)

05. AMC Registration Renewal. Registration renewal – twelve hundred dollars (\$1200)**. ()

046. Reinstatement. Reinstatement fee is as provided in Section 67-2614, Idaho Code. (3-24-16)

057. Application for Reciprocity. Application for reciprocity - two hundred fifty dollars (\$250*). (3-30-01)

068. Original License Via Reciprocity. Original License via reciprocity - one hundred dollars (\$100*). (3-21-12)

079. Temporary Permit. Temporary permit - one hundred dollars (\$100). (7-1-93)

0810. Trainee Registration Fee. Trainee registration fee - fifty dollars (\$50). (3-13-02)

0911. 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)

102. Continuing Education Provider Application Fee. Continuing Education Provider Application fee - one hundred dollars (\$100). (3-21-12)

143. Fees are Non-Refundable. Fees are non-refundable. (7-1-93)

124. 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. The fees for the categories marked with two (2) asterisks (**) include up to fifty dollars (\$50) as determined by the Appraisal Subcommittee multiplied by the number of appraisers working for or contracting with an AMC 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 registered AMC’s to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council “no less than annually.” (3-21-12)()

(BREAK IN CONTINUITY OF SECTIONS)

200. APPLICATION (RULE 200).

01. Filing Appraiser License Application ~~with Supporting Documents and Fees~~. Any person desiring to apply for licensure must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. After the qualifications have been reviewed, verified and approved by the Board, the applicant will receive the pre-approved examination card and must submit the appropriate fees to the examining entity. (3-21-12)

~~**02. Application Deadline Date. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance will be held until a subsequent meeting.**~~ (3-13-02)

~~**03.2. Eligibility for Examination.** The qualified applicant will be sent notification on how to register for the examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements. (3-21-12)~~

~~**04.3. Trainee Registration Application.** Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting in order to be reviewed by the Board. (3-13-02)~~

~~**04. AMC Registration Application. Any person or organization desiring registration as an AMC must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address.**~~ ()

~~**05. Application Deadline Date. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance may be held until a subsequent meeting.**~~ ()

~~**05.6. 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 thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)~~

201. -- 224. (RESERVED)

225. REQUIREMENTS FOR AMC REGISTRATION (RULE 225).
All applicants for registration as an AMC shall file an application as provided in these rules and shall meet all qualifications and requirements as provided in Section 54-4122, 54-4124 and 54-4126, Idaho Code, necessary for registration. ()

226. -- 249. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).

01. Qualification. Each applicant for registration as an appraiser trainee must meet the following requirements: (4-11-06)

a. Education. Within the five-year period preceding application, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (3-20-14)

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and (4-11-06)

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and (4-11-06)

iii. National USPAP Course - not less than fifteen (15) hours. (4-11-06)

b. Experience. All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. ~~The supervising appraiser shall:~~ (4-11-06)()

~~**i.** Have held a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser for at least three (3) years prior to providing supervision; and (3-20-14)~~

~~**ii.** Submit evidence of completion of an approved four-hour continuing education course regarding the role of a supervising appraiser. (3-29-10)~~

~~**iii.** Not have been disciplined by the Board or any other state or jurisdiction within the previous four (4) years that affects the supervisory appraiser's legal eligibility to engage in appraisal practice; and (3-20-14)~~

~~**iv.** Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and (4-11-06)~~

~~**v.** Be responsible for the training and direct supervision of the appraiser trainee; and (4-11-06)~~

~~**vi.** Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and (4-11-06)~~

~~**vii.** Review and sign all appraiser trainee appraisal report(s); and (3-20-14)~~

~~**viii.** Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. (4-11-06)~~

c. Examination. Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. (4-11-06)

d. ~~Beginning January 1, 2015, p~~Prior to registration as an appraiser trainee, each trainee applicant must complete a trainee appraiser course that complies with the content requirements established by the Appraisal Qualifications Board. This course is in addition to the education requirements set forth in Section 275. (3-20-14)()

02. Scope and Practice. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to

USPAP. (4-11-06)

a. Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. (4-11-06)

b. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: (4-11-06)

i. Type of property. (4-11-06)

ii. Date of report. (4-11-06)

iii. Address of subject property. (4-11-06)

iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. (4-11-06)

v. Number of actual work hours. (3-20-14)

vi. Signature and license number of the supervising appraiser. (4-11-06)

c. An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. (4-11-06)

03. Continuing Education. Prior to the second renewal and for each continuing education cycle thereafter as provided in Section 275 of this rule, an appraiser trainee shall be required to obtain: (3-21-12)

a. The equivalent of thirty (30) classroom hours of instruction in approved courses or seminars during the twenty-four (24) month period preceding the renewal. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. (3-21-12)

b. All continuing education shall be in compliance with Subsections 401.01 through 401.05. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. (3-20-14)

c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. (3-20-14)

d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. (4-11-06)

04. Renewal and Reinstatement. An appraiser trainee shall renew their registration annually as set forth in section 67-2614, Idaho Code, and may reinstate after expiration as provided in section 67-2614, Idaho Code. Beginning July 1, 2017, an individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board for good cause. ()

276. -- 299. (RESERVED)

276. REGISTERED TRAINEE SUPERVISORS (RULE 276).

01. Registered Trainee Supervisor Requirements. ()

a. A supervising appraiser shall: ()

- i. Hold a current Idaho license as a Certified Residential Appraiser or as a Certified General Appraiser when supervising a trainee registered in Idaho. ()
- ii. Have held a current and unrestricted license as a Certified Residential Appraiser or a Certified General Appraiser for at least three (3) years prior to providing supervision; and; ()
- iii. Submit evidence of completion of an approved four (4)-hour continuing education course regarding the role of a supervising appraiser. ()
- iv. Not have been disciplined by the Board or any other state or jurisdiction within the previous four (4) years; and ()
- v. Not supervise more than three (3) appraiser trainees at one (1) time; and ()
- vi. Be responsible for the training and direct supervision of the appraiser trainee; and ()
- vii. Accept responsibility for all appraiser trainee appraisal reports by signing and certifying that the report is in compliance with USPAP; and ()
- viii. Review and sign all appraiser trainee appraisal report(s); and ()
- ix. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. ()
- b. An accurate, current and complete appraisal experience log shall be maintained jointly by the supervising appraiser and the appraiser trainee. The appraisal log shall include:** ()
 - i. Type of property; ()
 - ii. Date of Report; ()
 - iii. Address of appraised property; ()
 - iv. Description of work performed by the appraiser trainee and the scope of review and supervision of the supervising appraiser. ()
 - v. Number of actual work hours by the appraiser trainee on the assignment; and ()
 - vi. The signature and license number of the supervising appraiser. ()
- c. A supervising appraiser may not continue to supervise if:** ()
 - i. The appraiser ceases to meet supervisor requirements; or ()
 - ii. The appraiser is disciplined, unless the board grants a waiver and a waiver may be subject to conditions set by the board. ()

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).

The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty

thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. As a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: (3-20-14)

- ~~a. Document registration as an Appraiser Trainee; and (4-11-06)~~
- ~~b. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)~~
 - ~~i. Residential Market Analysis and Highest and Best Use – not less than fifteen (15) hours; and (4-11-06)~~
 - ~~ii. Residential Appraiser Site Valuation and Cost Approach – not less than fifteen (15) hours; and (4-11-06)~~
 - ~~iii. Residential Sales Comparison and Income Approaches – not less than thirty (30) hours specifically including Valuation Principles and Procedures – Sales Comparison Approach; Valuation Principles and Procedures – Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and (4-11-06)~~
 - ~~iv. Residential Report Writing and Case Studies – not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. (4-11-06)~~
- ~~e. Beginning January 1, 2015, hold an Associate’s Degree or higher from an accredited college or university or document the successful completion of thirty (30) semester hours of college-level education. An applicant may receive semester hour credit for credits earned through the College-Level Examination Program (CLEP) provided that the accredited college or university accepts the CLEP and issues a transcript for the exam. (3-20-14)~~

- a. Hold an Associate’s Degree or higher from an accredited college or university or document the successful completion of thirty (30) semester hours of college-level education. An applicant may receive semester hour credit for credits earned through the College-Level Examination Program (CLEP) provided that the accredited college or university accepts the CLEP and issues a transcript for the exam; and ()
- b. Document registration as an Appraiser Trainee; and ()
- c. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: ()
 - i. Residential Market Analysis and Highest and Best Use – not less than fifteen (15) hours; and ()
 - ii. Residential Appraiser Site Valuation and Cost Approach – not less than fifteen (15) hours; and ()
 - iii. Residential Sales Comparison and Income Approaches – not less than thirty (30) hours specifically including Valuation Principles and Procedures – Sales Comparison Approach; Valuation Principles and Procedures – Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and ()
 - iv. Residential Report Writing and Case Studies – not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP

Compliance: Case Studies. ()

02. Experience. Prerequisite to sit for the examination: (7-1-97)

a. Document two thousand (2,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

03. Examination. Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

301. -- 349. (RESERVED)

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being certified every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. As a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall: (3-20-14)

~~**a.** Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law; and (4-2-08)~~

~~**b.** Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (4-11-06)~~

~~**c.** Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)~~

~~**i.** Statistics, Modeling and Finance not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)~~

~~**ii.** Advanced Residential Applications and Case Studies not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (4-11-06)~~

~~**iii.** Appraisal Subject Matter Electives not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (4-11-06)~~

~~**da.** On or after January 1, 2015, hold a Bachelor's Degree or higher from an accredited degree-granting college or university; and (3-20-14) ()~~

eb. Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real Estate Appraiser; and (3-20-14)

f. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (3-20-14)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (3-20-14)

ii. Advanced Residential Applications and Case Studies - not less than fifteen (15) hours, specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (3-20-14)

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours, and may include hours over the minimum shown in Subsection 350.01.c. of these rules. (3-20-14)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

c. Examination. Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (3-21-12)

351. -- 399. (RESERVED)

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement. (4-2-08)

01. Education. As a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: (3-20-14)

~~**a.** Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ag economics, business management, or real estate; and (4-2-08)~~

~~**b.** Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty five (225) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)~~

~~i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; (3-29-10)~~

~~ii. General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; (3-29-10)~~

~~iii. General Appraiser Sales Comparison Approach: not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; (3-29-10)~~

- ~~iv. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; (3-29-10)~~
- ~~v. General Appraiser Income Approach: not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; (3-29-10)~~
- ~~vi. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)~~
- ~~vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.b.; or (3-29-10)~~
- ~~e. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)~~
 - ~~i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)~~
 - ~~ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)~~
 - ~~iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-29-10)~~
 - ~~iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)~~
 - ~~v. General Appraiser Income Approach: not less than forty five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)~~
 - ~~vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)~~
 - ~~vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.e.; or (3-29-10)~~
- ~~d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)~~
 - ~~i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)~~
 - ~~ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-29-10)~~
 - ~~iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)~~

~~iv. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)~~

~~v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. (3-29-10)~~

~~ea. On or after January 1, 2015, hold a Bachelor's Degree or higher from an accredited degree-granting college or university; and (3-20-14)()~~

~~fb. Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows: (3-20-14)~~

~~i. Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance; (3-20-14)~~

~~ii. General Appraiser Market Analysis and Highest and Best Use - not less than thirty (30) hours; (3-20-14)~~

~~iii. General Appraiser Sales Comparison Approach - not less than thirty (30) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; (3-20-14)~~

~~iv. General Appraiser Site Valuation and Cost Approach - not less than thirty (30) hours; (3-20-14)~~

~~v. General Appraiser Income Approach - not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; (3-20-14)~~

~~vi. General Appraiser Report Writing and Case Studies - not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-20-14)~~

~~vii. Appraisal Subject Matter Electives - not less than thirty (30) hours, and may include hours over the minimum shown in Subsection 400.01.b. of these rules; or (3-20-14)~~

~~gc. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows: (3-20-14)~~

~~i. Statistics, Modeling and Finance - not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (3-20-14)~~

~~ii. General Appraiser Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and (3-20-14)~~

~~iii. General Appraiser Sales Comparison Approach - not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-20-14)~~

~~iv. General Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and (3-20-14)~~

v. General Appraiser Income Approach - not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-20-14)

vi. General Appraiser Report Writing and Case Studies - not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-20-14)

vii. Appraisal Subject Matter Electives - not less than thirty (30) hours. and may include hours over the minimum shown in Subsection 400.01.c.; or (3-20-14)

~~4d.~~ Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: (3-20-14)

i. General Appraiser Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and (3-20-14)

ii. General Appraiser Sales Comparison Approach - not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-20-14)

iii. General Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and (3-20-14)

iv. General Appraiser Income Approach - not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-20-14)

v. General Appraiser Report Writing and Case Studies - not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. (3-20-14)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document three thousand (3,000) hours of appraisal experience in no less than thirty (30) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. One thousand five hundred (1,500) hours of the experience must be nonresidential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 250.02.d. (4-11-06)

c. Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

~~551.—599.~~ **(RESERVED)**

~~600. AMENDMENTS (RULE 600).~~

~~The Board may propose to amend these Rules at any meeting of the Board by a favorable vote of three (3) members present, providing a copy of the proposed amendment shall have been mailed to each member of the Board at least~~

~~fifteen (15) days prior to the meeting at which the amendment is to be considered and that such amendment is made in accordance with the requirements of the law.~~ (7-1-93)

~~601. -- 649.~~ (RESERVED)

~~650. RULES OF PROCEDURE UNDER THE ADMINISTRATIVE PROCEDURE ACT (RULE 650).
All procedures available under the Board of Real Estate Appraisers shall be those adopted by the Bureau of Occupational Licenses.~~ (7-1-93)

~~651. -- 699.~~ (RESERVED)

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. (3-25-16)

~~701. -- 799.~~ (RESERVED)

~~800. RULEMAKING HISTORY PRIOR TO JULY, 1993 (RULE 800).
Adopted by Emergency January 7, 1992, Effective April 15, 1991, Adopted December 16, 1992, Effective January 5, 1993.~~ (7-1-93)

~~8701. -- 999.~~ (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS
DOCKET NO. 24-1901-1601 (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 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2016 Legislature passed House Bill 332 which amended the renewal and reinstatement statute to require that renewal and reinstatement be in compliance with Section 67-2614, Idaho Code.

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

This rule change will increase the reinstatement fee for expired residential care administrator licenses from \$25 to \$35. It is estimated that there will be a positive impact of \$330 to the Bureau of Occupational Licenses dedicated fund. This fee or charge is being imposed pursuant to Sections 54-4205 and 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: N/A

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 24-1901-1601
(Only Those Sections With Amendments Are Shown.)

401. CONTINUING EDUCATION (RULE 401).

01. Minimum Hours Required. Applicants for annual renewal ~~shall be~~ **or reinstatement are** required to complete a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. Basic First Aid, Cardio-Pulmonary Resuscitation, medication assistance, or fire safety courses shall not be considered for continuing education credit. (3-30-06)()

02. Course Approval. Courses of study relevant to residential care facility administration and sponsored or provided by the following entities or organizations shall be approved for continuing education credits: (3-30-06)

- a. Accredited colleges or universities. (3-30-06)
- b. Federal, state or local government entities. (3-30-06)
- c. National or state associations. (3-30-06)

d. Otherwise approved by the Board based upon documentation submitted by the licensee or course provider reviewing the nature and subject of the course and its relevancy to residential care administration, name of instructor(s) and their qualifications, date, time and location of the course and procedures for verification of attendance. (3-30-06)

03. Credit. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Each licensee shall maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (3-30-06)

04. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The 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. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

500. RENEWAL/RE-CERTIFICATION/ AND REINSTATEMENT OF EXPIRED LICENSE (RULE 500). Licenses shall expire and be renewed annually in accordance with Section 67-2614, Idaho Code. The Board shall refuse to renew a residential care administrators license unless the required fee is accompanied by an affidavit signed by the applicant setting forth the applicant's completion of continuing education requirements. **Licenseses must renew their licenses annually as set forth in Section 67-2614, Idaho Code, and may reinstate their licenses within five (5) years after expiration as provided in Section 67-2614, Idaho Code.** (4-2-03)()

~~**01. Requirements for Reinstatement.** Applicants seeking reinstatement of a license canceled for failure to renew within five (5) years of the cancellation period, must pay a twenty-five dollar (\$25) reinstatement fee plus the back year or years fees and shall provide verification of twelve (12) hours of continuing education. (7-1-98)~~

~~02. **Beyond a Five Year Lapse.** Beyond a five (5) year lapse, the applicant will be treated as a new applicant and application shall be made on the same forms as an application for an original license. (7-1-93)~~

501. -- 599. (RESERVED)

600. FEES (RULE 600).

- 01. **License Application Fee.** License application -- one hundred fifty dollars (\$150). (4-6-15)
- 02. **Annual Renewal Fee.** Annual renewal fee -- one hundred fifty dollars (\$150). (4-6-15)
- 03. **Provisional/Temporary Permit Fee.** Provisional/Temporary permit fee -- one hundred fifty dollars (\$150). ~~(4-6-15)~~()
- 04. **Reinstatement Fee.** Reinstatement ~~twenty five dollars (\$25)~~ fee is as provided in Section 67-2614, Idaho Code. ~~(7-1-93)~~()
- 05. **Reissuance of Lost License Fee.** Reissuance of lost license -- ten dollars (\$10). (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD

DOCKET NO. 24-2201-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 54-5303 and 54-5310, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

The Board is amending the rule to incorporate by reference the 2017 edition of the Liquefied Petroleum Gas Code, NFPA 58, published by National Fire Protection Association (NFPA) to keep abreast of the most current safety standards.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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 current rules incorporate by reference the 2011 Edition of NFPA 58. The 2017 version includes the latest safety protocols used in most state and referenced by the U.S. Department of Transportation. It includes minimum requirements for safe handling during LP-Gas transfer, including operator qualifications, maximum filling quantity in containers, and pre-transfer inspections to ensure containers are fit for continued service. The most current standards of safety address the latest in LPG technology and protect the public from hazards not covered by previous editions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2201-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled Liquefied Petroleum Gas Code, 201~~4~~⁷ Edition, commonly known as NFPA 58, published by National Fire Protection Association (NFPA), is herein incorporated by reference and is available for public inspection at the Board's office. Copies of the 201~~4~~⁷ Liquefied Petroleum Gas Code are available for purchase from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. ~~(3-29-12)~~()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1601 (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 54-2910, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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

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

These rules are being amended to define Audiology Support Personnel along with the criteria for Support Personnel to ensure public safety in the practice of Audiology. These amended rules also establish qualifications for Hearing Aid Dealer and Fitter Supervisors which will ensure provisional permit holders obtain adequate training. Finally, the Board is striking the subsection dealing with Audiology Provisional Permits as the training programs for Audiology are doctorate level and require experience as part of the curriculum. These rules will also reduce the fees for original license and license renewal.

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

These rules reduce the fees for an original license from \$100 to \$70 and for annual license renewal from \$125 to \$100. These fees or charges are being imposed pursuant to Sections 54-2910, 54-2912, 54-2913, 54-2914, 54-2915, and 54-2921, 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: N/A

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 24-2301-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS (RULE 10).

- 01. Board.** The Speech and Hearing Services Licensure Board as prescribed in Section 54-2908, Idaho Code. (3-30-06)
- 02. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-2903 and 67-2602, Idaho Code. (3-30-06)
- 03. Audiology Support Personnel.** Unlicensed natural persons who work under the direction and supervision of an audiologist who is licensed in accordance with Title 54, Chapter 29, Idaho Code and is engaged in the practice of audiology. ()

(BREAK IN CONTINUITY OF SECTIONS)

175. FEES (RULE 175).

- Applications should not be filed unless the applicant can meet all requirements. (3-30-06)
- 01. Application Fee.** Application Fee - Thirty dollars (\$30). (3-30-06)
- 02. Original License Fee.** The original license fee is ~~one hundred~~ seventy dollars (~~\$107~~) to be accompanied by the completed application. (~~3-30-06~~) ()
- 03. Examination/Reexamination Fee.** Examination fee shall be that charged by the examination provider plus an administration fee of fifty dollars (\$50) when the examination is administered by the Board. (3-30-06)
- 04. Provisional Permit.** Provisional permit fee is one hundred dollars (\$100). (3-30-06)
- 05. Annual Renewal Fee.** Annual renewal fee is one hundred ~~twenty-five~~ dollars (~~\$125~~⁰⁰). (~~3-29-10~~) ()
- 06. Annual Renewal Fee for Inactive License.** Annual renewal fee is sixty-five dollars (\$65). (3-27-13)
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license or examination fees for unexcused applicants. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

211. SUPPORT PERSONNEL: AUDIOLOGY (RULE 211).

- 01. Supervising Audiologist – Responsibilities – Restrictions.** ()
- a.** The supervising audiologist, a person licensed to practice audiology under Title 54, Chapter 29, Idaho Code, is responsible for everything audiology support personnel do or fail to do while performing their duties

under the supervising audiologist's supervision. ()

b. Responsibilities of the supervising audiologist include but are not limited to: ()

i. Hiring, training, assessing the competency, and evaluating the performance of audiology support personnel. ()

ii. Approving or disapproving all orders and directives concerning audiology tasks issued by administrators or other managers. ()

iii. Assigning audiology tasks to audiology support personnel and supervising the performance of those tasks. Assigned tasks must not exceed the knowledge and skills of audiology support personnel nor require the exercise of professional judgment, interpretation of test results, or the development or modification of treatment plans. ()

iv. Assessing the abilities of audiology support personnel to perform assigned audiology tasks. ()

v. Providing feedback to audiology support personnel to facilitate improved job performance. ()

c. The number of audiology support personnel that an audiologist may supervise at any one time must be consistent with the delivery of appropriate, quality service, and Title 54, Chapter 29, Idaho Code. ()

d. An audiologist must supervise audiology support personnel in the following manner: ()

i. A supervising audiologist must directly supervise audiology support personnel no less than one time for every five times that support personnel provide audiology services to a patient (20%). Direct supervision requires in-view real-time observation and guidance while an assigned activity is performed. This requirement can be met when the supervisor is providing supervision from a distant site using two-way video and audio transmission. The supervising audiologist will document and retain a record of all direct supervision periods. ()

ii. When not providing direct supervision, the supervising audiologist must provide direction and supervision to audiology support personnel while support personnel are providing audiology services to a patient by making themselves accessible to the support personnel by telephone, video conferencing or in person. ()

02. Audiology Support Personnel – Roles – Restrictions. ()

a. Audiology support personnel perform only tasks that are planned, delegated, and supervised by the supervising audiologist. Duties and responsibilities are assigned based on training, available supervision, and specific work setting. ()

b. Authorized audiology support personnel tasks include but are not limited to the following: ()

i. Greet and escort patients. ()

ii. Schedule patients. ()

iii. Package and dispatch by mail ear-mold orders, devices for repair, and manufacturer/lab returns. ()

iv. Maintain an inventory of supplies. ()

v. Check equipment for functionality. ()

vi. Test hearing aids and other amplification devices. ()

vii. Troubleshoot and perform minor repairs to hearing aids, ear molds, and other amplification devices. ()

- viii. Clean hearing aids and other amplification devices. ()
- ix. Perform electroacoustic analysis of hearing aids and other amplification devices. ()
- x. Instruct patients in the proper use and care of hearing aids and other amplification devices. ()
- xi. Demonstrate how to use alerting and assistive listening devices. ()
- xii. Instruct patients on how to perform proper ear hygiene. ()
- xiii. Assist audiologist in treatment programs. ()
- xiv. Assist audiologist with setup and technical tasks. ()
- xv. Prepare materials for ear impressions. ()
- xvi. Maintain and restock testing and treatment rooms. ()
- xvii. Perform equipment maintenance and biological checks. ()
- xviii. Conduct hearing and tympanic screening on children and adults without interpretation. ()
- xix. Conduct otoacoustic emission screening. ()
- xx. Perform non-diagnostic otoscopy. ()
- xxi. Perform pure-tone audiological reassessment on established patients. ()
- xxii. Prepare patients for vidoenystagmography/electronystagmography or evoked testing. ()
- xxiii. Assist audiologists to test the hearing of pediatric patients. ()
- xxiv. Perform universal newborn hearing screening tests. ()
- xxv. Perform infection control duties with the clinic/service. ()
- xxvi. Assist patients in recording their case history and completing other relevant forms. ()
- xxvii. Communicate with hearing instrument manufacturers and suppliers regarding the status of orders and repairs. ()
- xxviii. Facilitate the exchange of information between audiologist and patient when differences in languages or culture are an issue. ()
- xxix. Assist in clinical research. ()
- c. Audiology support personnel are prohibited from performing the following: ()
 - i. Any task prohibited by state or federal law. ()
 - ii. Any task not expressly approved by the supervising audiologist. ()
 - iii. Interpreting observations or data into diagnostic statements of clinical management strategies or procedures. ()
 - iv. Determining case selection. ()

v. Transmitting clinical information, either verbally or in writing, to anyone without the approval of the supervising audiologist. ()

vi. Composing clinical reports except for progress notes to be reviewed by the audiologist and held in the client's records. ()

vii. Referring a patient/client to other professionals or agencies. ()

viii. Referring to self or using in connection with audiology support person's name, any title other than one determined by the supervising audiologist that is consistent with state and federal law. ()

ix. Signing any formal documents (e.g. treatment plans, reimbursement forms, or reports). ()

x. Discharging a patient/client from services. ()

xi. Communicating with a patient/client's family or others regarding any aspect of the patient/client's status or services without the specific consent of the supervising audiologist. ()

03. Audiology Support Personnel certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) – Roles – Restrictions. ()

a. Audiology support Personnel who are certified by the CAOHC as a Certified Occupational Hearing Conservationist (COHC) may perform the following tasks under the supervision of a licensed audiologist in addition to those tasks set forth in Subsection 211.02.b: ()

i. Check and calibrate audiometric instrumentation. [see Rule 211.02.b.v & vi] ()

ii. Conduct otoscopic screening and pure-tone threshold testing. ()

iii. Counsel employees about test results and the criteria for employee referral. ()

iv. Fit employees and train them on personal hearing protection devices. ()

v. Fit hearing protection devices for testing. ()

vi. Assist CAOHC course directors in the conduct of training. ()

vii. Educate, train, and motivate employees to conserve their hearing. ()

viii. Maintain business and medical records. ()

ix. Generate periodic hearing conservation statistical reports. ()

b. In addition to being prohibited from performing the tasks listed in Subsection 211.02.c, CAOHC's are also prohibited from performing the following tasks: ()

i. Assuming the role of a professional supervisor of the audiometric monitoring portion of a hearing conservation program. ()

ii. Assuming the role of instructor of other occupation hearing conservationists. ()

iii. Interpreting audiograms. ()

iv. Conducting any type of audiometric testing other than air conduction (e.g. not bone-conduction testing or speech audiometry). ()

- v. Diagnosing hearing disorders. ()
- vi. Independently evaluating a hearing conservation program's effectiveness. ()
- vii. Conducting noise surveys and analyzing or assuming responsibility for noise-control solutions. ()
- 04 Audiology Support Personnel – Pre-Service and In-Service Instruction. ()**
 - a.** The supervising audiologist is responsible for the training of audiology support personnel and for maintaining a written record of completed training activity. ()
 - b.** Training will be conducted pre-service (before tasks are assigned) and in-service (after tasks are assigned). The quality and content of training is left to the discretion of the supervising audiologist. The following guidelines apply to both pre-service and in-service training. ()
 - i. Training should be well-defined and specific to assigned tasks. ()
 - ii. Supervising audiologists should ensure that the scope and intensity of training is sufficient to prepare audiology support personnel to successfully perform assigned tasks. ()
 - iii. Training should be competency based and be provided through a variety of formal and informal instructional methods accompanied by written policies and procedures. ()
 - iv. Supervising audiologists should provide audiology support personnel with a written description of their roles and functions. Audiologists should provide personnel with ongoing training opportunities to ensure that audiology practices are current and skills are maintained. ()
 - v. Training should include the identification of and appropriate response to linguistic and cultural challenges which may affect the delivery of service. ()

~~217~~. -- 219. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

450. PROVISIONAL PERMIT: FITTING AND DEALING HEARING AIDS (RULE 450).

- 01. Issuance of a Provisional Permit.** The Board may issue a provisional permit to allow a person to engage in fitting and dealing hearing aids provided that the holder of a provisional permit may practice only while under the supervision of a person fully licensed as a hearing aid dealer and fitter or audiologist under this chapter. (3-27-13)
- 02. Adequate Personal Contact -- Requirements.** (3-30-06)
 - a.** The supervisor and provisional permit holder must make personal contact each work day to review any assignments, client contacts, and hearing aid fittings for the first sixty (60) days of employment. The nature of the supervision and contact must allow for immediate feedback and includes audio/visual, in person, or telephone contacts. (3-27-13)
 - b.** After the first sixty (60) days of employment, personal contact, described in Subsection 450.02.a., must be made no less than once in each calendar week throughout the remaining period of the permit. (3-27-13)
 - c.** In the event a permit holder fails the licensing examination two (2) consecutive times, and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set

forth in Subsection 450.02.a. (3-29-10)

03. Supervisor -- Qualifications -- Responsibilities -- Restrictions. (~~3-30-06~~)()

a. Supervisors. A supervisor must: ()

i. Be approved in advance by the Board for each permit holder; and ()

ii. Hold either an Idaho hearing aid dealer and fitter license or an Idaho audiologist license that is current and in good standing and is renewed as provided in these rules; and ()

iii. Not have been the subject of any disciplinary action by the Board or by any other jurisdiction for two (2) years immediately prior to being approved as a supervisor. ()

b. Supervisor that is a hearing aid dealer and fitter. A supervisor that is a hearing aid dealer and fitter must: ()

i. Hold a current board certificate in hearing instrument sciences (BC-HIS) from the National Board for Certification in Hearing Instrument Sciences; or ()

ii. Have actively practiced as a hearing aid dealer and fitter for at least three (3) years immediately prior to being approved as a supervisor. ()

c. Supervisor that is an audiologist. A supervisor that is an audiologist must have actively practiced audiology for at least one (1) year immediately prior to being approved as a supervisor. ()

~~d.~~ The supervisor is responsible for all practice and conduct of each permit holder under supervision. (3-27-13)

~~e.~~ A supervisor may not supervise more than two (2) permit holders at a time. (3-29-10)

~~f.~~ The supervisor must have an established business site within the state of Idaho which ~~he the~~ supervisor regularly utilizes as a base of operation. The supervisor and the permit holder shall be required to work within the same facility. (~~3-29-10~~)()

~~g.~~ The supervisor must provide the permit holder with adequate training and client contact necessary to prepare for the required examination. (3-30-06)

~~h.~~ The supervisor of a hearing aid dealer and fitter permit holder must record with the Board a plan of training that encompasses all sections covered in the license examination. The plan must be accepted and approved by the Board or its agent prior to issuance of the permit. The supervisor shall document, by the quarterly report, the permit holder's progress. (3-27-13)

~~f.~~ A supervisor may terminate ~~his their~~ supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. (~~3-27-13~~)()

04. Application -- Quarterly Reports. (3-30-06)

a. Application for permit must include completed application, examination fee, permit fee, supervisor statement and plan of training and supervision. (3-30-06)

b. A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date of the third licensure examination following the original application. (3-30-06)

c. Twenty-four (24) months is the maximum time allowed for any combination of new or renewed

permits. (3-27-13)

d. Every permit holder must submit a quarterly report of ~~his~~ **their** activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include:

~~(3-27-13)~~ ()

i. Log of client and supervisor contacts shall be included in each quarterly report. (3-27-13)

ii. Supervisor's statement of completion of training assignments by permit holder as specified in Subsection 450.03.f. (3-29-10)

iii. Copy of test results for all persons tested by the permit holder whether or not a sale occurred. (3-30-06)

iv. Copy of hearing aid order for all fittings including specifications of instruments ordered. Hearing aid dealers and fitters must provide a copy of hearing aid order. (3-27-13)

e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. (3-27-13)

f. Supervisors who fail to properly or adequately supervise permit holders as set forth in Subsection 450.03 will be subject to disciplinary action described in Section 54-2923, Idaho Code. ()

05. Exemptions. (3-30-06)

a. A permit holder who is Board Certified by National Board for Certification in Hearing Instrument Sciences (NBC-HIS) shall be exempt from Subsections 450.02.a., 450.03.c., and 450.03.e. from the date of issuance of the permit until the date of the next offered licensing examination. (3-27-13)

b. Failure of the licensing examination or failure to take the next offered licensing examination rescinds this exemption. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

461. -- ~~469.~~ (RESERVED)

~~**470. PROVISIONAL PERMIT: AUDIOLOGY (RULE 470).**~~

~~**01- Issuance of a Provisional Permit.** The Board may issue a provisional permit to allow a person to engage in the practice of audiology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology provided that the holder of a provisional permit may practice only while under the supervision of a person licensed to practice audiology under this chapter. (3-27-13)~~

~~**02- Supervisor Responsibilities Restrictions.** (3-27-13)~~

~~**a.** The supervisor is responsible for all practice and conduct of each permit holder under his supervision. (3-27-13)~~

~~**b.** A supervisor may not supervise more than two (2) permit holders at a time. (3-27-13)~~

~~**e.** The supervisor must provide the permit holder with adequate supervision and direct client contact~~

~~activities which include, but are not limited to, assessment, diagnosis, evaluation, screening, treatment, and client management. (3-27-13)~~

~~d. A supervisor may terminate the supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. (3-27-13)~~

~~e. The supervisor must have an established business site within the state of Idaho which he regularly utilizes as a base of operation. All supervised activities shall occur in the state of Idaho. (3-27-13)~~

~~**03. Application—Quarterly Reports. (3-27-13)**~~

~~a. Application for permit must include completed application, permit fee, official transcripts from a college or university, documentation of having passed the approved examination, supervisor statement and plan of training and supervision. (3-27-13)~~

~~b. A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date from original application. (3-27-13)~~

~~e. Twenty four (24) months is the maximum time allowed for any combination of new or renewed permits. (3-27-13)~~

~~d. Every permit holder must submit a quarterly report of their activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit to practice audiology will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include: (3-27-13)~~

~~i. Log of client and supervisor contacts shall be included in the quarterly report. (3-27-13)~~

~~ii. Supervisor's statement of completion of training assignments by permit holder as specified in these rules. (3-27-13)~~

~~e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. A new permit may be applied for in accordance with these rules. (3-27-13)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~601. — 699. (RESERVED)~~

~~**700. ADOPTION AND EFFECTIVE DATE OF RULES (RULE 700).**~~

~~The rules of this Board are hereby approved by the Board on August 19, 2005, and shall become effective on this date. (3-30-06)~~

~~**701. -- 999. (RESERVED)**~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD

DOCKET NO. 24-2501-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

The Board of Driving Businesses is amending its rules to clarify that the list of current instructors must be submitted for original and reinstatement applications. The list must be kept current and made available upon request of the Board. It also clarifies that while a Driving Business is allowed to use a third party provider for on-line classroom instruction, the licensee is responsible for ensuring that the content meets the requirements approved by the Board. The rule outlines when the business licensee will send performance information to the Department of Motor Vehicles (DMV) and it updates language as to who may provide a medical examination and what document must be submitted to the Board to verify it.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
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Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2501-1601
(Only Those Sections With Amendments Are Shown.)

225. DRIVING BUSINESS LICENSE (RULE 225).

A driving business license enables a licensee to operate a driver education business at one (1), principal classroom location as designated in the application. The licensee may also utilize secondary locations for classroom instruction, so long as the business does not conduct driver education at any given secondary location for more than sixty (60) days in a one-year period. A driving business license is not transferable. The business licensee must conspicuously display the license at the business's principal classroom location. Each applicant must apply as required by Rule 150. (4-7-11)

01. Applicant Identity. The applicant must provide such identifying information as may be requested by the Board including, without limitation, the following: (4-7-11)

a. The applicant's legal name (i.e., the name of the natural person or business entity to be issued the license) and assumed business name(s), if any. (4-7-11)

b. The applicant's social security number, if the applicant has no employees and is a natural person (including a sole proprietor acting under an assumed business name). If the applicant has employees or is not a natural person (e.g., is a general or limited partnership, corporation, limited liability partnership, or limited liability company), then the applicant must provide its employer identification number. (4-7-11)

c. The names and addresses of the applicant's officers and shareholders having a twenty-five percent (25%) or greater ownership interest (if a corporation), members and managers (if a limited liability company), and partners (if a partnership). (4-7-11)

d. The applicant's contact information, including its mailing address, physical address, and telephone number. (4-7-11)

02. Criminal History Background Check. The applicant, if a natural person, and all persons listed under Paragraph 225.01.c. and Subsection 225.05 of these rules, must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must ensure that such persons submit a full set of their fingerprints, and any relevant fees, 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 Bureau has received the completed fingerprint-based criminal history background checks. (3-20-14)

03. Classroom Locations and Certificates of Occupancy. Each applicant must list all principal and secondary classroom locations to be utilized by the business. The applicant must provide a certificate of occupancy issued to the building/room by the local fire marshal or the fire marshal's designated agent, for each classroom location other than a location in a public or private school building, government building, church, or synagogue. (4-7-11)

04. Certificate of Vehicle Insurance. The certificate of vehicle insurance for each vehicle utilized by the driving business for driver education must accompany the application. The minimum coverage will include: (4-7-11)

a. Medical Payment for each person - five thousand dollars (\$5,000); and either (4-7-11)

b. Limit of liability (Combined single limit) - five hundred thousand (\$500,000) to apply to bodily injury and/or property damage; or (4-7-11)

c. Limit of liability (Split limit). Bodily injury - two hundred-fifty thousand (\$250,000) per person/ five hundred thousand (\$500,000) each accident; Property damage - two hundred-fifty thousand (\$250,000) each accident. (4-7-11)

05. *List of Licensed Instructors.* Before beginning to offer driver education, and at all times while offering driver education, a driving business must employ or have contracted with one (1) or more licensed driving instructors to teach the classroom instruction phase and behind-the-wheel training phase of the driver education to be provided by the business. ~~The A driving business must submit to the Bureau a current list of such licensed instructors with the applications for original licensure and reinstatement, and A driving business must keep such list current after licensure and available for inspection upon request by the board or its authorized agent. The list must be kept at its primary place of business and retained for five (5) years.~~ (4-7-11)()

06. *Vehicles.* An applicant for a driving business license must submit to the Bureau a list of the vehicles that the business will utilize when offering driver education. A business licensee may not utilize vehicles that do not appear on the list. Each vehicle must have dual control brake pedals, safety restraints for all passengers, a side view mirror on each side of the vehicle, and an additional rear view mirror or compatible viewing device for the exclusive use of the instructor. A driving business must ensure that students are not allowed in a listed vehicle unless the vehicle is in a safe and proper operating condition. (4-7-11)

a. **Initial Inspection.** An applicant may not include a vehicle on a business's vehicle list unless the vehicle has passed a vehicle inspection performed by an ASE mechanic or vehicle technician within the two (2) month period preceding the application. The inspection must be documented on the Board-approved inspection form included at Appendix A to these rules, or on such other similar forms as may be approved by the Board. The person who inspected the vehicle must sign the form, certifying that the vehicle generally is in a safe and proper operating condition, and that each inspected item passed inspection or, if found to be in need of repair, was repaired on a given date. The application must be accompanied by a separate, signed form for each listed vehicle. (4-7-11)

b. **Annual Inspection.** A business licensee must ensure that each vehicle passes an inspection every twelve (12) months, and that the inspection is performed by an ASE mechanic or vehicle technician documented on the Board-approved form referenced in Paragraph 225.06.a. of these rules. If a vehicle fails an annual inspection, the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes a subsequent inspection and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. (4-7-11)

c. **Incident Inspection.** If a vehicle incident occurs that requires an investigation and report by law enforcement, or in which the damage exceeds one thousand five hundred dollars (\$1,500), the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes inspection by an ASE mechanic or vehicle technician and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. (4-7-11)

d. **Signage.** The business licensee must ensure that the outside of each vehicle is equipped with safely secured signs. Signs must include "Student Driver," "Driver Education," "Driver Training," "Driving School," or similar language that clearly designates the vehicle as a driver training vehicle. (4-7-11)

07. *Course of Instruction.* Each applicant, for an original business license, must provide with its application the course of instruction the applicant will use when instructing students. The applicant must demonstrate, to the Board's satisfaction, that the course of instruction is designed to produce safe and effective drivers and is educationally sound. The course of instruction must be based on the minimum curriculum components outlined in Rule 226, and shall consist of: (4-7-11)

a. Not less than thirty (30) hours of classroom instruction; and (4-7-11)

b. Not less than six (6) hours of behind-the-wheel practice driving; and (4-7-11)

c. Not less than six (6) hours of student, in-vehicle observation of other persons (e.g., parents, other student drivers, etc.) driving the vehicle. (4-7-11)

08. On-line Instruction. In addition to, or in lieu of offering classroom instruction at a physical classroom location, a business licensee may offer classroom instruction to students via the internet. ~~If~~ While a business licensee may utilize a third party to offer on-line classroom instruction, the business licensee is responsible for ensuring that the instruction content meets the requirements of these rules and is approved by the Board. (4-7-11)()

09. Instructor Apprenticeship Training Program. A driving business may offer a Board-approved instructor apprenticeship training program under the conditions specified in Rule 275. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

227. DRIVING BUSINESS - COURSE OF INSTRUCTION (RULE 227).

01. Student Permit Required. No enrollee of any class D driver's training course will be allowed to attend classes or participate in driving instruction unless he has obtained a class D driver's training instruction permit, or a class D instruction permit, as provided in Section 49-307(4), Idaho Code. (4-7-11)

02. In-Car Documentation. A business licensee must ensure that each listed vehicle contains documentation that identifies each student and the student's permit number. Permits will be given to the students following the completion of the course and used during the required graduate licensing process. (4-7-11)

03. Maximum Daily Driving and Observation Time. Neither a business licensee nor an instructor licensee may permit an enrolled student to receive more than two (2) hours of behind-the-wheel driving time per day. Maximum observation time is two (2) hours per student, per day, and may be completed with a parent or legal guardian. (4-7-11)

04. Maximum Number of Students In Vehicle. Neither a business licensee nor an instructor licensee may permit more than three (3) students in a vehicle at one (1) time. (4-7-11)

05. Grading Criteria. A business licensee may not permit a student to graduate from the business's driver education program unless the student has achieved an eighty percent (80%) or higher in each of the three (3) course areas described in Subsection 225.07. The business licensee must utilize written grading criteria for each of the minimum components in Rule 226. Criteria may include student attitude and such other criteria as the driving business may deem appropriate. The business licensee must maintain records of the student's grades. (4-7-11)

06. Driving Log. Each driving instructor must complete a log for each student's behind-the-wheel driving and each driving business licensee must ensure that its driving instructors complete the log. The log must include, for each student, at least the student's name, birthdate, phone number, driving permit number, class date, instructor's name, lesson objective, total instruction time, total observation time, final grade, and date the student passed. (4-7-11)

07. Reporting. A business licensee will send student performance information as prescribed by the Idaho Division of Motor Vehicles (DMV) to the DMV no later than five (5) p.m. on the third business day following completion of the course. ()

~~07.8.~~ **Parental Involvement.** Each business licensee should encourage parental involvement in the education of the student. (4-7-11)

~~08.2.~~ **Record Retention.** The business licensee must maintain all logs and other records required under Rule 227 for at least three (3) years from date on which the student completes, or is no longer enrolled in, the business's driver education course. The business licensee may not release these records without written consent from the student and the student's parent or legal guardian. The Board and its agents, however, may inspect these records at any time. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

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)~~ performed by a licensed medical professional. The examination must be completed within two (2) years preceding the application. The applicant must submit a medical ~~affidavit or~~ examiner's 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. ~~(3-25-16)~~ ()

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 24 - BUREAU OF OCCUPATIONAL LICENSES

24.27.01 - RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY

DOCKET NO. 24-2701-1601 (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 54-4007.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2016 Legislature passed House Bill 519 which authorized the Board to establish requirements for a temporary license and provisional permit. These rules establish the requirements for a temporary license and a provisional permit and set fees for each. The rules also lower the fee for an original license and annual license renewal and update the list of approved licensure examinations.

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

Rule 250 lowers the original license fee and the annual license renewal fee from \$75 to \$65 and adds a temporary license and provisional permit fee of \$25. These fees or charges are being imposed pursuant to Section 54-4008, 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: N/A.

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:

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mitchell Toryanski at (208) 334-3233. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

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) 334-3945

THE FOLLOWING IS THE FEE RULE PROPOSED TEXT OF DOCKET NO. 24-2701-1601
(Only Those Sections With Amendments Are Shown.)

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~~six-five dollars (\$~~76~~5). (~~3-27-13~~)()

03. Annual Renewal Fee. Annual renewal fee is ~~seventy~~six-five dollars (\$~~76~~5). (~~3-27-13~~)()

04. License by Endorsement Fee. License by endorsement fee is seventy-five dollars (\$75). (3-27-13)

05. Temporary License. Temporary license fee is twenty-five dollars (\$25). ()

06. Provisional Permit. Provisional permit fee is twenty-five dollars (\$25). ()

~~057.~~ **Duplicate License Fee.** Duplicate license fee is ten dollars (\$10). (3-27-13)

~~068.~~ **Reinstatement Fee.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. (3-24-16)

~~079.~~ **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)

~~0810.~~ **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)

251. -- 299. (RESERVED)

300. REQUIREMENTS FOR ORIGINAL LICENSURE.

The Board may grant a license to an applicant for licensure who completes an application as set forth in Section 200 of these rules and meets the following general, education, and examination requirements: (3-27-13)

01. General. (3-27-13)

a. An applicant must provide evidence of being at least eighteen (18) years of age. (3-27-13)

b. An applicant must certify that he/she has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony or a crime involving moral turpitude, or if the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

c. An applicant must certify that he/she has not been convicted of a crime under any municipal, state, or federal narcotic or controlled substance law, or if the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

d. An applicant must certify that he/she or his/her license has not been subject to any disciplinary action by a regulatory entity in another state, territory or country including, but not limited to, having an application for licensure denied. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. (3-27-13)

- 02. Education.** Each applicant shall: (3-27-13)
- a. Certify that he/she has obtained a high school diploma or the equivalent; and (3-27-13)
 - b. Present evidence satisfactory to the Board of having successfully completed an approved massage program as defined in Section 010 of these rules. (3-27-13)

03. Examination. Each applicant shall also present evidence satisfactory to the Board of having successfully passed an approved examination. (3-27-13)

~~**04. Waiver of Requirements.** Until July 1, 2014, the Board may waive the requirements of Subsections 300.02 and 300.03 of these rules and issue a license to any applicant who meets one (1) of the following requirements: (3-27-13)~~

~~a. Completion of a minimum of five hundred (500) hours of supervised classroom and hands-on instruction relating to massage therapy; (3-27-13)~~

~~b. Completion of at least three hundred (300) hours of formal training in massage therapy as determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least three (3) years prior to the date of application; (3-27-13)~~

~~c. Completion of at least two hundred (200) hours of formal training in massage therapy, as determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least five (5) years prior to the date of application; (3-27-13)~~

~~d. Active membership in good standing as a massage therapist for a period of at least twelve (12) months of a national professional massage association or organization that offers professional liability insurance; or (3-27-13)~~

~~e. Successful passage of a nationally recognized competency examination in massage therapy that is approved by the Board. The passage of this exam may have occurred prior to the effective date of these rules. (3-27-13)~~

301. -- 304. (RESERVED)

305. APPROVED EXAMINATIONS.

Approved examinations shall be the following examinations or another nationally recognized competency examination in massage therapy that is approved by the Board. (3-27-13)

01. Approved Examinations. (3-27-13)

a. Massage and Bodywork Licensing Examination (MBLEx) as administered by the Federation of State Massage Therapy Boards (FSMTB); (3-27-13)

b. National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) ~~as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); (3-27-13)~~

e. or National Certification Examination for Therapeutic Massage (NCETM) as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); ~~and if taken before February 1, 2015.~~ (3-27-13)()

~~d.c.~~ Other nationally recognized competency examinations in massage therapy that are approved by the Board. A written request for approval must be submitted to the Board together with supporting documentation as may be requested by the Board. (3-27-13)

02. Successful Passage. A passing score, or successful passage of the exam, will be determined by the entity administering the exam. (3-27-13)

03. **Date of Exam.** The passage of the exam may have occurred prior to the effective date of these rules. (3-27-13)

(BREAK IN CONTINUITY OF SECTIONS)

311. -- 319. (RESERVED)

320. TEMPORARY LICENSE.

01. General. Any person who has submitted to the board a complete application for licensure by examination under section 54-4009 or by endorsement under section 54-4010, Idaho Code together with the required fees, may apply for a temporary license to practice massage therapy while their application is being processed by the board. ()

02. Duration. An applicant will be issued only one temporary license which will be valid for a period not to exceed four (4) months or until the board acts upon the licensure application, whichever occurs first. ()

321. -- 329. (RESERVED)

330. PROVISIONAL PERMIT.

Upon application to the board and payment of the required fees, an applicant may be issued a provisional permit to practice massage therapy if the applicant meets all the requirements for licensure under section 54-4009, Idaho Code except for having successfully passed a nationally recognized competency examination in massage therapy that is approved by the Board as described in Subsection 305.01. ()

01. General. A provisional permit will be issued subject to the following conditions: ()

a. The applicant must certify that the applicant will take the next scheduled examination for licensure approved by the board, and that the applicant has not failed two (2) previous examinations for licensure; and ()

b. A licensed massage therapist certifies to the board that the applicant will practice massage therapy only under the supervision of the licensed massage therapist while both are in the same location. ()

02. Duration and Renewal. An applicant will be issued only one provisional permit which shall be valid for a period not to exceed six (6) months or until the applicant is issued a temporary license or the board acts upon the massage therapist license application, whichever occurs first. A provisional permit may only be renewed once upon a showing of good cause. ()

3431. -- 399. (RESERVED)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1606

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 26, 2016 – 1 p.m. (MDT)

**Idaho State Capital Building, Room WW53
514 W. Jefferson
Boise, Idaho**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

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:

On July 22, 2016, S. 524, the Comprehensive Addiction and Recovery Act (CARA) of 2016, took effect. One provision of this Act is a loosening of restrictions on the partial filling of Schedule II controlled substance prescriptions. The federal law change would allow a patient to receive fewer Schedule II controlled substance pills than written by a prescriber, while not forfeiting the balance if picked up within a certain timeframe. This federal law change is intended to reduce the amount of Schedule II controlled substances dispensed, and reduce the number of unused pills that remain in Idaho households and need discarded. This proposed rule would harmonize Idaho law with the new federal law.

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

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

There is no anticipated fiscal impact as a result of these rule changes, though it could conceivably reduce healthcare costs if patients fill fewer pills than prescribed.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. The Board's negotiated rulemaking session was held on August 3, 2016. This proposed rule change stems from a change in federal law that was signed by President Obama on July 22, 2016. Thus, the timing of the federal law change and specifically when the Board was notified, did not lend itself to adding this to the negotiated rulemaking meeting. A draft has been circulated to known stakeholders on this topic, and an open meeting will be held on October 26, 2016 at which the Board will consider both written and verbal comments on this proposed rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at alex.adams@bop.idaho.gov.

DATED this 25th day of August, 2016.

Alex Adams, Pharm D, MPH
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. 27-0101-1601
(Only Those Sections With Amendments Are Shown.)

114. PRESCRIPTION DRUG ORDER: PARTIAL FILLING.

01. Partial Filing of Schedule II Prescriptions. A Schedule II controlled substance prescription drug order may be partially filled and dispensed ~~if the pharmacist is unable to supply~~ **within** the ~~full quantity ordered~~ **limits of federal law.** (3-21-12)()

~~**a.** The remaining portion of the prescription drug order may be filled if within seventy-two (72) hours of the first partial filling. If the remaining portion is not or cannot be filled within seventy-two (72) hours, the pharmacist must notify the prescriber.~~ (3-21-12)

~~**b.** Additional quantities must not be dispensed beyond seventy-two (72) hours without a new prescription drug order.~~ (3-21-12)

02. Partial Filing of Schedule II Prescriptions for LTCF or Terminally Ill Patients. A Schedule II controlled substance prescription drug order for a patient in an LTCF or for a patient with a documented terminal illness may be filled in partial quantities and individual dosage units. The pharmacist must record that the patient is either “terminally ill” or an “LTCF patient.” (3-21-12)

03. Schedule II Partial-Fill Documentation. For each partially filled prescription drug order, the following information must be recorded: (3-21-12)

- a.** The date; (3-21-12)
- b.** The quantity dispensed; (3-21-12)
- c.** The remaining quantity authorized for dispensing; and (3-21-12)
- d.** The identification of the dispensing pharmacist. (3-21-12)

- 04. Partial Filling of Schedule III, IV, and V Prescriptions.** The partial filling of a prescription drug order for a controlled substance listed in Schedules III, IV, or V is permissible if: (3-21-12)
- a.** Each partial fill is recorded in the same manner as a refill; (3-21-12)
 - b.** The total quantity dispensed in partial fillings does not exceed the total quantity prescribed; and (3-21-12)
 - c.** Dispensing does not occur after six (6) months from the date on which the prescription drug order was issued. (3-21-12)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.07 - RULES GOVERNING THE ADMINISTRATION OF THE IGEN GRANT PROGRAM

DOCKET NO. 28-0207-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-4702 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 19, 2016.

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

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

The proposed rule changes:

- Ensure the language between Idaho Code and the program rules are consistent.
- Correctly cite responsibilities for the Department of Commerce.
- Defines “industry partner,” a term that was introduced into Idaho Code during the last legislative session.
- Provide grammatical corrections and other program clarifications.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department of Commerce held informal negotiation sessions with officials representing the State Board of Education, Boise State University, Idaho State University, and the University of Idaho, in which all parties agreed with the proposed rule changes and language submitted in this notice.

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
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 Bobbi-Jo Meuleman, 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 26, 2016.

DATED this 1st day of September, 2016.

Bobbi-Jo Meuleman, Chief Operating 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. 28-0207-1601
(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. (3-20-14)

03. IGEN Council. Idaho Global Entrepreneurial Mission Council as defined in Section 67-4726, Idaho Code. (3-20-14)

04. IGEN 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)

05. IGEN Grant Program. A grant program established ~~by the IGEN Council for the purpose of funding projects intended~~ to further the purpose as described in Section 100 of these rules. ~~(3-20-14)~~()

06. University. As used in these rules, University means Boise State University, Idaho State University, and the University of Idaho. (3-20-14)

07. Industry Partner. A domestic or foreign entity that designs, produces, or sells goods or services or that contractually agrees to undertake such acts in connection with technologies licensed or otherwise transferred to the entity by a University, and that is partnered with an Eligible Applicant. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. REQUEST FOR PROPOSAL (RFP).

The ~~IGEM Council~~ Idaho Department of Commerce will release a RFP outlining the process and requirements for Eligible Applicants to apply for IGEN Grant Program awards. The RFP shall include requirements for performance measures and reporting. Awarded programs that fail to meet the requirements set forth in the RFP may be terminated. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

301. MATCHING REQUIREMENT.

All approved awards ~~must contain a match requirement. The match may be~~ are required to include a monetary or in-kind contribution from the Industry Partner(s) as established in the RFP. ~~(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 and in the funding agreement or for the misuse of IGEN funds. Upon receipt of a written notice of termination from the Department, the grantee must immediately stop all expenditures of IGEN funds ~~and return all unspent IGEN 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 e~~Commercialization revenue, revenue generated through the commercialization of IGEM Uuniversity ~~research initiative and by~~ intellectual property rights in a work authored or an invention conceived or first reduced to practice in the performance of an IGEM ~~funded research faculty will~~ grant award shall be distributed as outlined in Section 67-4731, Idaho Code. ~~(3-20-14)()~~

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1602

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 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 19, 2016.

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

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

Rule 006 is being amended to add the year information for the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.

Rule 075 is being amended to add the tax brackets for calendar year 2016 and remove the information for calendar year 2011 so only five years of historical data is retained in the rule.

Rule 263 is being amended to update the amount of guaranteed payments that are sourced as compensation for services per Idaho code section 63-3026A(3)(a)(i)(2).

Rule 771 is being amended to add tax year 2016 and the applicable grocery credit amounts to the table.

Rule 872 is being amended consistent with 2016 HB353.

Rule 874 is being amended consistent with 2016 HB352.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2016.

DATED this 1st day of September, 2016.

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. 35-0101-1602
(Only Those Sections With Amendments Are Shown.)

006. INCORPORATION BY REFERENCE (RULE 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. These documents are found on the Multistate Tax Commission (MTC) Website at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>, or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (4-2-08)

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions as adopted November 17, 1994. This document is found on the MTC Website at http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/FormulaforApportionmentofNetIncomeFinInst.pdf or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. (~~4-2-08~~)()

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~For taxable years beginning in 2011:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+	7.8% of the amount over \$26,760

Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.

(2-27-12)

ba. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,380	\$0	+	1.6% of taxable income
\$1,380	\$2,760	\$22.08	+	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+	7.4% of the amount over \$10,350

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.

(4-4-13)

eb. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.

(3-20-14)

d. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,429	\$0	+	1.6% of taxable income
\$1,429	\$2,858	\$22.86	+	3.6% of the amount over \$1,429
\$2,858	\$4,287	\$74.30	+	4.1% of the amount over \$2,858
\$4,287	\$5,716	\$132.89	+	5.1% of the amount over \$4,287
\$5,716	\$7,145	\$205.77	+	6.1% of the amount over \$5,716
\$7,145	\$10,718	\$292.94	+	7.1% of the amount over \$7,145
\$10,718 or more		\$546.59	+	7.4% of the amount over \$10,718

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

(4-11-15)

e. For taxable years beginning in 2015:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,452	\$0	+	1.6% of taxable income
\$1,452	\$2,904	\$23.23	+	3.6% of the amount over \$1,452
\$2,904	\$4,356	\$75.50	+	4.1% of the amount over \$2,904
\$4,356	\$5,808	\$135.03	+	5.1% of the amount over \$4,356
\$5,808	\$7,260	\$209.08	+	6.1% of the amount over \$5,808
\$7,260	\$10,890	\$297.65	+	7.1% of the amount over \$7,260
\$10,890 or more		\$555.38	+	7.4% of the amount over \$10,890

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2015.

(3-25-16)

e. For taxable years beginning in 2016:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,454	\$0	±	1.6% of taxable income
\$1,454	\$2,908	\$23.26	±	3.6% of the amount over \$1,454
\$2,908	\$4,362	\$75.60	±	4.1% of the amount over \$2,908
\$4,362	\$5,816	\$135.21	±	5.1% of the amount over \$4,362
\$5,816	\$7,270	\$209.36	±	6.1% of the amount over \$5,816
\$7,270	\$10,905	\$298.05	±	7.1% of the amount over \$7,270
\$10,905 or more		\$556.14	±	7.4% of the amount over \$10,905

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2016.

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(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).

Section 63-3026A(3), Idaho Code

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)

i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 263.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. The amount of guaranteed payments that are sourced as compensation for services is as follows:

TAX YEAR	AMOUNT
<u>2016</u>	<u>\$254,250</u>
2015	\$254,000
2014	\$250,000
2013	\$250,000

~~(3-25-16)~~ ()

05. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).
 Section 63-3024A, Idaho Code

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2016</u>	<u>\$100</u>	<u>\$100</u>
2015	\$100	\$100
2014	\$100	\$90

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~(3-25-16)~~ ()

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. Circumstances Causing Ineligibility. A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Uniformed Services. A member of the uniformed services who is: (4-7-11)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

c. See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

b. An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

c. No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer must remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (3-20-14)

b. Semimonthly Filers. (4-11-15)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, will remit the tax withheld based on semimonthly withholding periods. The first semimonthly withholding period begins on the first day of the month and ends on the 15th day of the same month with payment made no later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. (4-11-15)

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

iii. An employer who meets the threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii. of this rule, but only has one (1) monthly pay period, may request approval by the Tax Commission to pay and report monthly. The request should include verification of monthly payroll. ()

c. Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer will remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with

the Department of Commerce and Labor. (3-20-14)

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. An employer must file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return will: (3-20-14)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return must be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. (3-20-14)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. (3-20-14)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer must file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment must be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (3-20-14)

b. The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (3-20-14)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule will be filed using the proper forms as prescribed by the Tax Commission. The forms will include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).

Sections 63-3035 and 63-3036, Idaho Code

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or altered forms are not acceptable and may be returned to the employer for correction. (4-7-11)

02. Furnishing Forms W-2 to Employees. The employer must furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-7-11)

03. Filing Forms W-2 With the Tax Commission. On or before the last day of ~~February~~ **January**, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and

subsequently did not pay wages or withhold tax, no W-2s are required.

~~(3-30-07)~~()

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. (4-6-05)

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (5-8-09)

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. (5-8-09)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

a. The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

b. The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-1601

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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 079 - Production Exemption

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

The passage of House Bill 386 during the 2016 Idaho legislative session amended the production exemption for farming operations to include the term "removal from storage" of agricultural commodities. Rule 079.04 states that 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. The new legislation extends this, but only for farming operations. A reference was added in this section that points to Rule 083 for the production process beginning and end for farming.

- Rule 080 - Lumber Manufacturing
- Rule 081 - Underground Mining
- Rule 082 - Aboveground, Open Pit, Mining

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

Rule 083 - Farming And Ranching

The passage of House Bill 386 during the 2016 Idaho legislative session amended the production exemption for farming operations to include the term "removal from storage" of agricultural commodities. The proposed rule incorporates the statutory change.

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

- Sales Tax Rule 096 - Irrigation Equipment And Supplies
- Sales Tax Rule 102 - Logging

The passage of House Bill 347 during the 2016 Idaho legislative session removes the exclusion of hand tools with a unit cost of less than \$100 from the exemptions found in Idaho Code Sections 63-3622S, 63-3622T, 63-3622W, and 63-3622JJ. The proposed rule changes remove this exclusion from the associated rules.

Rule 096 – Irrigation Equipment And Supplies (63-3622W) removes hand tool exclusion from rule.

Rule 102 – Logging (63-3622JJ) removes hand tool exclusion from rule.

Rule 133 – Radio And Television Broadcast Equipment (63-3622S) contains no reference to the hand tool exclusion. No change.

Rule 127 – Free Distribution Newspapers (63-3622T) contains no reference to the hand tool exclusion. No change.

Sales Tax Rule 100, Prescriptions

The passage of House Bill 75 during the 2015 Idaho legislative session amended 63-3622N to exempt prescription eyeglasses, their component parts, and prescription contact lenses in two parts.

The proposed rule incorporates parts one and two of the statutory changes.

Part one - exempts prescription eyeglasses and their component parts on and after July 1, 2015.

Part two - exempts prescription contact lenses on and after July 1, 2016.

Sales Tax 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 Exemptions

The passage of House Bill 348 during the 2016 legislative session added paddleboards and similar watercraft to the list of vessels that are not eligible for tax exemption when sold to nonresidents. The proposed rule incorporates the statutory changes.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, pages 56-57](#).

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 Marni Odermann 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 26, 2016.

DATED this 1 day of September 2016.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1601
(Only Those Sections With Amendments Are Shown.)

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)
 - j. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()
- 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. See Rule 083 of these rules regarding farming. (7-1-93)()
- 05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)
- a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
 - b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
 - c. 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)
 - e. Equipment and supplies used in selling and distribution activities. (7-1-93)
 - f. 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)
 - 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. Transportation equipment and supplies. (7-1-93)
 - i. Aircraft of any type and supplies. (7-1-93)
 - j. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)
 - k. Other incidental items not directly used in production. (7-1-93)

l. Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

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)

n. Parts to repair recreation-related vehicles. (7-1-93)

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)

080. LUMBER MANUFACTURING (RULE 080).

Section 63-3622D, Idaho Code

This rule is intended to illustrate the application of the production exemption to the lumber manufacturing industry. The provisions of this rule are based upon the usual methods of doing business used in the industry generally. Factual differences in the manner in which a specific taxpayer may conduct its business can result in determinations different

from those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules will control. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. This rule is limited in application to the manufacturing of rough and finished lumber and does not encompass the manufacturing of plywood, particleboard, veneer, or paper products. (3-15-02)

- 01. Nontaxable Activities.** Generally considered as nontaxable activities are the following: (7-1-93)
- a.** Log receiving including log loaders, cranes, and front end loaders. (7-1-93)
 - b.** Log deck/log pond including log loading equipment and boats moving logs from the storage area to the debarker; sprinkler equipment when used for prevention of product deterioration; and devices used to detect metal in logs. (7-1-93)
 - c.** Debarking equipment used to strip bark from logs including conveyor equipment for moving debarked logs further into the mill or for conveying bark when bark is used as boiler fuel or when conveying bark to a further processing stage. (7-1-93)
 - d.** Chipper, used to produce chips including chip storage bins and pneumatic conveyors. (7-1-93)
 - e.** Mill deck, as used for grading and cutting to length. (7-1-93)
 - f.** Headrig/shotgun, as used for sawing logs. (7-1-93)
 - g.** Edger, as used for edging rough lumber. (7-1-93)
 - h.** Trimmer, as used for trimming to length. (7-1-93)
 - i.** Resaw, as used for producing the proper thickness. (7-1-93)
 - j.** Green chain, as used to determine according to size and species the amount of time required in the dry kiln. (7-1-93)
 - k.** Dry kiln, as used to reduce moisture content. This exemption encompasses fire brick, steam pipe and fans inside the kiln but does not include improvements to real property. (7-1-93)
 - l.** Unstackers. (7-1-93)
 - m.** Planers, as used for finishing, grading and grade stamping of specialty products. (7-1-93)
 - n.** Boiler when used for the generation of steam used to operate production equipment. (7-1-93)
 - o.** Powerhouse when used to generate power used to operate production equipment. (7-1-93)
 - p.** Waste collection, as used for the collection of waste products for use as fuel for the boiler, generally referred to as hog fuel. (7-1-93)
 - q.** Lumber wrap and steel strapping used for packaging material. (7-1-93)
 - r.** Pollution control equipment when required by a state or federal agency. (7-1-93)
 - s.** Equipment used primarily to install exempt equipment. (7-1-93)
 - t.** Equipment used primarily to fabricate exempt equipment. (7-1-93)
 - u.** Safety equipment and supplies required by a state or federal agency and used in a production area. (7-1-93)

v. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

- 02. Taxable Activities.** Generally considered as taxable activities are the following: (7-1-93)
- a.** Saw filing activities using saw filing equipment and saw filing supplies. (7-1-93)
 - b.** Shipping, including loading equipment and strapping, seals, and binders used in shipping activities to secure lumber on railroad cars, trucks, etc. (7-1-93)
 - c.** Cleanup. (7-1-93)
 - d.** Equipment used to repair or maintain production equipment. (7-1-93)
 - e.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)
 - f.** Safety equipment and supplies used in an area where no manufacturing occurs 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)
 - g.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)
- 03. Exemption Certificate.** Persons engaged in lumber manufacturing 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)

081. UNDERGROUND MINING (RULE 081).

Sections 63-3605B and 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. (3-25-16)
 - 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)
 - o. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()
- 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)

082. ABOVEGROUND, OPEN PIT, MINING (RULE 082).

Sections 63-3605B and 63-3622D, Idaho Code

This rule is meant to show how the production exemption applies to the aboveground, open pit, mining industry. This rule is based on the usual methods of doing business in the industry. Differences in the way a specific taxpayer conducts his business can result in determinations different than those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules apply. Determinations of taxability are made based on primary use of the equipment. This rule applies only to aboveground mining activities commonly referred to as open pit mining. (3-15-02)

- 01. Exempt Purchases.** The following are generally considered nontaxable: (7-1-93)
- a. Drilling and blasting, to loosen overburden for removal or, to define limits of existing ore bodies using track drills, rotary drills, and compressors to operate them, drill rods, drill bits, explosives, caps, fuses, etc., for

this purpose. (7-1-93)

b. Ore and overburden extraction and removal using front end loaders, track loaders, power shovels, backhoes, scoop loaders, and similar equipment used to extract and load ore or strip and load overburden. (7-1-93)

c. Hauling of ore and overburden to stockpiles, loading sites, or disposal sites on the mine site using scrapers, carryalls, and off-highway trucks and trailers. (7-1-93)

d. Ore sorting, grading, sizing, and crushing operations, including unloading from transport devices using bulldozers, front end loaders, crushers, conveyors, and similar equipment. (7-1-93)

e. Pollution control equipment required by a state or federal agency. See Section 63-3622X, Idaho Code. (7-1-93)

f. Safety equipment and supplies required by a state or federal agency when directly used in a mining area. (7-1-93)

g. Equipment used primarily to fabricate or install production equipment. (7-1-93)

h. Equipment such as cranes, manlifts, and scissorlifts, used primarily to install production equipment. (7-1-93)

i. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

02. Taxable Purchases. The following are generally considered taxable: (7-1-93)

a. Exploration, where the primary purpose is to discover new ore bodies using equipment, including rotary drills, drill rigs, blasting equipment, seismic equipment, cats, bulldozers, and other materials and supplies, primarily used for such activities. (7-1-93)

b. Real property improvements, construction, and maintenance activities, including materials and equipment used primarily for constructing or maintaining buildings, fences, railroads, concrete pads and footings, and roads. Equipment, including cranes, concrete equipment, and post hole diggers primarily used for such purposes. Materials and supplies, including lumber, steel, roofing, trusses, fence posts, gates, and wire; and concrete, rebar, and remesh. (7-1-93)

c. Maintenance and cleanup activities, including those where the primary purpose is to maintain equipment and facilities or cleanup grounds and roads, except where cleanup activities are done primarily to recover ore. Shop or other equipment used primarily to repair, clean, or maintain production equipment, including welders, lathes, shop tools, hoists, cranes, mechanics' trucks, oiling trucks and trailers, steam cleaners, and testing equipment. Shop and other materials and supplies which will not become a component part of production equipment. (7-1-93)

d. Land reclamation activities, including activities where mined ore pits or panels are filled in, shaped, and reseeded, including seed or seedlings, fertilizers, soil conditioners, soil, and bulldozers, scrapers, and seed drills primarily used for this purpose; however, equipment primarily used for ore and overburden extraction and loading is exempt, even though this equipment is also used in land reclamation. (7-1-93)

e. Transportation of personnel and materials, including transportation to and from worksites or about the mine in general using buses, people movers, trailers, trucks, or similar equipment. (7-1-93)

f. Equipment and supplies used in transportation activities where ore or overburden is moved between geographically separated mine sites, processing plants or disposal sites, if 1) a substantial break in the production activities occurs, and 2) the activity does not sort, grade, size, crush, or in some other way further process the ore. Transportation activities include loading, transporting, unloading, and stockpiling. A substantial break in the production activities occurs when the product is transported between geographically separated production sites by means of public roads, waterways, airways, railways, or any other public means. The production facility to which the

product is transported is a separate processing facility, and the equipment and supplies used to transport the product are subject to tax. Examples of taxable equipment include: trucks and trailers, whether licensed or unlicensed; railroad equipment; barges and other watercraft; pipelines; conveyors; front end loaders; and bulldozers. If the means of transport to processing plants, smelters, etc., does not constitute a substantial break in the process, such as a slurry line directly from the mine to the plant, then the loading and unloading activities are not taxable. (7-1-93)

g. Personnel support activities, including facilities, equipment, and supplies for eating, sleeping, and recreation. Examples include eating trailers, utensils and food, clothing provided to employees at no charge, and pool tables, beds, and linen. (7-1-93)

h. Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

03. Exemption Certificate. To claim the production exemption, above ground miners must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

083. FARMING AND RANCHING (RULE 083).

Sections 63-3603, & 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 or consumed in or during" farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including the planting, growing, harvesting, and initial storage and removal from 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. Quality Control. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

089. 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. Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

0910. 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)

096. IRRIGATION EQUIPMENT AND SUPPLIES (RULE 096).
Section 63-3622W, Idaho Code

01. Agricultural Irrigation. The Sales Tax Act exempts all irrigation equipment and supplies which are used directly for agricultural irrigation, ~~except hand tools with the unit price of less than one hundred dollars (\$100). The hand tool exception includes such property as shovels and similar tools.~~ To qualify for the exemption, the irrigation equipment or supplies must be used directly and primarily for agricultural irrigation purposes. If the use of the particular equipment or supplies is only incidental or only indirectly related to the agricultural irrigation process, the exemption will not apply. Examples include: (7-1-93)()

a. An off-highway motorbike or all-terrain vehicle, ATV, used to transport men or equipment is indirectly related to the irrigation process. (7-1-93)

b. Irrigation boots worn to protect the irrigator are incidental to the process and subject to the tax. (7-1-93)

02. Nonagricultural Irrigation Equipment or Supplies. Irrigation equipment or supplies used for any purpose other than agriculture are not exempt. For example, irrigation pipelines or sprinkler systems used on a golf course are taxable. (7-1-93)

03. Real Property Improvements. The exemption applies regardless of whether the equipment becomes a part of real estate. It is not necessary to distinguish between pipeline which retains its identity as tangible personal property and pipeline which may become incorporated into real property such as buried mainline pipe. (7-1-93)

04. Title to Equipment. The exemption applies regardless of whether the equipment is installed by a farmer, a contractor, or a subcontractor. The incidence of tax will not turn upon the determination of whether title to the irrigation equipment passed at the time of sale or subsequent to installation. (7-1-93)

05. Exemption Certificate. A purchaser's right to the exemption shall be documented by the use of an exemption certificate in the manner prescribed by Rule 128 of these rules. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

100. PRESCRIPTIONS (RULE 100).
Section 63-3622N, Idaho Code

01. In General. Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, eyeglasses, contact lenses, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-99)()

a. Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

b. Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, dentist, orthodontist, audiologist, or hearing aid dealer or fitter. Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(b), Idaho Code, will not qualify for the exemption. (5-8-09)

c. Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

d. Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

02. Seller Must Document Exempt Sale. The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

a. Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

b. Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

03. Purchases by Practitioners. A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (3-15-02)

04. Purchases by Nursing Homes and For Profit Hospitals. The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

- a. The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)
- b. The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)
- c. An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule 128 of these rules. (3-15-02)

05. Sale of Eyeglasses, Removable Contact Lenses, and Other Related Products ~~by Optometrists, Oculists, and Ophthalmologists~~. The sale of non-prescription eyeglasses, removable non-prescription contact lenses and other related products, such as carrying cases, non-prescription sunglasses, and cleaning solutions ~~by optometrists, oculists, or ophthalmologists~~ is subject to the sales tax, ~~regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser.~~ (6-23-94)()

a. ~~Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient.~~ The sale of eyeglasses and their frames, lenses, nose pieces, hinges, and related eyeglass component parts required as part of a finished pair of eyeglasses sold under a prescription is exempt from sales tax on and after July 1, 2015. (7-1-93)()

b. ~~Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost.~~ The sale of prescription contact lenses on and after July 1, 2016, is exempt from sales tax. (7-1-93)()

06. Dental and Orthodontic Appliances. The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).
Section 63-3605A, & 63-3622JJ, Idaho Code

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a. Chain saws ~~with a unit price of more than one hundred dollars (\$100)~~ and tree harvesters. (7-1-93)()
- b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

- a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)
- b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)
- c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)
- d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (4-11-06)

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

- a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)
- b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. (7-1-93)
- c. Reforestation equipment and supplies, except when part of the operation of a tree farm. (7-1-93)
- d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)
- e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)
- f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to

protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

~~g.~~ *Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used.* (7-1-93)

~~h.~~ Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)

~~i.~~ Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

08. Election to Pay Sales Tax. The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

(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 63-3606B & 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 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: (3-25-16)

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 (3-25-16)

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. (3-25-16)

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, paddleboards, ~~or~~ inflatable boats, or similar watercraft regardless of length when sold without a motor. (~~5-3-03~~)()

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)

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, paddleboards, ~~or~~ inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, ~~or~~ inflatable boat, or similar watercraft 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. 35-0102-1602
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 19, 2016.

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

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

Sales Tax Rule 037, Aircraft And Flying Services

The passage of House Bill 540 during the 2016 Idaho legislative session exempted the sale, lease, purchase, or use of fixed-wing aircraft primarily used as an air tactical group supervisor platform under contract with a governmental entity for wildfire activity. The proposed rule incorporates the statutory changes.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016, Idaho Administrative Bulletin, [Vol. 16-7, page 80](#).

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 Marni Odermann 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 26, 2016.

DATED this 1 Day of September 2016.

Marni Odermann
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) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1602
(Only Those Sections With Amendments Are Shown.)

037. AIRCRAFT AND FLYING SERVICES (RULE 037).
Section 63-3622GG, Idaho Code

- 01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)
- a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)
 - b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)
 - c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)
 - d. Nonresident Individual.** An individual as defined by Section 63-3014, Idaho Code. (7-1-94)
 - e. Nonresident Businesses and Other Organizations.** A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-4-13)
 - f. Day.** For the purpose of this rule any part of a day is a day. (7-1-94)
 - g. Transportation of freight or passengers for hire.** “Transportation of freight or passengers for hire” means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. (4-4-13)
 - h. Common Carrier.** The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. (4-4-13)
 - i. Public.** The public does not include: (4-4-13)
 - i. Owners or operators of the aircraft; (4-4-13)
 - ii. Employees of the aircraft owner or operator; (4-4-13)
 - iii. Guests of the aircraft owner or operator; (4-4-13)
 - iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; (4-4-13)

v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or (4-4-13)

vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. (4-4-13)

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

a. Primarily used to provide passenger or freight services for hire as a common carrier; (4-4-13)

i. Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time. (3-20-14)

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 50 = 110 hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. (3-20-14)

b. Primarily used for emergency transportation of sick or injured persons; ~~or~~ (2-18-02)()

c. That is a fixed-wing aircraft primarily used as an air tactical group supervisor platform under a contract with a governmental entity for wildfire activity; or ()

d. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (4-4-13)

03. Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. (4-4-13)

04. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

05. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

06. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting

services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

a. Aircraft purchased, rented, or leased for aerial contracting are subject to tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (4-4-13)

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

07. Air Ambulance Service. Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

08. Flying Instructions. Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

09. Recreational Flights. Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

10. Aircraft Held for Resale. Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

11. Fuel. The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-1603
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 19, 2016.

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

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

Sales Tax Rule 041, Food, Meals, Or Drinks.

The passage of House Bill 11 during the 2015 Idaho legislative session corrected the statute's reference to the Older Americans Act. The proposed rule incorporates the statutory changes made in 2015.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marni Odermann at (208) 334-7531 or marni.odermann@tax.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 26, 2016.

DATED this 1 day of September 2016.

Marni Odermann
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) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1603
(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~~ 109-365, 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. (3-25-16)

a. For purposes of this subsection, prepared food means food intended for human consumption that: (3-25-16)

i. Is heated when given away; or (3-25-16)

ii. Consists of two (2) or more ingredients combined by the retailer and given away as a single item; or (3-25-16)

iii. Is customarily served with utensils. (3-25-16)

b. For purposes of this subsection, prepared beverage means any beverage intended for human consumption. (3-25-16)

IDAPA 35 -- IDAHO STATE TAX COMMISSION

35.01.10 -- IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1601

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), 63-2516, 63-2523, 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 19, 2016.

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

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

Rule 017, SECURITY FOR TAX REQUIRED.

The rule describes the bonding procedure authorized by Section 63-2510A, Idaho Code, and is amended to clarify the procedure by which the state tax commission determines the amount of the bond required for wholesalers.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, pages 66-67](#).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Williams at (208) 334-7855 or don.williams@tax.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 26, 2016.

DATED this 1 day of September 2016.

Don Williams
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd, Plaza IV
PO Box 36
Boise, ID 83722-0410
Phone: (208) 334-7855
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1601
(Only Those Sections With Amendments Are Shown.)

017. SECURITY FOR TAX REQUIRED (RULE 017).

Sections 63-2510 and 63-2510A, Idaho Code

01. Security for Payment of Taxes. Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler shall be liable, including any penalty and interest.

(7-1-98)

a. The amount of the security shall be at least the greater of two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base, ~~but in no case shall be less than one thousand dollars (\$1,000)~~ or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received. ~~(3-20-04)~~ ()

b. If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the State Tax Commission accordingly, or pay a deposit to the State Tax Commission for future taxes due which exceed the limitations.

(3-20-04)

c. Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the State Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the State Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the State Tax Commission.

(7-1-98)

02. Reviewing Security on File. The State Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability.

(7-1-98)

03. New Wholesaler Application. When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows:

(7-1-93)

a. If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler shall furnish security based on the most recent twelve (12) month history of the prior ownership.

(7-1-93)

b. If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler shall furnish security in the amount of an estimated two (2) month tax liability of the new ~~firm business~~, or ~~one thousand dollars (\$1,000)~~ the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received, whichever is greater. The estimate shall be prepared by the new wholesaler and shall be subject to review and approval by the State Tax Commission.

~~(7-1-98)~~ ()

04. Types of Security. A person required to post security may, instead of posting a surety bond, deposit with the State Tax Commission any of the following alternatives equivalent to the amount of the bond required.

(4-4-13)

a. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a

permit. (4-4-13)

b. Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (4-4-13)

i. The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature. (4-4-13)

c. Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. (4-4-13)

d. Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: (4-4-13)

- i.** No Automatic Teller Machine (ATM) card may be issued to the account; and (4-4-13)
- ii.** Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone. (4-4-13)

05. Taxpayer Petition for Release from Security Requirements. A security shall be required in all instances unless the State Tax Commission, upon petition by the taxpayer, determines that a security is not required. (7-1-98)

a. The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months. (7-1-98)

b. Upon written petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine his books and records within sixty (60) days. The State Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. (7-1-98)

c. If a petition for release of security is denied, notice shall be mailed to the taxpayer by certified mail. The notice shall include the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, he must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (7-1-98)

06. Failure to File Timely After Release from Security. If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the State Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (7-1-98)

a. The demand shall be in writing and shall be personally served on the taxpayer or mailed to him by certified mail. (7-1-93)

b. If the taxpayer wishes to petition for redetermination of the demand, he must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (7-1-93)

c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions shall be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (7-1-93)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1601

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 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 2017 and the Revenue Ruling where the federal rate for the calculation can be found.

Rule 702 is being amended to provide that a power of attorney form for future tax periods is limited to 3 years in the future.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2016.

DATED this 1st day of September, 2016.

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. 35-0201-1601
(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.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22
Calendar Year 2016	4% simple interest	Revenue Ruling 2015-19
<u>Calendar Year 2017</u>	<u>3% simple interest</u>	<u>Revenue Ruling 2016-20</u>

~~(3-25-16)~~()

(BREAK IN CONTINUITY OF SECTIONS)

702. DISCLOSURE OF INFORMATION: THIRD PARTIES (RULE 702).

Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

01. In General. The Tax Commission may not disclose returns or return information about a taxpayer to any person other than that taxpayer or an authorized representative of the taxpayer except as provided by statute or rule. (3-20-97)

02. Written Authorization to Disclose Information. (3-20-97)

a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. (3-20-97)

b. The written authorization must contain: (3-20-97)

i. The taxpayer's name, address and social security number, employer identification number, or other identifying number that relates to the returns or return information to be disclosed; (4-5-00)

ii. The name and address of the person to whom disclosure is authorized; (3-20-97)

iii. Language indicating the taxpayer's consent to disclosure of information; (3-20-97)

iv. The tax period or periods for which disclosure may be made; and (3-20-97)

v. The signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an entity other than an individual, the signature of an authorized employee or officer of the taxpayer. (3-20-97)

c. If authorizing a representative for future tax periods or years, such authorization may not exceed three (3) years from December 31 of the year that the Commission receives the written authorization. ()

ed. A written complaint or inquiry by a taxpayer to an elected official of the executive or legislative branches of state or federal government relating to the Tax Commission's actions or positions relating to that taxpayer is an authorization for the Tax Commission to disclose information relevant to the complaint or inquiry to the official, or the official's delegate. (3-20-97)

03. Audits or Investigations. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person to collect or ascertain any tax liability, to determine the correctness of a return or return information, or for any other purpose relating to the Tax Commission's duties of administering or enforcing Idaho tax laws. Disclosures necessary to these inquiries are authorized. (3-20-97)

04. Testimony in Judicial or Administrative Proceedings. If a Tax Commissioner, Tax Commission employee or agent is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify without written authorization from the taxpayer, and may object to his appearance on the basis of this rule and Section 63-3076, Idaho Code. Information requested in a subpoena issued by a United States Grand Jury shall be provided. (3-20-97)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with 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 67-5717 and 67-9205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

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

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

New legislation effective July 1, 2016 created the "State Procurement Act." This legislation requires the Administrator of the Division of Purchasing to promulgate rules regarding the process and factors influencing the decision to grant, continue and revoke delegated purchasing authority; as well as rules establishing policies and procedures related to the administration, management, monitoring and oversight of contracts entered into by an agency.

In addressing the requirements of the new State Procurement Act, the rule changes will include rules regarding the process and factors influencing the decision to grant, continue and revoke delegated purchasing authority; as well as rules establishing policies and procedures related to the administration, management, monitoring and oversight of contracts entered into by an agency. This rulemaking will also include additional minor modifications intended to clarify, consolidate and modernize existing language; including (but not limited to) establishing the form for preservation of records within the Division of Purchasing, updates to the definition section, as well as revisions to reflect minor modifications which were adopted in the State Procurement Act. Internal and agency comments may result in additional revisions to the existing rules.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sarah Hilderbrand, Administrator, at (208) 332-1612 or sarah.hilderbrand@adm.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 26, 2016.

DATED 9th day of September, 2016.

Sarah Hilderbrand, Administrator
Department of Administration - Division of Purchasing
Telephone: (208) 332-1612 / Fax: (208) 327-7320

650 W. State St., Room 100
P. O. Box 83720
Boise, ID 83720-0003

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0501-1601
(Only Those Sections With Amendments Are Shown.)

011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-9203, Idaho Code, shall apply to this chapter. ()

~~01. Acquisition. The process of procuring or purchasing property by the state of Idaho. (3-15-02)~~

~~021. Administrator. The administrator for of the division of purchasing. The administrator is the chief buyer. (3-15-02)()~~

~~03. Agency. All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction. (3-15-02)~~

~~042. Alternate. Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)~~

~~05. Bid. A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid. (3-15-02)~~

~~06. Bidder. A vendor who has submitted a bid or quotation on specific property. (3-15-02)~~

~~073. Brand Name or Equal Specification. This means a ^Δ specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)()~~

~~084. Brand Name Specification. This means a ^Δ specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)()~~

~~095. Buyer. An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing activity authority. (3-15-02)()~~

~~10. Component. An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-15-02)~~

~~106. Concession Services. The granting by the purchasing activity authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)()~~

~~1207. Consultant Services. This means ~~w~~Work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)()~~

~~1308.~~ **Contract.** ~~Contract means a~~ Any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract ~~shall also~~ include purchase orders issued ~~any amendments mutually agreed upon~~ by ~~both parties~~ the purchasing authority. (3-15-02)()

~~14.~~ **Contractor.** ~~A bidder or offeror who has been awarded an acquisition contract.~~ (3-15-02)

09. Contract Administration. Actions taken related to changes to contracts, including amendments, renewals and extensions; as well as receipt, review and retaining of the contract and contract-related documents; and exercise of remedies. ()

10. Contract Management. Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes some functions related to solicitation development and contract development and close-out; also includes, but is not limited to regular monitoring of the contractor's day-to-day performance, evaluation of deliverables, invoice review, payment approval, progress tracking, regular status meetings, and management of state-owned property and other resources used in contract performance management. ()

~~151.~~ **Director.** The chief officer of the department of administration. (3-15-02)

~~162.~~ **Division.** The division of purchasing of the department of administration as established by Section 67-9204, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)

~~173.~~ **Document.** When used in these rules, may include electronic documents. (3-15-02)

184. Equal. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation. (3-15-02)

~~19.~~ **Equipment.** ~~Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years.~~ (3-15-02)

2015. Formal Sealed Procedure. Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

~~21.~~ **Goods.** ~~Items of personal property including concession services, not qualifying as equipment, parts or supplies.~~ (3-15-02)

16. Informal Solicitation. Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. ()

~~22.~~ **Information Technology Property.** ~~Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications.~~ (3-15-02)

~~2317.~~ **Invitation to Bid.** ~~Means a~~ All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)()

~~24.~~ **Lowest Responsible Bidder.** ~~The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.~~ (3-15-02)

~~2518.~~ **Offeror.** A vendor who has submitted a ~~proposal in~~ response to a request for proposals for property to be acquired by the state. (3-15-02)()

~~26~~**19.** **Open Contract.** A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to ~~procure or~~ purchase specified property under the terms and conditions set forth in the contract. (4-7-11)()

~~27.~~ **Person.** ~~Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency.~~ (3-15-02)

~~28.~~ **Procurement.** ~~The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift.~~ (3-15-02)

290. **Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, ~~engineering,~~ actuarial, ~~architecture,~~ veterinarian, information technology and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)()

~~30.~~ **Property.** ~~Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes.~~ (3-15-02)

~~31.~~ **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

~~32.~~ **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

~~33.~~ **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)

~~34.~~ **Purchase Order.** ~~See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a bidder's vendor's quote, proposal or bid. See also definition of contract.~~ (3-15-02)()

~~35.~~ **Purchasing Activity or Authority.** The division or an agency exercising authority based on a delegation of authority by the administrator to an individual or an agency; or as otherwise provided under these rules ~~to an individual within the division or the agency~~ to engage in the conduct of purchasing. (3-25-16)()

~~36.~~ **Quotation.** An offer to supply property in response to a request for quotation and generally used for ~~small or emergency purchases~~ informal solicitation procedures. (3-15-02)()

~~37.~~ **Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-15-02)()

~~38.~~ **Request for Quotation.** The document, form or method generally used for purchases solicited in accordance with ~~small purchase or emergency purchase~~ informal solicitation procedures. (3-15-02)()

~~39.~~ **Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing activity authority acquire the ~~stated requirements~~ property. (3-15-02)()

~~40.~~ **Sealed.** Includes invitations to bids and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids and proposals manually sealed and

submitted. (3-15-02)()

431. Sealed Procedure Limit. That dollar amount, as established by these rules, above which the formal sealed ~~bid~~ procedure will be used. ~~Said~~ The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)()

~~42. **Services.** Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices.~~ (3-15-02)

432. Small Purchase. An acquisition that costs less than the sealed procedure limit. (3-15-02)

~~433. **Solicitation.** Means a~~An invitation to bid, a request for proposals, request for quote or other document or communication issued by the purchasing ~~activity~~ authority for the purpose of soliciting bids, proposals, or ~~offers~~ quotes to perform a contract. (3-15-02)()

~~434. **Specifications.** The explicit requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is~~ property to be ~~based~~ acquired by the state. ~~Unless specifically provided in a solicitation, s~~Specifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms the scope of work and the performance and physical characteristics of property. (3-15-02)()

~~435. **State.** This means t~~The state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)()

~~47. **Supplies.** Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk.~~ (3-15-02)

~~436. **Telecommunications.** Means a~~All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)()

~~49. **Vendor.** A person or entity capable of supplying property to the state.~~ (3-15-02)

~~5037. **Written.** When used in these rules, may include an electronic writing.~~ (3-15-02)

012. -- 020. (RESERVED)

021. DELEGATION OF AUTHORITY OF ADMINISTRATOR.

Whenever a purchase is made by the division of purchasing on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. The division shall administer the acquisition of all property for agencies except those for which the agencies have separate statutory purchasing authority. The administrator may delegate in writing such authority as deemed appropriate to ~~any~~ employees of the division, an agency or employees of a purchasing activity an agency. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All ~~delegated~~ acquisitions under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delgation. Delegations shall be subject to periodic reporting and review as directed by the administrator. (3-15-02)()

01. **Manner of Submission.** Request for delegated purchasing authority must be submitted in writing, on a form and in a manner established by the administrator. ()

02. **Accompaniments to Application.** Application for authority must be accompanied by the following: ()

a. **Documentation that the proposed designee demonstrates sufficient purchasing knowledge and ability to accommodate the agency's particular needs;** ()

- b.** A demonstrated need for the dollar limit of authority requested; ()
- c.** An agency purchasing manual outlining internal operational processes and procedures related to the conduct of purchasing within the agency; and ()
- d.** A written plan for continual training for staff which includes routine participation in training sessions, workshops and conferences offered by the division. ()
- 03.** Policy. The administrator will establish a delegated purchasing authority policy applicable to all designees; and may place additional conditions on individual delegated authority, in order to ensure consistency in the procurement process as well as proper oversight and compliance with state purchasing code, rules and applicable policy. ()
- 04.** Designee Responsibility. Agency designee(s) are responsible for all procurement-related activities conducted for designee's agency under authority delegated by the administrator. ()
- 05.** Sub-delegation. Designees may sub-delegate purchasing authority within their respective agencies consistent with the designee's capacity to monitor and oversee such activity. ()
- 06.** Authority Not Transferable. Authority is not transferable and will automatically terminate when the designee leaves the employment of the requesting agency; however, an agency may apply to the administrator for the immediate designation of an interim designee to exercise delegated purchasing authority for a time period not exceeding ninety (90) days, subject to conditions outlined by the administrator, relative to the purchasing competency of the interim designee. ()
- 07.** Quarterly Review. The administrator will review the activities of a designee with delegated purchasing authority on no less than a quarterly basis. ()
- 08.** Failure to Comply. Failure to comply with the conditions included in the written authorization provided by the administrator may result in immediate rescission of authority, increased monitoring, reduction in authority level, additional training, or other action deemed appropriate by the administrator to ensure compliance with purchasing code, rules and applicable policy. ()

022. -- 030. (RESERVED)

031. COOPERATIVE PURCHASING POLITICAL SUBDIVISIONS.

The various bid statutes relating to municipal corporations, school districts, and counties may authorize these political subdivisions to utilize any contract ~~resulting from a~~ entered into by the state ~~bid process~~. A public agency may use open contracts as authorized by statute and the terms of the open contract; and the state may otherwise cooperate with political subdivisions in the acquisition of property. (4-7-11)()

032. ACQUISITION OF CONCESSION SERVICES.

If there is no expenditure of state funds, the acquisition of concession services, including but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, service contracts, advertising contracts, broadcast rights to sporting events or other similar types of ~~goods property~~, may be conducted by each purchasing ~~activity~~ authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. ~~While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services when no expenditure of state funds is involved.~~ The purchasing ~~activity~~ authority is encouraged to utilize a competitive process if determined to be in its best interest. (3-15-02)()

033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.

Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of the chief information officer within the department of administration before submission to the division. It is the requesting

agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to ~~state acquisition requirements, these rules and~~ so agencies should plan ~~long enough~~ in advance to allow for ~~this~~ review ~~by the office of the chief information officer. The department's review and any subsequent~~ All acquisitions ~~of telecommunications and information technology property~~ will conform to the guidelines and policies established or adopted by the ~~Information Technology Resource Management Council or other~~ governing or policy board or council ~~that may be~~ created by statute or directive for the purpose of information technology oversight or review. (3-15-02)()

034. PUBLIC NOTICE.

Public notice of all ~~acquisitions solicitations~~ shall be made in accordance with Section 67-9208, Idaho Code, ~~except for reverse public auction acquisitions. Notice of solicitations shall be posted electronically unless the administrator exempts the solicitation from the requirement to post to the state's electronic procurement (e-procurement) system, as provided in Section 044 of these rules.~~ Notice of sole source acquisitions shall be ~~posted electronically, and otherwise~~ in accordance with Section 67-9221, Idaho Code. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

042. EXCEPTIONS TO ~~FORMAL SEALED PROCEDURE~~ COMPETITION.

Purchases meeting the following criteria need not be purchased by ~~the formal sealed procedure competitive solicitation, unless otherwise directed by the administrator:~~ (3-15-02)()

01. Emergency Purchases. Emergency purchases as authorized by Section 67-9221, Idaho Code, and Section ~~043~~ ~~of these rules.~~ (3-15-02)()

~~02. Small Purchases. Small purchases, unless the administrator specifically requires a formal sealed procedure, made in accordance with Section 044. (3-15-02)~~

~~032. Sole Source Purchases.~~ Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-9221, Idaho Code, and Section 045. (3-15-02)

~~043. Reverse Auctions.~~ Purchases through reverse public auctions as authorized by Section 67-9221, Idaho Code. (3-15-02)

~~054. Federal Government Acquisitions.~~ Acquisitions from the United States of America or any agency thereof. (3-15-02)

~~065. Rehabilitation Agency Acquisitions.~~ Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

~~076. Correctional Industries.~~ Purchases of ~~road or street signs, metal motor license plates, wearing apparel, furniture, articles or containers for state use not for resale on the open market or any other~~ property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-15-02)()

~~087. Purchases from General Services Administration Federal Supply Contractors.~~ Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid ~~upon written approval of the administrator.~~ The administrator shall determine whether such property meets the ~~purchasing activity's requesting agency's~~ requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive ~~bidding solicitation~~ procedures and requirements. (3-15-02)()

~~098. Existing Open Contracts.~~ ~~Supplies, services or other~~ ~~Excerpt as provided in these rules,~~ property

available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (4-7-11)()

~~402.~~ **Exempt Purchases.** By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive ~~acquisition~~ solicitation that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-15-02)()

- a. Examples include, but are not limited to: (3-15-02)
 - i. Special market conditions; (3-15-02)
 - ii. Property requiring special contracting procedures due to uniqueness; (3-15-02)
 - iii. Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; ~~or~~ (3-15-02)()
 - iv. ~~Services~~ Property for which competitive solicitation procedures are impractical; ~~or~~ (3-15-02)()
 - v. Used property. ()
- b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

043. EMERGENCY PURCHASES.

01. Definition of Emergency Conditions. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-15-02)

02. Conditions. Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing ~~activity~~ authority to make emergency purchases of up to an amount set forth in the delegation of authority. (3-15-02)()

044. SMALL PURCHASES.

~~**01. General.** Small purchases are those purchases or procurements expected to cost one hundred thousand dollars (\$100,000) or less. Costs are determined based on the following: (4-7-11)~~

~~a. One-time purchases of property; or (3-15-02)~~

~~b. Total cost of a contract for services, including renewal or extension periods. (3-15-02)~~

~~**02. Splitting of Requirements.** Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-15-02)~~

~~**03. Procedure.** Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible. (3-15-02)~~

~~04. **Form of Request for Quotation.** Unless otherwise prohibited by the buyer, the request for quotation and the quotation may be written, oral, electronic, telephonic or facsimile. (3-15-02)~~

~~05. **Quoting Time.** The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and the number and location of vendors. (3-15-02)~~

~~06. **Open Contracts.** Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (4-7-11)~~

~~07. **Professional, Consultant, and Information Technology Services.** Professional, consultant, and information technology services acquired under this rule, where the services are reasonably expected to cost one hundred thousand dollars (\$100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the service is not available under an open contract. (4-7-11)~~

~~08. **Purchases in Amounts Less Than Ten Thousand Dollars.** If the property to be acquired is expected to cost less than ten thousand dollars (\$10,000), it may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the property is not available under an open contract. (4-7-11)~~

01. Small Purchase Categories. ()

a. Exempt. Property expected to cost less than ten thousand dollars (\$10,000). ()

b. Informal. Purchase of any property expected to cost at least ten thousand dollars (\$10,000) and less than the sealed procedure limit. ()

c. Professional and consultant services. The acquisition of professional or consultant services expected to cost less than the sealed procedure limit, for projects limited to one (1) year in duration. ()

02. Procedure. Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. ()

a. Professional and consultant small purchases and exempt small purchases may be acquired as each agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state, subject to the limitations in Subsection 044.03 of this rule. ()

b. Informal small purchases may be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's electronic procurement (e-procurement) system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: ()

i. The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible, along with the administrator's authorization. ()

ii. If not posted on the division's e-procurement system, the agency shall document the quotes received (or its attempt to obtain quotes) from at least three (3) vendors having a significant Idaho economic presence as defined in Section 67-2349, Idaho Code. ()

03. Limitations. The following limitations apply to all small purchases: ()

a. Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. ()

b. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. ()

c. Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. ()

045. SOLE SOURCE PURCHASES.

01. Only a Single Supplier. Sole source purchase shall be used only if ~~a~~ the requirement ~~d~~ property is reasonably available from a single supplier. A requirement for a particular proprietary property item does not justify a sole source purchase if there is more than one (1) potential ~~bidder or offeror for~~ supplier that can provide the required property item. (3-15-02)()

02. Examples of Sole Source. Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

a. Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

b. Where a ~~sole~~ single supplier's ~~item~~ property is needed for trial use or testing. (3-15-02)()

c. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

d. Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

03. Administrator Makes Determination. The determination as to whether an acquisition shall be made as a sole source ~~shall~~ will be made by the administrator. Each request ~~shall~~ must be submitted in writing by the ~~using~~ requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by ~~a using~~ an agency that an acquisition be restricted to ~~one (1) potential contractor~~ a single supplier shall include a justification for the property, as well as an explanation as to why no other ~~contractor~~ supplier is acceptable. (3-15-02)()

04. Negotiation in Sole Source Purchase. ~~The buyer~~ After receipt of authorization from the administrator for a sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms, in accordance with the authorization and in the best interest of the state. (3-15-02)()

046. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.

Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the administrator will conduct a survey of the market ~~place by requesting current prices from at least three (3) vendors currently marketing~~ appropriate for the property being sought. The fair market price of a rehabilitation ~~vendor~~ agency shall not be greater than one hundred twenty-five percent (125%) of the lowest price received during the survey. The administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. ~~The division or purchasing activity, if the acquisition is less than the sealed procedure limit or the contract is one (1) year or less in duration, may then contract with the rehabilitation agency at the proposed price.~~ (3-15-02)()

047. -- 050. (RESERVED)

051. CONTENT OF ~~THE INVITATION TO BID OR REQUEST FOR PROPOSALS~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

The following shall be included in an invitation to bid or a request for proposals: (3-15-02)()

01. **Submission Information.** Information regarding the applicable opening date, time and location. (3-15-02)
02. **Specifications.** Specifications developed in accordance with Section 111 of these rules *including, if applicable, scope of work.* (3-15-02)()
03. **Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-15-02)()
04. **Evaluation Criteria.** Any evaluation criteria to be used in determining property acceptability. (3-15-02)
05. **Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)
06. **Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)
07. **Pre-Proposal or Pre-Bid Conference.** The date, time and location of the *pre-proposal* conference must be included in the *Request for Proposals solicitation.* (4-7-11)()

052. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS.

An invitation to bid or request for proposals A solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an addendum amendment, provided the change is issued in writing prior to the *bid opening solicitation closing* date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to *an invitation to bid or request for proposals a solicitation* shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the *division state* unless confirmed in writing by the buyer and acknowledged by the *division purchasing authority* prior to the date of the *opening closing*. Changes to the *invitation to bid or request for proposals solicitation* shall be identified as such and shall require that the vendor acknowledge receipt of all addenda amendments issued. The right is reserved to waive any informality. (3-15-02)()

~~053. PRICE ESCALATION.~~

~~Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.~~ (3-15-02)

~~0543. -- 060. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

070. PRE-PROPOSAL CONFERENCE.

All *R*request for *P*proposals ~~solicitations~~ will have a pre-proposal conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the *subject Request for Proposal solicitation*. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e*P*-procurement system as an amendment to the *Request for Proposal solicitation*, will have any force or effect. (4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.

Any bid or proposal, withdrawal, or modification received after the time and date set for closing at the place designated in the solicitation is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids and proposals, other than clearly marked “no bids”, will be returned to the ~~offeror~~ submitting vendor. Time of receipt will be determined by the official time stamp or receipt mechanism located at the designated place for receipt of responses. The purchasing authority assumes no responsibility for failure of the United Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (4-6-15)()

073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until ~~bid~~ the time specified for opening time. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings. (3-15-02)()

074. MISTAKES.

The following procedures are established relative to claims of a mistake. (3-15-02)

01. Mistakes in Responses Submission. If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the state or the fair treatment of other submitting vendors. (4-6-15)()

02. Mistakes Discovered Before Opening. Mistakes discovered by a vendor prior to closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing authority before the closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (4-6-15)

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Acknowledge the receipt of an addendum amendment, but only if: (3-15-02)()

(1) It is clear from the submission that the submitting vendor received the addendum amendment and intended to be bound by its terms; or (3-15-02)()

(2) The addendum amendment involved had a negligible effect on price, quantity, quality or delivery. (3-15-02)()

b. Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

c. Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-15-02)

05. Written Approval or Denial Required. In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

075. -- 080. (RESERVED)

081. EVALUATION AND AWARD. Any contract award shall comply with these provisions. (3-15-02)

01. General. The contract is to be awarded to the lowest responsible and responsive bidder or offeror (or for requests for quotes, vendor submitting a quote). The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. ~~No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.~~ (3-15-02)()

02. Standards of Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, ~~provided that these additional standards are set forth in the solicitation.~~ Factors to be considered in determining whether a vendor is responsible include, but are not limited to, whether the vendor has: (3-15-02)()

a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (3-15-02)

b. A satisfactory record of integrity; (3-15-02)

c. Qualified legally to contract with the purchasing ~~activity~~ authority and qualified to do business in the state of Idaho; (3-15-02)()

d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)

e. Requisite ~~E~~xperience; or (3-15-02)()

f. A satisfactory prior performance record, if any applicable. (3-15-02)()

03. Information Pertaining to Responsibility. A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

04. Written Determination of Nonresponsibility Required. If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

05. Extension of Time for Acceptance. After opening, the buyer may request submitting vendors to

extend the time during which their bids or proposals may be accepted, ~~provided that, with regard to bids, no other change is permitted.~~ The reasons for requesting such extension shall be documented. (3-15-02)()

06. Partial Award. A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a ~~bid response to a solicitation~~, excluding others ~~portions of a response and other offers~~, unless the ~~bidder vendor~~ stipulates all or nothing in its ~~bid response to the solicitation~~. (3-15-02)()

07. Only One Submission Received. If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be ~~rejected and: canceled, and a new solicitation issued, as the purchasing authority determines to be in its best interest.~~ (3-15-02)()

~~a. New bids or offers may be solicited; or~~ (3-15-02)

~~b. The proposed acquisition may be canceled.~~ (3-15-02)

082. TIE ~~BIDS~~ RESPONSES.
~~The following provisions shall apply to tie bids as defined herein.~~ (3-15-02)

01. Tie ~~Bids~~ Responses -- Definition. Tie ~~bids responses~~ are low responsive bids, ~~proposals or quotes~~ from responsible bidders ~~or offerors (or for requests for quotes, from vendors submitting a quote)~~ that are identical in price or score. ~~Responsibility is determined based upon the standards of responsibility set forth in Section 081 of these rules.~~ (3-15-02)()

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among ~~identical bidders tie responses~~. In the discretion of the buyer, award shall be made in any permissible manner that will ~~discourage resolve tie bids responses~~. Procedures that may be used to ~~discourage resolve tie bids responses~~ include: (3-15-02)()

a. If price is considered excessive or for ~~an~~ other reason such ~~bids responses~~ are unsatisfactory, reject all ~~bids responses, rebid resolicit~~ and seek a more favorable contract in the open market ~~or enter into negotiations pursuant to Section 084 of these rules;~~ (3-15-02)()

b. Award to an Idaho resident or an Idaho domiciled ~~bidder vendor~~ or for ~~an~~ Idaho produced ~~product property~~ where other tie ~~bid response(s)~~ are from out of state or to a ~~bidder vendor~~ submitting a domestic ~~product property~~ where other tie ~~bid is responses are~~ for foreign (external to Idaho) manufactured or supplied property; (3-15-02)()

c. Where identical low ~~bids responses~~ include the cost of delivery, award the contract to the ~~bidder vendor located (or shopping from a point)~~ farthest from the point of delivery; (3-15-02)()

~~d. Award the contract to the bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;~~ (3-15-02)

~~ed.~~ Award to the ~~bidder vendor~~ with the earliest delivery date. (3-15-02)()

03. Drawing Lots. If no permissible method will be effective in ~~discouraging resolving tie bids responses~~ and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie ~~bids responses~~. (3-15-02)()

083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. Classifying Proposals. For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

a. Acceptable; (3-15-02)

b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

c. Unacceptable. (3-15-02)

02. **“Offerors” Defined.** For the purposes of this rule, the term “offerors” includes only those ~~persons~~ persons submitting proposals that are acceptable or potentially acceptable. The term shall not include ~~persons~~ persons that submitted unacceptable proposals. (3-15-02)()

03. **Purposes of Discussions.** Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed. (3-15-02)

04. **Conduct of Discussions.** The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror’s price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror. (3-15-02)

05. **Best and Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing ~~agency’s~~ authority’s interest, and additional discussions will be conducted or the ~~agency’s~~ requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. (3-15-02)()

06. Application to Other Solicitation Types. The provisions of this Section 083 may be utilized in other types of solicitations, in addition to requests for proposals, so long as the solicitation document provides for the possibility of discussions and includes a reference to this section. ()

084. NEGOTIATIONS.

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

~~01. Price Agreements. The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days’ written notice. Price agreements may be appropriate when: (3-15-02)~~

~~a. The dollar value of items or transactions is relatively small; (3-15-02)~~

~~b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs; (3-15-02)~~

~~c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or (3-15-02)~~

~~d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-15-02)~~

021. After a Competitive Solicitation Use of Negotiations. Negotiations may be used under this rule when the administrator determines in writing that negotiations may be in the best interest of the state ~~and that~~ including but not limited to the following circumstances: (3-15-02)()

a. A competitive solicitation has been unsuccessful because, without limiting other possible reasons,

all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

b. There has been inadequate competition; ~~or~~ (3-15-02)()

c. During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; ~~or~~ (3-15-02)()

d. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the extended time and expenditure of resources for a resolicitation. ()

~~032.~~ **Examples.** Examples of situations in which negotiations, ~~as permitted by Subsection 084.02.c. of this rule,~~ may be appropriate include but are not limited to: (3-15-02)()

a. Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)

b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

c. Agreeing to any clarifications regarding ~~scope of work~~ specifications or ~~other~~ contract terms. (3-15-02)()

~~043.~~ **Conditions of Use.** Negotiations, as permitted by Subsection 084.021.c. of this rule, are subject to the following: (3-15-02)()

a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder; (3-15-02)

e. If one (1) or more responsive offers does not exceed available funds, ~~and~~ negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria; ~~or~~ the specifications ~~or scope of work~~; (3-15-02)()

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

g. Any clarifications or changes resulting from negotiations shall be documented in writing; (3-15-02)

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

~~054.~~ **Timing of Use.** If conducted, negotiations are the last step in the procurement process. Use of oral

interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule, unless the administrator makes a written determination that it is in the state's best interest to proceed directly to negotiations in lieu of first conducting oral interviews and the best and final procedures. (3-15-02)()

085. PRICE AGREEMENTS.

The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: ()

01. Dollar Value. The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; ()

02. Property. The property may not be conducive to standard competitive bidding procedures; ()

03. Multiple Agreements. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or ()

04. Non-exclusive Agreements. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. ()

0856. -- 090. (RESERVED)

091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.

Prior to the issuance of a ~~purchase order or~~ contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: (3-15-02)()

01. Best Interest. It is in the best interests of the state of Idaho; (3-15-02)

02. Does Not Meet Specifications. The submission does not meet the minimum specifications; (3-15-02)

03. Not Lowest Responsible Bid. The submission is not the lowest responsible submission; (3-15-02)

04. Bidder Is Not Responsible. A finding is made based upon available evidence that a submitting vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)

05. Deviations. The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

092. CANCELLATION OF SOLICITATION.

Prior to the issuance of a ~~purchase order or~~ contract, the purchasing ~~activity~~ authority reserves the right to reject all bids, proposals or quotations ~~es~~ or to cancel a solicitation ~~or request for quotation~~. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: (3-15-02)()

01. Inadequate or Ambiguous Specifications. (3-15-02)

02. Specifications Have Been Revised. (3-15-02)

03. Cancellation Is in the Best Interest of the State. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

~~102. TIME PURCHASE CONTRACTS.~~

~~01. **Time Purchase for Personal Property.** A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided. (3-15-02)~~

~~a. Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints. (3-15-02)~~

~~b. Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained. (3-15-02)~~

~~c. Documentation of any required approval shall be submitted to the division with any required requisition. (3-15-02)~~

~~d. Provision for installment payments must be included in the solicitation. (3-15-02)~~

~~02. **Lack of Fund Contract Language Required.** An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability. (3-15-02)~~

~~103~~2. -- 110. (RESERVED)

111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.

01. **Purpose.** Unless exempted by these rules or by the administrator, all solicitations ~~and requests for quotations~~ require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency's needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency's needs and to enable the vendors to determine and understand the agency's requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. (3-15-02)()

02. **Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of purchase requisitions their principal functional or performance needs. (3-15-02)

03. **Preference for Commercially Available Products.** Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

04. **Brand Name or Equal Specification.** (3-15-02)

a. A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

b. A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

c. Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand

name or equal specifications shall include a description of the particular design and functional or performance characteristics required. (3-15-02)

d. Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

05. Brand Name Specification. (3-15-02)

a. Since use of a brand name specification is restrictive, such a specification may only be used when the administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification. (3-15-02)

b. The administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one (1) source can supply the requirement, the acquisition shall be made under Section 67-9221, Idaho Code. (3-15-02)

06. Specification of Alternates May Be Included. A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

113. CONTRACT OVERSIGHT.

01. Contract Management and Contract Administration. ()

a. Agencies which issue their own contracts pursuant to their delegated authority (or as otherwise exempt from the requirements of these rules) will be responsible for all aspects of contract management and contract administration, as those terms are defined in Section 011 of these rules. ()

b. When the division of purchasing issues a contract on behalf of an agency, in its role as the state's contracting agent, the division of purchasing is responsible for contract administration and the agency is responsible for contract management. ()

02. Contract Management. Each state agency which manages one (1) or more contracts, whether entered into directly by the agency or by the division of purchasing acting as the statutory purchasing agency for the agency, will perform the following minimum contract management functions at a level consistent with the dollar value, complexity, and risk associated with each contract ()

a. Designate a competent contract manager as the single point of contact for each agency contract; ()

b. Document the contract manager's responsibilities and reporting requirements relative to the contract, including activities such as management of the invoice and payment process, budget tracking, and invoice review and reconciliation with contract requirements and deliverables, to ensure compliance; ()

c. Document a communication and escalation plan, as between the contract manager, identified agency personnel and the contract administrator, designed to ensure timely and effective contract monitoring and issue resolution (the communication and escalation plan must include the division of purchasing for contracts for which the division of purchasing is acting as the statutory purchasing agent for the agency); ()

d. Develop and implement internal contract monitoring tools, including a reporting structure, based

on the dollar value and/or potential risk associated with contract failure; and ()

e. Close out each contract, including, but not limited to documenting receipt of goods or services in compliance with contract requirements as well as a review of vendor performance and lessons learned. ()

03. Service Contracts Exceeding \$1,500,000 in Total Value. For each contract which is valued at more than one million five hundred thousand dollars (\$1,500,000) over the duration of the contract and which consists primarily of the purchases of services, the agency responsible for contract management must develop and implement contract reporting requirements that capture, at a minimum, information on compliance with financial provisions and delivery schedules; the status of any corrective action plans; as well as any liquidated damages assessed or collected under the contract during the current reporting period. Reports will be submitted to the designated agency purchasing representative as well as the division of purchasing on no less than a biannual basis, with a schedule for each contract determined by the contract manager in consultation with the agency purchasing representative and the division of purchasing. ()

~~1134.~~ -- 999. (RESERVED)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.15 - RULES GOVERNING EXCESS WEIGHT PERMITS FOR REDUCIBLE LOADS

DOCKET NO. 39-0315-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 modifications to this rule address truck permitting and 129,000 lb commercial motor vehicles (129K trucks) on the state's Interstate system. With the Idaho legislature's passage of SB1229 (2016), 129K trucks are now able to use the Interstates as they are now 129K designated routes. SB1229 was brought forward after the passage of the Federal Omnibus Appropriations Bill for FY16 in December 2015. SB1229 created a new section in code: §49-1004B, Idaho Code.

Furthermore, this rule proposes to establish a statewide permitting system. To promote intrastate surface transportation safety, intermodal commerce, law enforcement efficiencies and reduced administrative costs to local highway jurisdictions, commercial vehicle combinations in excess of eighty thousand (80,000) pounds will be permitted by the Idaho Transportation Department's Division of Motor Vehicles on local highways when a local highway jurisdiction authority has agreed to participate in the Department's permitting process.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2016 Idaho Administrative Bulletin, [volume 16-5, pages 68-69](#).

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: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, at (208) 334-8699.

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 26, 2016.

DATED this 8th day of September, 2016.

Ramón S. Hobdey-Sánchez, Governmental Affairs Program Specialist
Idaho Transportation Department,
3311 W State Street
PO Box 7129, Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0315-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.03.15, "Rules Governing Excess Weight Permits for Reducible Loads," IDAPA 39, Title 03, Chapter 15. (3-20-14)

02. Scope. This rule authorizes the issuance of special permits which allow vehicle combinations to operate in excess of eighty thousand (80,000) pounds when hauling reducible loads on the Interstate and non-interstate and local highway systems if legal axle weight limits are not exceeded. To promote intrastate surface transportation safety, intermodal commerce, law enforcement efficiencies and reduced administrative costs to local highway jurisdictions, commercial vehicle combinations in excess of eighty thousand (80,000) pounds will be permitted by the Idaho Transportation Department's Division of Motor Vehicles on local highways when a local highway jurisdiction authority has agreed to participate in the Department's permitting process. ~~(3-20-14)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL REQUIREMENTS AND CONDITIONS.

01. Weights Allowed on Interstate. The Federal Highway Amendment Act of 1974 established allowable legal weight limits on Interstate System Highways at twenty thousand (20,000) pounds on single axles, thirty-four thousand (34,000) pounds on tandems, and total gross loads not exceeding eighty thousand (80,000) pounds. (3-20-14)

02. Weights Allowed on Non-Interstate Highways. Allowable legal weight limits on non-interstate highways are set at twenty thousand (20,000) pounds on single axles, thirty-seven thousand eight hundred (37,800) pounds on tandems, and total gross loads not exceeding eighty thousand (80,000) pounds. (3-20-14)

03. Permit Types to Exceed Eighty Thousand Pounds Gross Weight. Permits will be issued for vehicle combinations operating on Interstate and non-interstate highways with total gross loads exceeding eighty thousand (80,000) pounds but not to exceed twenty thousand (20,000) per single axle, thirty-four thousand (34,000) pounds per tandem, and not to exceed the weight limit for any group of two (2) or more consecutive axles established by Section 49-1001, Idaho Code. (3-20-14)

a. Excess Weight Permit - gross weight limited to one hundred five thousand five hundred (105,500) pounds on interstate, ~~and~~ non-interstate and local highways when the appropriate local highway jurisdictional authority has agreed to participate in the Department's permitting process. ~~(3-20-14)~~(____)

b. Extra Length/Excess Weight Permit - gross weight limited to one hundred five thousand five hundred (105,500) pounds on interstate, ~~and~~ non-interstate and local highways and length limited to those specified in IDAPA 39.03.22, "Rules Governing Overlegal Permits for Extra Length, Excess Weight and Up to 129,000 Pound Vehicle Combinations." Except that no vehicle combination weighing more than one hundred five thousand five hundred (105,500) pounds shall operate on local highways contrary to the provisions of section 49-1004A, Idaho Code, IDAPA 39.03.22 and IDAPA 39.03.15.100.03.c. ~~(3-20-14)~~(____)

c. Up to One Hundred Twenty-Nine Thousand (129,000) Pounds - gross weight not to exceed one hundred twenty-nine thousand (129,000) pounds on designated ~~highways~~ routes, as specified in Section 49-1004 and Section 49-1004B, Idaho Code, and length limited to those specified in IDAPA 39.03.22, "Rules Governing Overlegal Permits for Extra Length, Excess Weight and Up to 129,000 Pound Vehicle Combinations." ~~(3-20-14)~~(____)

IDAPA 42 -- IDAHO WHEAT COMMISSION

42.01.01 -- RULES OF THE IDAHO WHEAT COMMISSION

DOCKET NO. 42-0101-1601

(SECOND) NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 22-3309, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking are scheduled by the Idaho Wheat Commission and will be held as follows:

BOTH MEETINGS START AT 10:00 am (MDT)	
Tuesday, October 18, 2016	Wednesday, October 19, 2016
Canyon Crest Dining Event Center 330 Canyon Crest Drive Twin Falls, ID 83301	La Quinta Inn 1440 Bench Road Pocatello, ID 83201

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

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

Interested members of the public who wish to participate must submit any written comments, questions, recommendations, or ideas to the Idaho Wheat Commission at the address below. Individuals may also attend the public meeting to be conducted on the above date during which the Commission will allow oral comments or presentations to be made.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the Commission's website.

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

The Idaho Wheat Commission ("Commission") will take up negotiated rulemaking with regard to the Report of Tax on Wheat form (or equivalent), including, but not limited to, the manner in which the form is completed, the manner in which the form is returned to the Commission, the timing upon which the form is delivered to the Commission, and the information included in the form.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text, if available, contact Blaine Jacobson, Executive Director, at (208) 334-2353. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Commission's website at the following web address: <http://www.idahowheat.org/>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments, questions, recommendations, or ideas must be directed to the undersigned and must be submitted to the Idaho Wheat Commission at least three (3) days prior to the meeting date at the address below or via email to blaine@idahowheat.org.

DATED this 19th day of September 2016.

Blaine Jacobson, Executive Director
Idaho Wheat Commission
821 W. State St.
P. O. Box 82720
Boise, ID 83720-0099
Phone: (208) 334-2353
Fax: (208) 334-2505

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 33-2211, and 33-2301, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent amendments.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Division of Vocational Rehabilitation (IDVR) Field Services Policy Manual contains internal processes to IDVR as well as eligibility and program requirements for the people and agencies IDVR serves. Currently this manual is incorporated by reference into Idaho Administrative Code, IDAPA 47.01.01. When a document is incorporated by reference into administrative rule it has the force and effect of law and can only be changed through the rulemaking process. Proposed amendments update reference to governing federal regulation by replacing the Workforce Investment Act with the Workforce Innovation and Opportunity Act, to update the Order of Selection Process to current standards in compliance with federal regulations, and updates the Field Services Policy Manual with the amendments approved by the State Board of Education on August 11, 2016. Amendments to the Field Services Policy Manual included technical corrections, removal of outdated references, updates of definitions or new definitions in compliance with federal regulations, clarification to review and assessment data used for eligibility determinations, determination of significance of disability, and the removal of process internal to the agency.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 57](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
Tel: (208)332-1582 / Fax: (208)334-2632

650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0101-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 47.01.01, “Rules of the Idaho Division of Vocational Rehabilitation.” (5-3-03)

02. Scope. The chapter has the following scope: To streamline the existing rules and to implement program changes necessitated by the ~~1998 Amendments of the~~ Rehabilitation Act of 1973, as amended. ~~(4-5-00)~~()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. General. Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-30-01)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-30-01)

a. All federal publications through the Rehabilitation Services Administration. (2-17-09)

b. Idaho Division of Vocational Rehabilitation Field Services Policy Manual, approved August 13, 2015~~6~~, available for review on the website at <http://www.vr.idaho.gov/>. ~~(3-25-16)~~()

c. Workforce ~~Investment~~ Innovation and Opportunity Act (WIOA), Public Law ~~105-220~~ 113-128. ~~(5-3-03)~~()

d. Federal Register, Department of Education, 34 CFR Parts ~~361-~~ 363, and 397. ~~(2-17-09)~~()

e. The Rehabilitation Act of 1973, as amended. (2-17-09)

03. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390 or through access to the internet URL addresses outlined in Subsection 004.02. (2-17-09)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Authorization ~~to~~ for Purchase. A purchase order issued on behalf of the Division. ~~(5-3-03)~~()

02. CFR. Code of Federal Regulations. (7-1-93)

- 03. Customer.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (7-1-13)
- 04. Designated State Agency.** The Idaho State Board of Education. (5-3-03)
- 05. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)
- 06. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)
- 07. IPE.** Individualized Plan for Employment. (4-5-00)
- 08. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34CFR Part 361.5 (b) 30 and is further defined as: (2-17-09)
- a.** Having a severe physical, mental, cognitive or sensory impairment which seriously limits three (3) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (7-1-13)
- b.** Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (3-20-04)
- 09. Method of Written Notification.** The written notification of findings and conclusions arising from an Informal Dispute Resolution, Mediation, or Fair Hearing, shall be served to the customer via the U.S. Postal Service. (7-1-13)()
- 10. PM.** Policy Memorandum. (5-3-03)
- 11. RSA.** Rehabilitation Services Administration, U.S. Department of Education. (5-3-03)
- 12. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)
- 13. VRC.** Vocational Rehabilitation Counselor. (5-3-03)
- 011. -- 099. (RESERVED)**

100. CUSTOMER APPEALS.

In accordance with 34 CFR Part 361.57, the customer appeals process is governed by Section 100 through 103 of these rules and is outlined in the Division's agency Field Services Policy Manual on the website at <http://www.vr.idaho.gov/> that is incorporated by reference into these rules in Subsection 004.02.b. (7-1-13)()

(BREAK IN CONTINUITY OF SECTIONS)

200. ORDER OF SELECTION.

~~The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible customers due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority one (Priority Number 1) being the most restrictive and priority four (Priority Number 4) being the least restrictive.~~ (7-1-13)

01. Order of Selection. In the event that the Division of Vocational Rehabilitation lacks the personnel or financial resources, or both, to provide the full range of vocational rehabilitation services to all eligible individuals, the following Order of Selection (OOS) will be used to prioritize service provision. ()

a. Students with disabilities (as defined by 34 CFR 361.5(c)(51)) who received pre-employment transition services prior to eligibility determination and assignment to a priority category shall continue to receive

such services. ()

b. All customers who have an Individualized Plan for Employment (IPE) will continue to be served. ()

02. Priority Status. Priority will be given to eligible individuals with the most significant disabilities, followed by those eligible individuals with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one (1) of the following priority categories: ()

~~01a.~~ Priority **Number 1.** ~~At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served~~ Eligible individuals with the Most Significant Disabilities (MSD). (5-3-03)()

~~02b.~~ Priority **Number 2.** ~~At the time that a decision to move to an order of selection is made, it is determined that only those customers in Priority Number 1 above and current and future, otherwise eligible, customers rated to this or a more restrictive priority can be served. Customers meeting this priority rating are those customers with most significant disabilities~~ Eligible individuals with Significant Disabilities (SD). (7-1-13)()

~~03c.~~ Priority **Number 3.** ~~At the time that a decision to move to an order of selection is made, it is determined that only those customers in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, customers rated to this or a more restrictive priority can be served. Customers meeting this priority rating are those customers with significant disabilities~~ All other eligible individuals with Disabilities (D).

03. When Unable to Serve Eligible Individuals. If the Idaho Division of Vocational Rehabilitation cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on priority category and date of application. (7-1-13)()

~~04. Priority Number 4.~~ ~~All eligible customers for Vocational Rehabilitation services (no order of selection in place).~~ (7-1-13)

201. -- 299. (RESERVED)

300. CUSTOMER SERVICES.

01. Provision of Purchased Services Contingent Upon Financial Need of the Customer. The Idaho Division of Vocational Rehabilitation will apply a financial needs assessment. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but will be a consideration in allocating the cost of VR services, with some exceptions. (7-1-13)

02. Authorization ~~to~~ for Purchase. The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or on, the beginning date of service. If services are provided without a Division approved authorization ~~to~~ for purchase, the Division reserves the right to not honor the vendor's invoice. (5-3-03)()

03. General Provisions. Idaho Division of Vocational Rehabilitation will only pay for services that contribute to the determination of eligibility or to achieve an employment outcome. (3-20-04)

04. Residency Requirement. There is no duration of residency requirement. The customer must be living in the state of Idaho and legally be able to work within the United States (i.e., non U.S. citizens must show they are legally able to work within the United States). (7-1-13)()

05. Provision of ~~CRP~~(Community Rehabilitation Program) (CRP) Services. ~~IDVR~~ Idaho Division of Vocational Rehabilitation will purchase vocational services from CRPs that are accredited by either Commission Accreditation Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System (RSAS). In conjunction with the customer, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the customer to achieve an employment outcome. (7-1-13)()

IDAPA 47 -- DIVISION OF VOCATIONAL REHABILITATION

47.01.02 -- RULES AND MINIMUM STANDARDS GOVERNING EXTENDED EMPLOYMENT SERVICES

DOCKET NO. 47-0102-1601

NOTICE OF RULEMAKING -- PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 33-2211 and 33-2303, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 Extended Employment Services Program is a program housed within the Idaho Division of Vocational Rehabilitation (IDVR). Proposed amendments clarify that the Extended Employment Services are a specific program separate from federal programs managed by IDVR. Additional changes make technical corrections, update references, remove outdated language and update provider qualification and referral process to be in alignment with current best practices, and provide clarification of the "program year."

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 58](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037
Tel: (208)332-1582
Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0102-1601
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

The following rules and minimum standards for ~~e~~Extended ~~e~~Employment ~~s~~Services are made under sections 33-2211 and 33-2303, Idaho Code. (3-14-07)()

001. TITLE AND SCOPE.

01. Title. These rules govern the Extended Employment Services (EES) ~~P~~program of the Idaho Division of Vocation Rehabilitation (IDVR) and are to be cited as IDAPA 47.01.02, Idaho Division of Vocational Rehabilitation, "Rules and Minimum Standards Governing Extended Employment Services." (3-14-07)()

02. Scope. In accordance with Section 33-2203, Idaho Code, the Extended Employment Services ~~P~~program of IDVR provides ~~services~~ to eligible ~~Clients services customers~~ that are intended to increase opportunities for such ~~Clients customers~~ to work in their communities. ~~IDVR The Extended Employment Services (EES) program~~ will contract with providers that have been ~~certified by IDVR approved~~ to provide such services, as provided herein. (3-14-07)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE INFORMATION.

01. Office Hours. The ~~IDVR administrative~~ Extended Employment Services office is open from 8:00 am until 5:00 pm Monday through Friday. (3-14-07)()

02. Mailing Address. PO Box 83720, Boise, ID 83720-0096 (3-14-07)

03. Street Address. Len B. Jordan Building, 650 W State Street, Room 150, Boise, Idaho. (3-14-07)

04. Telephone. (208) 334-3390, Fax: (208) 334-5305 TDD: (208) 327-7040. (3-14-07)

05. Internet website at <http://www.vr.idaho.gov/>. (3-14-07)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following terms and abbreviations are used as herein defined. (3-14-07)

01. CAREF. The Rehabilitation Accreditation Commission, an international accrediting body of employment services providers. ~~The internet website for CAREF is http://www.carf.org.~~ (3-14-07)()

02. Client Customer. An individual residing in the state of Idaho who has applied for, and who is eligible to receive, ~~Extended Employment Services from IDVR EES.~~ A ~~Client customer~~ must be at least ~~eighteen (18) years of age, unless such person is participating as part of a school work transition program, in which case such person must be at least~~ sixteen (16) years of age. (3-14-07)()

03. Certified Extended Employment Services (EES) Provider. A community rehabilitation program

services provider, sometimes referred to in these rules as a provider, that has been ~~certified~~ **approved** by ~~IDVR EES program~~ to provide ~~Extended Employment Services~~. (3-14-07)()

04. Extended Employment Services (EES). Long term maintenance services that assist ~~Clients customers~~ in maintaining employment, or in gaining employment skills in preparation for community employment, or which provide assistance to adult ~~Clients customers~~ with disabilities within an ~~industrial industry~~/business community setting or a community rehabilitation program, intended to maintain paid employment. Such services include individual supported employment, group ~~community-based non-integrated~~ supported employment, and work services. (3-14-07)()

05. Individual Program Plan. The ~~EES plan of Extended Employment Services~~ to be provided to individual ~~Clients customers~~. (3-14-07)()

06. Idaho Division of Vocational Rehabilitation (IDVR). The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the ~~Extended Employment Services EES P~~ program. (3-14-07)()

07. RSAS. Rehabilitation Services Accreditation Systems, a national accrediting body of vocational services providers. ~~The internet website for RSAS is http://www.rsasnet.org.~~ (3-14-07)()

011. -- 099. (RESERVED)

100. CERTIFICATION OF PROVIDERS PROGRAM YEAR.

~~**01. Certification Required.** A provider must apply for and receive certification from IDVR, as provided herein, to provide Extended Employment Services to Clients. Such certification shall be for only the Extended Employment Services Program region in which such provider intends to provide services, and for which approval is granted by IDVR.~~ (3-14-07)

~~**021. Timeline Program Year and Application Submission Date.** For purposes of these rules, the Extended Employment Services EES P program fiscal year is ~~June~~ **July** 1 of a given year through ~~May 31~~ **June 30** of the next succeeding year. An ~~application for certification~~ **EES Provider Agreement** for a fiscal year must be submitted on or before the first business day of ~~April~~ **May** preceding the fiscal year for which ~~certification approval~~ is sought. ~~A written decision on certification status in regard to such application will be issued by IDVR on or before the first business day of May preceding such fiscal year. If approved by IDVR, certification status for a provider becomes effective on June 1, the first day of such fiscal year. An application that is denied may be reconsidered during the course of a fiscal year if there have been significant developments in a region that require IDVR to add a new or additional provider after June 1. In such event, IDVR will give preference to denied applications based on date of application.~~ (3-14-07)()~~

~~**03. Criteria.** IDVR will determine to grant or deny certification based on the following criteria:~~ (3-14-07)

~~**a.** The provider must be accredited by CARF or RSAS;~~ (3-14-07)

~~**b.** The provider must meet and maintain all the requirements for provider qualifications, specified in Section 300 of these rules;~~ (3-14-07)

~~**04. Grandfather Provision for Current Providers.** Upon the effective date of adoption of these rules, providers that have been paid by IDVR for Extended Employment Services that were provided to Clients during the month of May, 2006, and which comply in all respects with Section 300 of these rules, shall be grandfathered and deemed to be certified to provide Extended Employment Services in the region(s) in which they have provided services during such month.~~ (3-14-07)

~~**05. Duration.** Once certified, an Extended Employment Service Provider (including a provider that is grandfathered under subsection 100.04.05 of these rules) retains certified status unless or until the certification is terminated or revoked by IDVR.~~ (3-14-07)

101. -- 199. (RESERVED)

200. EXTENDED EMPLOYMENT SERVICES PROVIDER AGREEMENT.

01. Standard Form. ()

a. Prior to providing ~~Extended Employment Services~~, a ~~Certified Extended Employment Services Provider~~ shall enter into an annual ~~Extended Employment Services EES~~ Provider Agreement with ~~IDVR the EES program~~ which will specify the terms and conditions of the ~~appointment approval~~. Such agreement shall be on a standard form approved by ~~IDVR the EES program~~, after consultation with ~~Certified Extended Employment Services the EES Provider~~. Such ~~EES Provider Agreement~~ shall detail the provider requirements, services, scope of work, other special provisions, and fees. The EES program will make the EES Provider Agreement available the first business day of April. (3-14-07)()

b. Approval to provide EES will be provided by the EES program on or before the first business day of June preceding such fiscal year. If approved by the EES program, a provider is eligible to deliver EES effective July 1, the first day of such fiscal year. An agreement that is denied may be reconsidered during the course of a fiscal year. The EES program has the discretion to add a new or additional providers after July 1, if there have been significant developments in a region that justify the need for new or additional providers. In such event, the EES program will give preference to denied applications based on date of application. ()

02. **Annual Agreement.** This agreement must be signed prior to the beginning of the ~~Extended Employment Services EES~~ fiscal year by an authorized representative of the ~~Certified Extended Employment Services Provider~~ and the IDVR ~~State Administrator~~ or a designee. (3-14-07)()

03. **Subject to Agreement Revision.** ~~This~~ agreement shall be entered into annually, and is subject to revision, as may be required by ~~IDVR the EES program~~. The EES program will provide providers notification of any changes to the agreement, with as much notification as possible. (3-14-07)()

201. -- 299. (RESERVED)

300. PROVIDER QUALIFICATIONS.

An approved EES Certified Extended Employment Services Provider shall meet all of the following requirements: (3-14-07)()

01. Experience. A new provider must have a minimum of three (3) full years of experience working with customers who are receiving Medicaid Waiver or must have worked with IDVR customers in employment services, or both. ()

~~02.~~ **Accreditation.** Receive and maintain accreditation by CARF or RSAS. (3-14-07)

~~023.~~ **Staff.** All staff will meet the following requirements—assure that all its employees and subcontractors hired after August 10, 2006 who are providing Extended Employment Services: (3-14-07)()

a. Satisfactorily complete a criminal history background check, to be obtained by the provider; (3-14-07)

b. ~~Are not less than~~ Be eighteen (18) years of age and, if less than twenty-one (21) years of age, have not less than six (6) months experience with people with disabilities; (3-14-07)()

c. Demonstrate the ability to deliver services as specified in the Individual Program Plan for each ~~Client customer~~; and (3-14-07)()

d. Document completion of not less than forty (40) hours of training directly related to vocational support for people with disabilities. Training must be documented no later than six (6) months from the date of hire and include all of the following topics: (3-14-07)

- i. Behavior technology, especially positive behavioral support; (3-14-07)
- ii. Instructional techniques; (3-14-07)
- iii. Strategies for dealing with aberrant or maladaptive behavior; (3-14-07)
- iv. Integration/normalization; (3-14-07)
- v. Functional impact of disabilities, particularly developmental disabilities and mental illness; ~~and~~
(3-14-07)()
- vi. Strategies for remediation and accommodation. (3-14-07)
- vii. Ethics and confidentiality; ()
- viii. The development and use of measurable objectives; and ()
- ix. Overview of assistive technology. ()

301. -- 399. (RESERVED)

400. TERMINATION OR REVOCATION OF PROVIDER STATUS.

~~IDVR~~ The EES program may terminate or revoke the certified approval status ~~of~~ and discontinue authorizing or purchasing services from ~~Certified~~ Extended Employment Services Providers for actions including, but not limited to, the following: (3-14-07)()

- 01. Loss of Accreditation.** Failure to maintain accreditation from either CARF or RSAS; (3-14-07)
- 02. Out of Compliance.** The provider is determined by ~~IDVR~~ the EES program to be out of compliance with these rules or the ~~Extended Employment Services~~ EES Provider Agreement. (3-14-07)()
- 03. Business Practices.** The provider is determined to be engaged in business practices that are inconsistent with sound fiscal practice; or (3-14-07)
- 04. ~~Client~~ Customer Rights.** The provider is determined to be in violation of ~~Client~~ a customer's rights. (3-14-07)()

401. -- 499. (RESERVED)

500. EXTENDED EMPLOYMENT SERVICES ~~CLIENTS~~ CUSTOMER —REFERRAL, ~~AND~~ ELIGIBILITY, AND CASE CLOSURE.

01. Referral. Each applicant to be a Client customer for ~~Extended Employment Services~~ EES under these rules will be referred by a Vocational Rehabilitation Counselor, employed by IDVR, who will provide the applicant with information on the services available from ~~Certified Extended Employment Services~~ EES providers. (3-14-07)()

02. Eligibility. ~~Extended Employment Services Specialists at IDVR~~ The EES program will assess the eligibility of each applicant for ~~Extended Eligibility Services~~ services. Applicants who are eligible for and have access to other public funding sources for long term support services are not eligible for EES services. Eligible applicants must have a disability that falls into one (1) of four (4) categories described below, and such disability must constitute a barrier to such person maintaining paid employment without long term vocational support: (3-14-07)()

- a. Developmental Disabilities.** Pursuant to Section 66-402, Idaho Code, a chronic disability of a person that appears before the age of twenty-two (22) years; and (3-14-07)

- i. Is attributable to impairment, such as ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one (1) of those impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; ~~(3-14-07)~~ ()
 - ii. 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 (3-14-07)
 - iii. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-14-07)
- b.** Mental Illness. A person has been assessed by a qualified professional and been diagnosed under DSM-IV or later editions with schizophrenia, schizoaffective disorder, major affective disorder, delusional disorder or a borderline personality disorder ~~and~~ in which this psychiatric disorder must be of sufficient severity to cause a disturbance in role performance or coping skills in at least two (2) of these areas on either a continuous or an intermittent (at least once per year) basis: vocational/academic, financial, social/interpersonal, family, basic living skills, housing, community, or health. ~~(3-14-07)~~ ()
- c.** Specific Learning Disability. A disorder in one (1) or more of the psychological processes involved in understanding, perceiving, or using language or concepts (spoken or written). A disorder which may manifest itself in problems related to speaking, reading, spelling, or mathematical calculations (or to a lesser extent, listening, thinking, or writing), and seriously limit two (2) or more functional capacities (mobility, communication, self-care, self-direction, work tolerance or work skills). (3-14-07)
- d.** Traumatic Brain Injury. A traumatically acquired insult to the brain that may cause physical, intellectual, emotional, social, and vocational changes. A closed head injury may be caused by a rapid acceleration/ deceleration, as in a motor vehicle accident. An open head injury is visible insult and may be the result of an accident, gun shot wound, or other physical injuries. Immediate effects are loss of consciousness, loss of memory, or change in vision, strength, coordination, or sensory function. Anatomical abnormalities may be present, such as cerebral hemorrhage or skull fracture. Long term effects may include physical, cognitive, and psycho-social-behavioral-emotional impairments. (3-14-07)

03. Case Closure. Cases will be closed from the EES program for the following reasons and will include documentation in the case record that supports such reason: ()

- a.** Unable to locate or contact customer; ()
- b.** Customer is utilizing Medicaid Waiver services for CSE; ()
- c.** Customer's disability too significant to benefit from services; ()
- d.** Customer is non-compliant or has not followed through with EES services; ()
- e.** Customer has retired from employment; ()
- f.** Customer no longer interested in employment or receiving EES services; ()
- g.** Customer no longer needs EES services; ()
- h.** Customer has moved out of state; or ()
- i.** All other appropriate reasons. ()

501. -- 599. (RESERVED)

600. COVERED SERVICES.

The Extended Employment Services that may be provided to *Clients customers* by *Certified Extended Employment Services P* providers are described below. *These services EES* typically follow the completion of other vocational rehabilitation services, such as vocational evaluation, job site development, and initial training at the job site. (3-14-07)()

01. Individual Community Supported Employment. Self-employment or paid employment that is: (3-14-07)()

a. For a *Client customer* paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain that employment; (3-14-07)()

b. Conducted in a community or industry setting where persons without known paid work supports are employed; and (3-14-07)

c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation. (3-14-07)

02. Group Community-Based Non-Integrated Supported Employment. Self-employment or paid employment which is: (3-14-07)()

a. For a group of no more than eight (8) *Clients customers* who are paid not less than minimum wage and who, because of their disability(ies), need ongoing support to maintain that employment; (3-14-07)()

b. Conducted in a variety of community and industry settings where the *Clients customers* have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting; (3-14-07)()

c. Supported by training and supervision needed to maintain that employment; and (3-14-07)

d. Not conducted in the work services area of an *Extended Employment Services EES P* provider. (3-14-07)()

03. Work Services. The work services program utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on *Certified Extended Employment Services EES P* provider premises. (3-14-07)()

(BREAK IN CONTINUITY OF SECTIONS)

800. SERVICE PROVISION.

01. Services on Individual Program Plan. *Extended Employment Services EES* for each individual *Client customer* must be based on the Individual Program Plan developed for such *Client customer*. (3-14-07)()

02. Development of Individual Program Plan. Those involved in developing the Individual Program Plan must include, but are not limited to, the following: (3-14-07)

a. The *Client customer*. Efforts must be made to maximize the *Client customer*'s involvement in the planning process by providing him or her with information and education regarding rights, and available options; and (3-14-07)()

b. The *Client customer*'s legal guardian, if one has been appointed by the court; and (3-14-07)()

c. ~~Certified Extended Employment Services~~ **The EES P**provider program staff, responsible for the implementation of the Individual Program Plan. (3-14-07)(____)

03. Submission of the Individual Program Plan. The Certified ~~Extended Employment Services~~ **EES P**provider must submit the Individual Program Plan to ~~an Extended Employment Services~~ **the EES P**program ~~Specialist~~ using the standard format provided or approved by ~~IDVR~~ **the EES program**. The ~~Extended Employment Services P~~program ~~Specialist~~ will either accept the Individual Program Plan as submitted, or may require revisions to the Individual Program Plan before acceptance. (3-14-07)(____)

04. Timeline for Submission. The Individual Program Plan must be submitted to ~~an Extended Employment Services~~ **the EES P**program ~~Specialist~~ within thirty (30) days from the beginning of the provision of ~~Extended Employment Services~~ **EES**. No payment will be made for ~~Extended Employment Services~~ **EES** without receipt of the Individual Program Plan covering those Extended Employment Services. (3-14-07)(____)

05. Revision. The ~~certified Extended Employment Services~~ **EES P**provider must submit an updated Individual Program Plan for each ~~Client~~ **customer** to ~~an Extended Employment Services~~ **the EES P**program ~~Specialist~~ at least annually. (3-14-07)(____)

06. Progress Reports. The ~~Certified Extended Employment Services~~ **EES P**provider must submit a progress report on each ~~Client~~ **customer** to ~~an Extended Employment Services~~ **the EES P**program ~~Specialist~~ at six (6) month intervals. A standardized format provided or approved by ~~IDVR~~ **the EES program** must be used. (3-14-07)(____)

801. RECORDS.

01. Client Customer Files. ~~Certified Extended Employment Services~~ **EES P**providers shall maintain individual ~~Client~~ **customer** files, which must include the following: (3-14-07)(____)

- a. Referral information; (3-14-07)
- b. Eligibility; (3-14-07)
- c. Authorization for services; (3-14-07)
- d. Contact information; (3-14-07)
- e. Legal guardianship information; (3-14-07)
- f. Individual Program Plan; (3-14-07)
- g. Progress Reports; (3-14-07)
- h. Documentation of service; (3-14-07)
- i. Satisfaction measures; (3-14-07)
- j. Releases of information; and (3-14-07)
- k. Documentation that updates to ~~Client~~ **customer** information were provided to IDVR. (3-14-07)(____)

02. Storage. Files must be maintained for five (5) years from the date of discharge of the Client to whom the file pertains. (3-14-07)

802. -- 899. (RESERVED)

900. PAYMENT FOR SERVICES.

01. Fee for Service. The IDVR State Administrator shall set the fees for covered services, after discussion with ~~Certified Extended Employment Services EES P~~ providers. Such fees shall be set forth in the annual ~~Extended Employment Services EES~~ Provider Agreement. Such fees shall be reviewed annually, and may be adjusted by ~~the~~ IDVR ~~State Administrator~~ to take effect at the beginning of the fiscal year. (3-14-07)()

02. Pre-Authorization. All ~~Extended Employment Services EES~~ must be pre-authorized by ~~an~~ ~~Extended Employment Services the EES P~~ program ~~specialist~~, and shall be set forth in the Individual Program Plan for each ~~Client customer~~. (3-14-07)()

03. Billing Procedures. (3-14-07)

a. ~~Certified Extended Employment Services EES P~~ providers must submit a monthly billing statement for each ~~Client customer~~ served, in a format approved by an ~~Extended Employment Services EES P~~ program ~~Specialist~~ and within timelines set forth in the annual ~~Employment Services EES~~ Provider Agreement. (3-14-07)()

b. Bills may only be submitted for ~~Extended Employment Services EES~~ that have been identified and accepted by ~~IDVR the EES program~~, as ~~set out~~ ~~stipulated~~ in an Individual Program Plan. (3-14-07)()

c. All bills submitted by ~~Certified Extended Employment Services P~~ providers are subject to prepayment and post payment review. Documentation sufficient to support each payment item shall be available for review, and must be maintained for five (5) years from the date of service. The ~~Certified Extended Employment Services P~~ providers must submit copies of the documentation regarding the provision of such services upon written request from an ~~Extended Employment Services Specialist EES program~~. (3-14-07)()

04. Audits. ~~IDVR The EES program~~ may perform audits of billing records and other documentation submitted by ~~Certified Extended Employment Services P~~ providers in order to verify the accuracy of such records. (3-14-07)()

05. Denial/Revocation of Payment. ~~IDVR The EES program~~ may deny payment, or seek reimbursement or set-off for payments previously made, if the provider is not in compliance with these rules, the signed Employment Services Provider Agreement, or if the provider does not provide the services as set forth in a ~~Client customer~~'s Individual Program Plan. (3-14-07)()

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO 50-0101-1602
NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 8, 2016.

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:

The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and mirror the language in Section 20-229B, Idaho Code, passed in the 2016 legislative session. This statutory language allows the Violation Hearing Officers the discretion to have the alleged parole violator appear in front of the Commission instead of imposing intermediate sanctions when the alleged parole violation was violent or sexual in nature or the parole violator has received a new formal charge of a felony or violent crime. This is for public safety.

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

To comply with the statutory language change in IC 20-229B, to send the alleged parole violator in front of the Commission when the alleged parole violators conduct was violent or sexual in nature or the parole violator has received a new formal charge of a felony or violent crime. This is for public safety.

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, Paralegal, (208) 334-2520.

DATED this 8th day of August, 2016.

Sandy Jones
Executive Director
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. 50-0101-1602
(Only Those Sections With Amendments Are Shown.)

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. (3-8-16)
- 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)
- c.** Parolees who have allegedly absconded from supervision are considered to be a Fugitive from Justice, starting from the day a Fugitive Warrant is issued by the commission and ending upon the day of arrest on that warrant. Per Idaho Code Section 20-228 upon issuance of a Fugitive Warrant parole is suspended and that time that a parolee is considered to be a Fugitive from Justice will not be counted towards the time on parole, or as part of the sentence. (3-8-16)
- 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 Parole Violations and Absconding.** If the violation does not result from ~~a conviction~~ **either conduct that is sexual or violent in nature, or from a formal charge** of a new felony or violent misdemeanor, ~~then the parolee will be afforded the opportunity to serve on~~ **the following** intermediate sanctions ~~rather than proceeding through the formal parole violation process.~~ **will apply:** (3-8-16)(8-8-16)T
- a.** For a first parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon either: (3-8-16)
- 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 (3-8-16)
- ii.** Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)
- b.** For a second parole violation other than absconding, 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 either: (3-8-16)
- 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 (3-8-16)
- ii.** Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)

c. For a third or subsequent parole violation other than by absconding, 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. (3-8-16)

d. For a first violation by absconding, 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 either: (3-8-16)

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 (3-8-16)

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)

e. For a second or subsequent parole violation by absconding, 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. (3-8-16)

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. (3-8-16)

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 proceed through the formal violation process. (3-8-16)

h. The commission or hearing officer will use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine length of confinement. 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. (3-8-16)

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. (3-8-16)

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 copies of reports or documents that are public records according to the public records act. (3-8-16)

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 convicted of a misdemeanor, or new felony, or is charged with absconding, 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. (3-8-16)

ii. Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a misdemeanor, or new felony criminal conviction, or absconding, the subject is entitled to a preliminary hearing within a reasonable amount of time. An on-site hearing will be conducted to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (3-8-16)

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 400.07.g.i. and 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. (3-8-16)

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 55 - DIVISION OF CAREER-TECHNICAL EDUCATION

55.01.03 - RULES OF CAREER-TECHNICAL SCHOOLS

DOCKET NO. 55-0103-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-1002G, and 33-2202 through 33-2212, Idaho Code, and Article IX, Section 2 of the Idaho Constitution.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons or more, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 update definitions, make technical corrections and provide clarification on the application processes and calculation of average daily attendance for Career Technical Schools for the purposes of calculating added cost funding.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, page 61](#).

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

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

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 26th, 2016.

DATED this 26th day of August, 2016.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 55-0103-1601
(Only Those Sections With Amendments Are Shown.)

005. DEFINITIONS.

01. Administrator. An on-site school administrator, holding the appropriate career-technical education administrator endorsement. ()

02. Dual Credit. Pursuant to Section 33-5109, Idaho Code, dual credit may be granted for Advanced Placement, College Level Examination Program, or Tech Prep class offerings that are approved through an accredited institution of higher education. This does not have to be a one (1) credit for one (1) credit articulation. Competencies from multiple classes can count toward postsecondary credit/credits. **Advanced Opportunities.** Additional educational opportunities offered to students enrolled in career technical school programs, pursuant to state board of education governing policies and procedures. (3-30-01)()

03. Attendance Zones. For purposes of Section 33-1002G, Idaho Code, each high school is classified as an attendance zone. The attendance zone requirement can be met by having students enrolled in approved career-technical school courses from at least two (2) high school zones within a district or at least two (2) high school zones in different districts participate in the career-technical school. A minimum of fifteen percent (15%) of the total student body enrolled in an approved career-technical school intermediate or capstone course must reside in attendance zones apart from the attendance zone of the majority of students. Cooperative Service Agencies must meet the fifteen percent (15%) attendance criteria on a program-by-program basis. (3-30-01)()

04. Career-Technical Schools. Schools designed to provide high-end, state-of-the-art technical programs that foster quality technical education at the secondary level. Programs and services are directly related to the preparation of high school students for employment in current or emerging occupations that require other than a baccalaureate or advanced degree. These schools are closely linked to postsecondary education, thereby avoiding redundancy and maintaining rigor. They are also closely linked to current business and industry standards to ensure relevance and quality. (3-30-01)

05. Field Experience. Paid or unpaid work experience such as business/industry internship, clinical experience, supervised occupational experience, job placement, school-based enterprise, or similar work experience setting. The field experience must be of sufficient duration and depth to add to the technical competencies of the student. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

101. CAREER-TECHNICAL SCHOOL GENERAL APPROVAL CRITERIA.

For approval, applying districts/~~consortiums~~ Cooperative Service Agencies must meet at least four (4) of the five (5) criteria listed in Section 33-1002G, Idaho Code. Approval criteria: (3-30-01)()

01. High School Attendance Zones. Two (2) or more high school attendance zones. (3-30-01)

02. ~~Dual Credit~~ Advanced Opportunities. (3-30-01)()

03. Field Experience. (3-30-01)

04. Funded as a Separate School. (3-30-01)

05. Separate Site or Cooperative Service Agency. Located at a separate site or approved by the State Board of Education as a cooperative service agency. (3-30-01)

102. CAREER-TECHNICAL COMPONENT CRITERIA.

01. Program Criteria. Career-technical schools are intended to deliver high-end technical education programs that go beyond the scope of traditional career-technical education. The lab should be appropriately designed for the type of program and the number of students enrolled. The program should have state-of-the-art equipment, current technology and strong links to business and industry. (3-30-01)

02. Career-Technical School Program. Each program of a career-technical school shall: (3-30-01)

a. Be based on industry standards that are measurable using a competency-based evaluation system. (3-30-01)

b. Demonstrate a responsiveness to students' needs and to labor market needs. (3-30-01)

c. Contain a sequence of instruction that follows a set of industry competencies. (3-30-01)

d. Reinforce basic and advanced academic skills. (3-30-01)

e. ~~Have at least one (1) dual credit technical course or be approved for postsecondary credit as part of a Tech Prep agreement.~~ Meet the all of required standards defined through Technical Competency Credits, as outlined in State Board of Education Governing Policies and Procedures Section III.Y. and as aligned among participating postsecondary institutions. (3-30-01)()

f. Promote access and equity for all students and school personnel. (3-30-01)

g. Incorporate active input from an appropriately qualified business/industry technical advisory committee. (3-30-01)

h. Ensure that all programs implement instructional delivery methods that use current teaching and industry technologies. (3-30-01)

i. Employ instructors who hold career-technical certification to teach the occupation and who also hold a related industry-based credential or equivalent as approved by the Division of Career-Technical Education. (3-30-01)()

j. Promote the development of leadership, interpersonal and other cross-functional workplace skills through career-technical student organizations ~~or other appropriate means.~~ (3-30-01)()

k. Ensure that the instructional setting is appropriate and effective regarding: (3-30-01)

i. Student-teacher ratios. (3-30-01)

ii. Number of lab work stations. (3-30-01)

iii. Number of quality work-experience sites. (3-30-01)

iv. Safety. (3-30-01)

v. Work-experience agreements. (3-30-01)

vi. Facility maintenance. (3-30-01)

103. APPLICATION PROCESS.

Applications for career-technical school funding must be received by the Division of Career-Technical Education on or before ~~the first Friday in July~~ April 15 for the following fiscal year. In the case of application renewals, failure to meet the application deadline will result in a twenty-five percent (25%) reduction in CTS funding. In the event of a new school application, failure to meet the application deadline will result in a denial of the application.

(3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

105. CAREER-TECHNICAL SCHOOL AVERAGE DAILY ATTENDANCE.

The Division of Career-Technical Education shall use the enrollment reports sent to the State Department of Education to calculate career-technical school average daily attendance (ADA) in accordance with applicable laws and rules (Section 33-1002, Idaho Code). Students in attendance at a qualifying career-technical school shall be reported as aggregate hours and/or aggregate attendance. The aggregate hours and aggregate attendance will be combined to calculate the ADA for the career-technical school. (3-30-01)

01. Aggregate Hours. The daily hours of all students enrolled in career-technical school approved intermediate and capstone courses who attend less than two and one-half (2.5) hours per day shall be added together and reported as weekly aggregate hours. (3-30-01)()

02. Aggregate Attendance. Students enrolled in career technical school approved intermediate and capstone courses who attend^{ing} more than two and one-half (2.5) hours per day are to be reported as aggregate attendance. (3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

108. ACCOUNTABILITY.

01. Assessment Process. The Division of Career-Technical Education shall develop an assessment process that includes measures and standards for career-technical school programs. (3-30-01)

02. Administrator Responsibility. The administrator of each career-technical school shall be responsible to provide a complete report for each program on the measures and standards at the end of each fiscal year onsite administration of the career technical school and submit all required career-technical school documentation, as outlined by the Division of Career-Technical Education. (3-30-01)()

03. Accreditation. Each career-technical school shall be accredited following Department of Education guidelines. This accreditation shall be appropriate for the individual type of career-technical school that is developed. (3-30-01)

04. School Improvement Plan. The administration, faculty and staff at each career-technical school shall be responsible to develop and implement a local school improvement plan based on the assessment process. (3-30-01)

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1601 (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 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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

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

Incorporates by reference amendments to previously adopted SOMB's Standards and Guidelines for Adult Sexual Offender Management Practices, and the Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders to provide the following: an extension on the timeframe for psychosexual evaluator and sex offender treatment provider certification applicants to meet the clinical experience requirements; clarification of specialized training requirements for dual population certification applicants; modification of supervision requirements for provisional-level psychosexual evaluators and sex offender treatment providers to accommodate a less restrictive level of supervision; elimination of a now-unnecessary criteria exception provision for psychosexual evaluators; clarification of conditional waiver provisions for psychosexual evaluator and sex offender treatment provider applicants; creation of conditional waiver provisions for post-conviction sexual offender polygraph examiner applicants with inclusion of an extension provision for "good cause"; reduction of quality assurance monitoring measures for psychosexual evaluators and treatment providers to a level that is supported by the SOMB's available resources; replacement of the single level of certification for post-conviction sex offender polygraph examiners with senior and associate-level certifications to accommodate examiners who are new to the field; placement of those who are currently certified as post-conviction sex offender polygraph examiners in the senior level of certification if qualifications are met; the continuing education requirements for post-conviction sex offender polygraph examiners will be brought into line with the requirements established by the American Polygraph Association; modification of the formal education provision for post-conviction sex offender polygraph examiners; and make technical corrections. Technical corrections will also be made to associated forms.

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

Section 18-8314, Idaho Code, provides authority for the agency to collect fees for provider certification processing. With this rulemaking, the current single level of post-conviction sexual offender polygraph examiner certification will be replaced by two (2) certification levels.

The existing application processing fee structure will be applicable to both certification levels as follows:

- 1) Seventy-five dollars (\$75) for initial senior/approved or associate/supervised level post-conviction sexual offender polygraph examiner certification applications; and
- 2) Fifty dollars (\$50) for biennial certification renewal applications for both certification levels.

This fee structure is consistent with that already imposed by the SOMB for senior/approved and associate/supervised level psychosexual evaluator and sexual offender treatment provider certification applicants.

FISCAL IMPACT: The following is a specific 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 SOMB does not anticipate any fiscal impact to the state general fund from the Rule changes resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Volume 16-8, page 129](#).

The agency directly notified the impacted psychosexual evaluators, sexual offender treatment providers and post-conviction sex offender polygraph examiners to solicit feedback on the standards modifications as well as posted the documents on its website. Forums for discussion and comments were also offered to complete drafting of the standards modifications and proposed modifications to the IDAPA Rule language.

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 Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. Rulemaking authority was granted to the board to carry out these provisions.

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled into documents entitled “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices”; Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports;” “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders;” Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports,” which are all incorporated by reference into this rulemaking to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format as well as the cost for republication. They can be found on the agency’s website: <http://somb.idaho.gov>

Further, the existing reference to the incorporated document “Bylaws of the American Polygraph Association” is being updated to reflect a new effective date.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Aileen Lucas at (208) 658-2146.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 18th day of August, 2016.

Aileen Lucas, Administrative Assistant
Sexual Offender Management Board
1299 N Orchard St Ste 110
Boise, ID 83706
Phone: (208) 658-2146
Fax: (208) 287-3322
Email: somb@idoc.idaho.gov

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 57-0101-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)

02. “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (4-11-15)

03. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

04. “Bylaws of the American Polygraph Association,” effective ~~January~~ September 201~~2~~5, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. ~~(3-20-14)~~()

05. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” ~~edition 2013 November~~, December 201~~3~~6 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. ~~(3-20-14)~~()

06. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” ~~November~~ December 201~~4~~6 ~~edition~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

07. The Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports,” ~~effective December~~ 201~~5~~6 ~~revision~~, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

08. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,” ~~effective December~~ 201~~5~~6 ~~revision~~, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. ~~(4-11-15)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post-conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting

qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)

05. Certified Post Conviction Sex Offender Polygraph Examiner. A polygraph examiner who has received specialized post conviction sexual offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. A person meeting this definition may be certified by the Board as either a senior/approved post conviction sexual offender polygraph examiner or an associate/supervised post conviction sexual offender polygraph examiner. (3-20-14)()

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (4-11-15)

08. Established Standards. The "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" and the "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (4-11-15)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the direct clinical supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (4-11-15)()

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the direct clinical supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (4-11-15)()

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (4-11-15)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (4-11-15)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor for the first two hundred fifty (250) hours of direct service provided followed by face-to-face direct contact with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every fifteen (15) hours of direct service provided; or (~~3-20-14~~)()

c. For purposes of supervision for associate/supervised post conviction sexual offender polygraph examiners, supervision is generally considered as face-to-face direct contact with a Board-approved supervisor during conduct of the supervisee's first five (5) PCSOT polygraphs followed by review by a Board-approved supervisor of one (1) PCSOT polygraph for every five (5) PCSOT polygraphs conducted by the supervisee. Such review shall include chart and report review. ()

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

01. APA. The American Polygraph Association. ()

02. ATSA. The Association for the Treatment of Sexual Abusers. (3-20-14)

03. DSM. The "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association. (3-20-14)

04. IDOC. The Idaho Department of Correction. (3-20-14)

05. IDJC. The Idaho Department of Juvenile Corrections. (4-11-15)

06. PCSOT. "Post conviction sexual offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (~~3-20-14~~)()

07. SOCB. The Sexual Offender Classification Board. (3-20-14)

08. SOMB. The Sexual Offender Management Board. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours ~~which were~~. Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and

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

c. Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (3-20-14)

02. Associate/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours ~~which were~~. Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board;

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

c. Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (3-20-14)

d. Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (3-20-14)

c. May assist with the conduct of psychosexual evaluations only under the direct clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours ~~which were~~ Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. ~~(3-20-14)~~()

02. Associate/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours ~~which were~~ Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and ~~(3-20-14)~~()

c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

c. Shall only provide treatment services under the direct clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

150. REQUEST FOR CONDITIONAL WAIVER.

01. Conditional Waiver. The Board may consider an applicant's request for a time limited conditional waiver for deficiencies in experience and specialized training qualifications as set forth in the established standards issued by the Board. ~~Conditional waiver requests shall only be considered for psychosexual evaluator or sexual~~

~~offender treatment provider applicants at the senior/approved or associate/supervised level. (3-20-14)()~~

02. Duration. A conditional waiver is limited to a period of two (2) years. Conditional waivers may ~~not~~ be extended ~~or renewed after the third year~~ for one (1) year upon a finding of good cause. (3-20-14)()

03. Frequency. A conditional waiver request shall only be considered one (1) time each for: ()

a. An initial certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; ()

b. A renewal certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; ()

c. A renewal certification application for post conviction sexual offender polygraph examiner applicants at the senior/approved level; and ()

d. A person certified as an associate/supervised post conviction sexual offender polygraph examiner who, after the two (2) year time limitation at this status has expired, does not meet qualifications for advancement to post conviction sexual offender polygraph examiner certification at the senior/approved level. ()

04. Good Cause. Good cause may include the certificate holder experiencing a period of physical disability, serious illness, hardship, or other extenuating circumstances accepted by the Board. ()

151. ~~CRITERIA EXCEPTION FOR PSYCHOSEXUAL EVALUATORS. (RESERVED)~~

~~Any person currently certified by the Board to conduct psychosexual evaluations on the date the established standards issued by the Board become effective and in force will be granted continued certification by the Board upon application. The certificate holder shall be assigned to the level of certification reflective of his training and experience in accordance with the established standards issued by the Board. (3-20-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

201. LEVELS OF POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER CERTIFICATION.

The Board issues certificates within two (2) levels reflective of a person's experience in conducting post conviction sexual offender polygraphs. ()

01. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited program or school; ()

c. Has successfully completed a minimum of one hundred (100) polygraph examinations. Of this requirement, a minimum of ten (10) sexual history polygraph examinations and a minimum of ten (10) PCSOT maintenance polygraph examinations shall have been conducted within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; ()

02. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited

program or school: ()

c. Shall only conduct polygraphs under the supervision of a Board-approved supervisor as defined in Paragraph 010.15.c. of these rules, and under the terms of a formal supervision agreement. ()

202. CRITERIA EXCEPTION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

A person currently certified by the Board to conduct post conviction sexual offender polygraph examinations on the date the established standards issued by the Board for senior/approved and associate/supervised level post conviction sexual offender polygraph examiners become effective and in force will be granted continued certification by the Board upon application. Within sixty (60) days of the standards going into effect, the certificate holder will be required to submit information as to the number of polygraph examinations completed and will be assigned to either the senior/approved or associate/supervised post conviction sexual offender polygraph examiner certification level pursuant to Section 201 of these rules. ()

~~2043.~~ -- ~~22930.~~ (RESERVED)

~~**230. SPECIALIZED TRAINING FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.**~~

~~For initial certification as a post conviction sexual offender polygraph examiner, an applicant must have successfully completed a minimum of forty (40) hours of formal post conviction sex offender polygraph testing (PCSOT) training, beyond the basic polygraph training course requirements, from an accredited American Polygraph Association program or school. (3-20-14)~~

231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of ~~forty (40)~~ thirty (30) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. ~~Twenty (20) hours of such continuing education shall pertain to specialized sexual offender polygraph training.~~ (3-20-14)()

232. -- 299. (RESERVED)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations for Certified Evaluators and Certified Treatment Providers. Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (3-20-14)

b. Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Guidelines, as referenced in Section 004 of these rules; (4-11-15)

c. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

e. Be committed to community protection and safety; (3-20-14)

f. Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

g. Conduct testing in accordance with the person's licensing body, qualifications and experience, and

in a manner that ensures the integrity of testing data; (3-20-14)

h. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

i. Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.
Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the American Polygraph Association APA; ~~(3-20-14)~~()

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the American Polygraph Association APA or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; ~~(3-20-14)~~()

d. Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the Association for the Treatment of Sexual Abusers ATSA, as referenced in Section 004 of these rules; ~~(3-20-14)~~()

e. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; (4-11-15)

f. Have no sexual relationships with any client; ~~and~~ ~~(4-11-15)~~()

g. Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders. (4-11-15)

h. Be committed to community protection and safety; and ()

i. Provide services in a manner that ensures humane and ethical treatment of clients. ()

(BREAK IN CONTINUITY OF SECTIONS)

332. FEES.

The following non-refundable application processing fees are established by the Board: (3-20-14)

01. Initial Certification. Application processing fees for initial certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). ~~(3-20-14)~~()

b. Associate/Supervised Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). ~~(3-20-14)~~()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (3-20-14)

~~**d.** Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-20-14)~~

02. Renewal Certification. Application processing fees for renewal certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). ~~(3-20-14)~~()

b. Associate/Supervised Psychosexual Evaluator, ~~or~~ Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). ~~(3-20-14)~~()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (3-20-14)

~~**d.** Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-20-14)~~

03. Change in Certification Level. Application processing fees for a change in certification level shall be as referenced in Section 155 of these rules. (3-20-14)

333. CERTIFICATION PERIOD.

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (3-20-14)

01. Senior/Approved Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. ~~(3-20-14)~~()

02. Associate/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. ~~(3-20-14)~~()

03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder's month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (3-20-14)

04. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter unless extended by conditional waiver. ~~(3-20-14)~~()

05. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years from the certificate holder's month of birth following initial certification. Thereafter, the certificate holder must meet minimum requirements for upgrade to the senior/approved level to be eligible for certification renewal, unless extended by conditional waiver. ()

(BREAK IN CONTINUITY OF SECTIONS)

350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH PROVIDERS EXAMINERS.

01. Identification. The Board shall publish a central roster of psychosexual evaluators, sexual offender

treatment providers and post conviction sexual offender polygraph ~~providers~~ ~~examiners~~ pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: ~~(3-20-14)~~ ()

- a. The certificate holder's name; (3-20-14)
 - b. The certificate holder's business address and telephone number; (3-20-14)
 - c. Whether the certificate holder is certified or approved by conditional waiver; (3-20-14)
 - d. The category and applicable level of certification; (3-20-14)
 - e. The expiration date of the certification or conditional waiver; (4-11-15)
 - f. Whether the certificate holder is approved to provide services to adult or juvenile clients, or both; (4-11-15)
- and
- g. Current formal disciplinary action imposed on a certificate holder by the Board. (3-20-14)

02. Availability. A copy of the central roster may be obtained from the Board, and shall be posted on the Board's website. (3-20-14)

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

61.01.07 - RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM

DOCKET NO. 61-0107-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(vii), Idaho Code.

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

ALL MEETINGS START AT 6:00 PM LOCAL TIME	
Monday, October 3, 2016	Monday, October 17, 2016
The Grove Hotel The Evergreen Room, 2nd Floor 245 South Capitol Blvd. Boise, ID 83702	Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11th Avenue Caldwell, ID 83605
Tuesday, October 18, 2016	Wednesday, October 19, 2016
Hilton Garden Inn Snake River Room 700 Lindsay Blvd. Idaho Falls, ID 83402	Hampton Inn & Suites Pocatello Pocatello Room 1551 Vista Drive Pocatello, ID 83201
Thursday, October 20, 2016	Tuesday, October 25, 2016
Holiday Inn Express 1554 Fillmore Street Twin Falls, ID 83301	Kroc Center - Cedar Room 1765 W. Golf Course Road Coeur d'Alene, ID 83815
Wednesday, October 26, 2016	
Lewis-Clark State College Sacajawea Hall, Room 115 500 8th Avenue Lewiston, ID	

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 rule creates standards for attorneys who are appointed to represent indigent persons and other individuals who are entitled to be represented by an attorney at public expense that take into account Idaho's Principles of an Indigent Defense Delivery System, Idaho Code 19-850(1)(a)(vii). The standards included in this rule include requirements that such attorneys conform to performance standards, carry a maximum number of cases per year, and appear at initial appearances.

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 as a result of this rulemaking.

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

There is no fiscal impact on the state general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8 – page 163](#).

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 incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director, at (208) 332-1735 or Kimberly.Simmons@pdc.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 November 18, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2016.

Kimberly J. Simmons, Executive Director
State Public Defense Commission
816 West Bannock St., Suite 201
Boise, ID 83702
Phone: (208) 332-1735
Fax: (208) 364-6147
Kimberly.Simmons@pdc.idaho.gov

THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 61-0107-1601
(Only Those Sections With Amendments Are Shown.)

IDAPA 61
TITLE 01
CHAPTER 07

61.01.07 - RULES GOVERNING THE STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(vii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing the standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors such as case complexity, support services and travel, Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) as referenced in the same section. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 07, "Rules Governing Standards for Defending Attorneys That Utilize Idaho's Principles of an Indigent Defense Delivery System." ()

02. Scope. These rules establish the standards and guidelines for Indigent Defense Providers and defending attorneys practicing in the State of Idaho. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC's office. ()

003. ADMINISTRATIVE APPEALS.

The PDC's determination to set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. Idaho's Principles of an Indigent Defense Delivery System. "Idaho's Principles of an Indigent Defense Delivery System," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ()

02. Standards For Defending Attorneys. "Standards For Defending Attorneys," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ()

005. OFFICE—OFFICE HOURS—MAILING AND STREET ADDRESS—TELEPHONE—INTERNET WEBSITE.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC's official website is: <https://pdc.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007-009. (RESERVED)

010. DEFINITIONS

01. Case. A Case shall mean representation of one person on one charging document. The following Idaho Supreme Court definition on case processing and reporting shall apply: ()

a. A new criminal case is defined, processed, and reported as follows: ()

i. A criminal case is initiated and counted at the filing of the charging document (citation, complaint, information, or indictment). ()

ii. The defendant and all misdemeanor and felony charges resulting from a single incident are counted as a single case, even if it involves multiple citations or complaints. Infractions must be filed separately, but may be consolidated. If the charging document contains multiple defendants involved in a single incident, a separate case will be created for each defendant, so that each defendant is counted as a single case. Idaho Criminal Rules and Misdemeanor Criminal Rules provide some exceptions: ()

1) Two (2) or more defendants can be joined in a single case pursuant to I.C.R. 8(b). ()

2) Offenses based on two or more acts or transactions connected together or constituting part of a common scheme or plan may be consolidated pursuant to M.C.R. 3(e). ()

iii. In cases involving multiple charges, the case type is classified according to the most serious offense (i.e., if a defendant is charged with a misdemeanor and a felony in a single case, the case is classified as a felony). ()

iv. The disposition of a criminal case is reported in the same case subtype that was used when the case was filed. For example, if a case is filed as a felony and is reduced to a misdemeanor prior to disposition, it is reported as a disposition of a felony. Similarly, if a case is filed as a misdemeanor and is amended to a felony, it is reported as a disposition of a misdemeanor. ()

v. With respect to felony bound over to district court, the following rules apply: ()

1) When a felony is filed in the magistrate division, it is counted as a new felony filing. ()

2) Upon the filing of the information or order binding, or both, the case over to the district court, the case is counted as a disposition of a felony in magistrate division and as a new felony filing in district court. ()

3) When disposed in district court, the case is counted as a disposition of a felony in the district court. ()

4) If the case is reduced to a misdemeanor and remanded to the magistrate division for the acceptance of a misdemeanor plea, the case is counted as a disposition of a felony in the district court and a remand of a felony in the magistrate division. ()

b. Post-judgment actions in criminal cases are processed and reported as follows: ()

i. In addition to new criminal cases, the following post-judgment actions will be tracked and reported separately: ()

1) Motion to revoke probation; ()

2) Motion for early discharge of probation; ()

3) Motion to modify terms of probation; ()

4) Defendant is transferred to a problem-solving court following a guilty plea/sentencing; ()

- 5) Motion for contempt/Motion to show cause; ()
- 6) Motion to amend or set aside judgment of conviction or set aside guilty plea; ()
- 7) Motion to correct or reduce sentence; ()
- 8) Motion for new trial; ()
- 9) Motion for stay of execution; ()
- 10) Motion to seal case; and ()
- 11) Motion for appellate bond. ()
- ii. Case remanded to the magistrate division for acceptance of a misdemeanor plea. ()
- iii. The above post-judgment actions will be counted at the filing of a motion or, the issuing of an order for cases that are remanded to a lower court or transferred to a problem-solving court. ()
The disposition of any of the above listed post-judgment actions is counted as a disposition in the same post-judgment category that triggered the action. ()

02. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. ()

03. Defending Attorney. Defined in Section 19-851, Idaho Code, as “any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense” in state courts. ()

04. Established Standards. The “Standards For Defending Attorneys” as referenced in Section 004 of these rules and established pursuant to Section 19-850(1)(a), Idaho Code. ()

05. Fiscal Year. As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following year. ()

06. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission’s actions to remedy specific deficiencies pursuant to section 19-861A (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ()

07. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that require differing amounts of time and resources. As used in this section, workload takes that fact into consideration. ()

011. ABBREVIATIONS

01. PDC. The State Public Defense Commission. ()

02. IPIDDS. Idaho’s Principles of an Indigent Defense Delivery System. ()

012. – 019. (RESERVED)

020. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all institutional defender attorneys, and defending attorneys included in primary or conflict contracts with the counties in the State. ()

a. Maintenance of Roster. The roster will be updated whenever there is a change, in May and may be updated more frequently in order to accurately reflect anytime there are staff changes at the county level. ()

b. Roster Contents. The roster will include the name of each individual attorney, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. ()

c. Availability of Public Defense Roster. The roster will be made available from the PDC office upon request. ()

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. ()

03. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. ()

021. APPLICATION OF ESTABLISHED STANDARDS.

The established standards shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who is assigned to represent at least one indigent defendant or is otherwise assigned to represent an adult or juvenile at public expense in state courts in a fiscal year. ()

021. – 099. (RESERVED)

Sections Affected Index

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.14 - Rules Governing Dairy Waste

Docket No. 02-0414-1601

000. Legal Authority.....	24
001. Title And Scope.....	24
007. -- 009. (Reserved).....	24
010. Definitions.....	24
011. Abbreviations.....	27
012. -- 029. (Reserved).....	27
030. Dairy Environmental Management Plan Approval.....	28
031. -- 039. (Reserved).....	29
040. Inspections.....	29
041. Inspection Report Forms.....	29
042. -- 049. (Reserved).....	29
050. Compliance Schedules.....	29
060. Unauthorized Discharges And Unauthorized Releases -- Penalties.....	30
061. Compliance With Idaho Pollutant Discharge Elimination System Rules.....	30
062. -- 999. (Reserved).....	30

02.04.15 - Rules Governing Beef Cattle Animal Feeding Operations

Docket No. 02-0415-1601

001. Title And Scope.....	32
004. Incorporation By Reference.....	32
010. Definitions.....	32
011. Abbreviations.....	35
050. Authority To Inspect.....	35
052. Administration Of IPDES Program.....	35
053. Compliance With Idaho Pollutant Discharge Elimination System Rules.....	35
054. -- 079. (Reserved).....	35

02.04.16 - Rules Governing Agriculture Odor Management

Docket No. 02-0416-1601

010. Definitions.....	37
100. Accepted Agricultural Practices.....	38
101. -- 199. (Reserved).....	39
200. Applicability.....	39

02.04.19 - Rules Governing Domestic Cervidae

Docket No. 02-0419-1601

004. Incorporation By Reference.....	41
201. Annual Inventory Report.....	41
205. Notice Of Death Of Domestic Cervidae.....	42
206. (Reserved).....	43
208. Intrastate Movement Certificate.....	43
250. Intrastate Movement Of Domestic Cervidae.....	43
450. Tuberculosis.....	44
451. -- 499. (Reserved).....	44
500. Surveillance For CWD.....	44
501. Collection Of Samples For CWD Testing.....	44

02.04.21 - Rules Governing the Importation of Animals**Docket No. 02-0421-1601**

004. Incorporation By Reference.....	47
011. Abbreviations.....	48
200. Importation Of Cattle Into Idaho.....	48
201. Cattle And Bison Imported From Canada.....	49
202. When Permits Are Required For Cattle.....	49
203. Official Identification Of Imported Cattle.....	50
204. -- 209. (Reserved).....	50
240. Tuberculosis Test Requirements.....	50
300. Equidae.....	51
400. Importation Of Swine.....	52
600. Importation Of Domestic Cervidae.....	53
601. Testing Requirements.....	53

02.04.32 - Rules Governing Poultry Operations**Docket No. 02-0432-1601**

010. Definitions.....	55
011. Abbreviations.....	58

IDAPA 07 - DIVISION OF BUILDING SAFETY**07.01.06 - Rules Governing the Use of National Electrical Code****Docket No. 07-0106-1601**

011. Adoption And Incorporation By Reference Of The National Electrical Code.....	60
---	----

07.02.02 - Rules Governing Plumbing Permits**Docket No. 07-0202-1601 (Fee Rule)**

011. Permits.....	63
-------------------	----

07.02.06 - Rules Concerning Idaho State Plumbing Code**Docket No. 07-0206-1601**

002. Written Interpretations.....	66
011. Adoption And Incorporation By Reference Of The Idaho State Plumbing Code.....	66

07.03.01 - Rules of Building Safety**Docket No. 07-0301-1601**

004. Adoption And Incorporation By Reference.....	82
---	----

07.05.01 - Rules of the Public Works Contractors License Board**Docket No. 07-0501-1601**

200. Type 4-Specialty Construction Categories.....	91
--	----

**07.07.01 - Rules Governing Installation of Heating, Ventilation,
and Air Conditioning Systems, Division of Building Safety****Docket No. 07-0701-1601**

002. Written Interpretations.....	103
004. Adoption And Incorporation By Reference Of The International Mechanical Code, 2012 Edition.....	103

Docket No. 07-0701-1602 (Fee Rule)

023. HVAC Journeyman Certificates Of Competency: Requirements.....	106
050. HVAC Permits.....	107

07.08.01 - Idaho Minimum Safety Standards and Practices for Logging - General Provisions**Docket No. 07-0801-1601**

000. Legal Authority.....	109
---------------------------	-----

003. Administrative Appeals.....	109
004. (Reserved) Incorporation By Reference.....	109
005. Office – Office Hours – Mailing Address And Street Address.....	109
006. Public Records Act Compliance.....	109
007. Definitions.....	109
008. Interpretation And Application Of These Rules.....	110
009. Employer's Responsibility.....	111
010. Employee's Responsibility.....	113
011. -- 999. (Reserved).....	114
07.08.02 - Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation	
Docket No. 07-0802-1601	
000. Legal Authority.....	116
003. Administrative Appeals.....	116
004. Incorporation By Reference.....	116
005. Office – Office Hours – Mailing Address And Street Address.....	116
006. Public Records Act Compliance.....	116
007. -- 008. (Reserved).....	116
009. Definitions.....	116
010. First Aid.....	116
011. Safety Equipment And Personal Protective Equipment.....	118
012. Fire Prevention, Protection And Suppression.....	121
013. Designated Logging Camps.....	123
014. -- 999. (Reserved).....	123
07.08.04 - Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas	
Docket No. 07-0804-1601	
000. Legal Authority.....	126
003. Administrative Appeals.....	126
004. Incorporation By Reference.....	126
005. Office – Office Hours – Mailing Address And Street Address.....	126
006. Public Records Act Compliance.....	126
007. -- 008. (Reserved).....	126
009. Definitions.....	126
010. Garages And Machine Shops And Related Areas.....	126
07.08.05 - Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems	
Docket No. 07-0805-1601	
000. Legal Authority.....	129
003. Administrative Appeals.....	129
004. Incorporation By Reference.....	129
005. Office – Office Hours – Mailing Address And Street Address.....	129
007. -- 008. (Reserved).....	129
009. Definitions.....	129
010. General Requirements.....	129
011. Signaling.....	130
012. Electric Signal Systems.....	130
013. Radio Signaling Systems.....	130
014. -- 999. (Reserved).....	132

07.08.06 - Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards**Docket No. 07-0806-1601**

000. Legal Authority.....	134
003. Administrative Appeals.....	134
004. Incorporation By Reference.....	134
005. Office – Office Hours – Mailing Address And Street Address.....	134
006. Public Records Act Compliance.....	134
007. -- 008. (Reserved).....	134
009. Definitions.....	134
010. Truck Road Standards.....	134
011. -- 999. (Reserved).....	135

**07.08.07 - Idaho Minimum Safety Standards and Practices for Logging -
Transportation of Employees****Docket No. 07-0807-1601**

000. Legal Authority.....	137
003. Administrative Appeals.....	137
004. Incorporation By Reference.....	137
005. Office – Office Hours – Mailing Address And Street Address.....	137
006. Public Records Act Compliance.....	137
007. -- 008. (Reserved).....	137
009. Definitions.....	137
010. Transportation Of Employees.....	137
011. -- 999. (Reserved).....	138

07.08.08 - Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking**Docket No. 07-0808-1601**

000. Legal Authority.....	140
003. Administrative Appeals.....	140
004. Incorporation By Reference.....	140
005. Office – Office Hours – Mailing Address And Street Address.....	140
006. Public Records Act Compliance.....	140
007. -- 008. (Reserved).....	140
009. Definitions.....	140
010. Falling And Bucking.....	140
011. Illustration Of Undercuts.....	142
012. Mechanical Delimbers And Feller Bunchers.....	145
013. -- 999. (Reserved).....	145

**07.08.09 - Idaho Minimum Safety Standards and Practices for Logging -
Rigging, Lines, Blocks, and Shackles****Docket No. 07-0809-1601**

000. Legal Authority.....	147
003. Administrative Appeals.....	147
004. Incorporation By Reference.....	147
005. Office – Office Hours – Mailing Address And Street Address.....	147
006. Public Records Act Compliance.....	147
007. -- 008. (Reserved).....	147
009. Definitions.....	147
010. Rigging.....	147
011. Guylines.....	148
012. Lines, Shackles And Blocks.....	151
013. -- 999. (Reserved).....	154

*07.08.10 - Idaho Minimum Safety Standards and Practices for Logging -
Canopy and Canopy Construction for Logging Equipment*

Docket No. 07-0810-1601

000. Legal Authority.....	156
003. Administrative Appeals.....	156
004. Incorporation By Reference.....	156
005. Office – Office Hours – Mailing Address And Street Address.....	156
006. Public Records Act Compliance.....	156
007. -- 008. (Reserved).....	156
009. Definitions.....	156
010. General Requirements.....	156
011. Tractors And Similar Logging Equipment.....	158
012. -- 999. (Reserved).....	158

07.08.11 - Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding

Docket No. 07-0811-1601

000. Legal Authority.....	160
003. Administrative Appeals.....	160
004. Incorporation By Reference.....	160
005. Office – Office Hours – Mailing Address And Street Address.....	160
006. Public Records Act Compliance.....	160
007. -- 008. (Reserved).....	160
009. Definitions.....	160
010. Skidding And Yarding.....	161
012. Yarding Machinery.....	161
013. Wire Rope.....	166
014. Tree Climbing.....	176
015. Typical Rigging Systems.....	178
016. -- 999. (Reserved).....	182

07.08.12 - Idaho Minimum Safety Standards and Practices for Logging - Road Transportation

Docket No. 07-0812-1601

000. Legal Authority.....	184
003. Administrative Appeals.....	184
004. Incorporation By Reference.....	184
005. Office – Office Hours – Mailing Address And Street Address.....	184
006. Public Records Act Compliance.....	184
007. -- 008. (Reserved).....	184
009. Definitions.....	184
010. Log Truck Transportation.....	184
011. Steered Trailers.....	191
012. Common Carriers.....	192

*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*

Docket No. 07-0813-1601

000. Legal Authority.....	194
003. Administrative Appeals.....	194
004. Incorporation By Reference.....	194
005. Office – Office Hours – Mailing Address And Street Address.....	194
006. Public Records Act Compliance.....	194
007. -- 008. (Reserved).....	194

009. Definitions 194
010. Specific Requirements 194
011. -- 999. (Reserved) 199

07.08.14 - Minimum Safety Standards and Practices for Logging - Helicopter Logging

Docket No. 07-0814-1601

000. Legal Authority 201
003. Administrative Appeals 201
004. Incorporation By Reference 201
005. Office – Office Hours – Mailing Address And Street Address 201
006. Public Records Act Compliance 201
007. -- 008. (Reserved) 201
009. Definitions 201
010. General Requirements 201
011. Specific Requirements 202
012. -- 999. (Reserved) 203

07.08.15 - Idaho Minimum Safety Standards and Practices for Logging - Commonly Used Logging Terms

Docket No. 07-0815-1601

000. Legal Authority 205
003. Administrative Appeals 205
004. Incorporation By Reference 205
005. Office – Office Hours – Mailing Address And Street Address 205
006. Public Records Act Compliance 205
007. -- 008. (Reserved) 205
009. Additional Definitions 205
010. Definitions 205
011. -- 999. (Reserved) 209

07.08.16 - Idaho Minimum Safety Standards and Practices for Logging - Recommended Safety Program

Docket No. 07-0816-1601

000. Legal Authority 211
003. Administrative Appeals 211
004. Incorporation By Reference 211
005. Office – Office Hours – Mailing Address And Street Address 211
006. Public Records Act Compliance 211
007. (Reserved) 211
008. Definitions 211
009. (Reserved) 211
010. Introduction 212
011. Fire And Safety Policy 212
012. -- 999. (Reserved) 218

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.02 - Rules Governing the Postsecondary Credit Scholarship Program

Docket No. 08-0102-1601 (New Chapter)

000. Legal Authority 220
001. Title And Scope 220
002. Written Interpretations 220
003. Administrative Appeals 220
004. Incorporation By Reference 220
005. Office Information 220

006. Public Records Act Compliance.....	221
007. -- 009. (Reserved).....	221
010. Definitions.....	221
011. -- 100. (Reserved).....	221
101. Application Process.....	221
102. -- 299. (Reserved).....	221
300. Scholarship Awards.....	221
302. Continuing Eligibility.....	222
303. -- 999. (Reserved).....	222
08.01.04 - Residency	
Docket No. 08-0104-1601	
001. Title And Scope.....	224
003. Administrative Appeals.....	224
004. Incorporation By Reference.....	224
005. Office -- Office Hours -- Mailing Address And Street Address.....	224
006. Public Records Act Compliance.....	225
007. -- 009. (Reserved).....	225
010. Definitions.....	225
011. -- 099. (Reserved).....	227
100. Resident Classification By All Institutions.....	227
101. Residency Classification Process.....	227
102. Factors For Determining Domicile.....	227
103. Appeals Procedure.....	228
104. -- 999. (Reserved).....	229
08.01.09 - Rules Governing the GEAR UP Idaho Scholarship Program	
Docket No. 08-0109-1601 (Chapter Repeal)	
08.02.01 - Rules Governing Administration	
Docket No. 08-0201-1602	
801. Continuous Improvement Planning And Training.....	232
Docket No. 08-0201-1603	
802. Literacy Growth Targets.....	237
803. -- 999. (Reserved).....	237
Docket No. 08-0201-1604	
803. Statewide Average Class Size.....	239
804. -- 999. (Reserved).....	239
08.02.02 - Rules Governing Uniformity	
Docket No. 08-0202-1607	
007. Definitions.....	241
014. Certificates Issued To Applicants From Regionally Accredited Institutions.....	242
015. Idaho Educator Credential.....	242
016. Idaho Interim Certificate.....	254
021. Endorsements.....	255
022. Endorsements A - D.....	256
023. Endorsements E - L.....	260
024. Endorsements M - Z.....	262
025. -- 041. (Reserved).....	265
042. Alternate Routes To Certification.....	265
043. -- 059. (Reserved).....	268
060. Application Procedures / Professional Development.....	268
120. Local District Evaluation Policy -- Teacher And Pupil Personnel Certificate Holders.....	269

121. Local District Evaluation Policy - School Principal	272
08.02.03 - Rules Governing Thoroughness	
Docket No. 08-0203-1601	
004. Incorporation By Reference	277
008. Definitions H - S	279
105. High School Graduation Requirements	281
Docket No. 08-0203-1603	
106. Advanced Opportunities	287
117. (Reserved)	288
Docket No. 08-0203-1608	
004. Incorporation By Reference	294
007. Definitions A - G	295
008. Definitions H - S	297
111. Assessment In The Public Schools	300
112. Accountability	303
113. (Reserved)	308
114. Failure To Meet Annual Measurable Progress	308
Docket No. 08-0203-1609	
105. High School Graduation Requirements	310
Docket No. 08-0203-1610	
004. Incorporation By Reference	315
Docket No. 08-0203-1611	
105. High School Graduation Requirements	318
08.02.05 - Rules Governing Pay for Success Contracting	
Docket No. 08-0205-1601 (New Chapter)	
000. Legal Authority	324
001. Title And Scope	324
002. Written Interpretations	324
003. Administrative Appeals	324
004. Incorporation By Reference	324
005. Office Information	324
006. Public Records Act Compliance	325
007. -- 009. (Reserved)	325
010. Definitions	325
011. -- 100. (Reserved)	325
101. Initiating Contracting	325
102. Proposal Evaluation	325
103. Contract Negotiations	326
104. Contract Monitoring	327
105. -- 999. (Reserved)	327
08.05.01 - Rules Governing Seed and Plant Certification	
Docket No. 08-0501-1601	
004. Incorporation By Reference	329
IDAPA 11 - IDAHO STATE POLICE	
11.04.02 - Rules Governing Simulcasting	
Docket No. 11-0402-1601	
010. Definitions	335
047. Notices -- Posted	338
048. -- 999. (Reserved)	339

11.04.03 - Rules Governing Licensing and Fees**Docket No. 11-0403-1601 (Fee Rule)**

050. Fingerprints..... 341

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council**Docket No. 11-1101-1601**

010. Definitions..... 343

055. Drug Use..... 346

058. Traffic Record Investigation..... 347

081. Agreement To Serve..... 348

Docket No. 11-1101-1602

059. Background Investigation..... 351

**11.11.02 - Rules of the Idaho Peace Officer Standards and Training Council
for Juvenile Detention Officers****Docket No. 11-1102-1601**

034. The Part-Time Juvenile Detention Officer Certificate..... 354

**11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council
for Correction Officers and Adult Probation and Parole Officers****Docket No. 11-1104-1601**

031. Minimum Standards For Employment For Correction Officers..... 357

032. -- 050. (Reserved)..... 360

052. Correction Officer Certification..... 360

053. The Basic Certificate..... 360

11.13.01 - The Motor Carrier Rules**Docket No. 11-1301-1601**

004. Incorporation By Reference (Rule 4)..... 362

Docket No. 11-1301-1602

004. Incorporation By Reference (Rule 4)..... 365

019. Carrier Safety Requirements (Rule 19)..... 366

Docket No. 11-1301-1603

004. Incorporation By Reference (Rule 4)..... 369

IDAPA 12 - DEPARTMENT OF FINANCE**12.01.08 - Rules Pursuant to the Uniform Securities Act (2004)****Docket No. 12-0108-1601**104. Fraudulent, Dishonest And Unethical Practices - Broker-Dealer, Broker-Dealer Agents,
Issuer Agents, Investment Advisers, Investment Adviser Representatives (Rule 104). 372**12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act****Docket No. 12-0110-1601**

005. Incorporation By Reference (Rule 5)..... 374

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME**13.01.02 - Rules Governing Hunter Education and Mentored Hunting****Docket No. 13-0102-1601 (Fee Rule)**

000. Legal Authority..... 376

001. Title And Scope..... 376

100. Hunter And Archery Education..... 376

102. Trapper Education..... 377

103. -- 999. (Reserved)..... 377

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-1601

006. -- 199. (Reserved).....	380
260. Tags For Controlled Hunts.....	380
300. Identification Of Animals That Legally May Be Taken.....	386
301. -- 319. (Reserved).....	387
320. Tag Validation And Attachment And Proxy Statement.....	387
321. -- 349. (Reserved).....	388
350. Identification Of Sex, Size, And/Or Species In Possession And During Transportation Or Shipment.....	388
420. Mandatory Check And Report Requirements.....	388
422. Mandatory Wolf Telephone Report.....	389
423. -- 499. (Reserved).....	390
500. Areas Closed To Hunting Of Big Game Animals.....	390

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-1603

260. Tags For Controlled Hunts.....	392
-------------------------------------	-----

13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho

Docket No. 13-0109-1601

400. Areas Closed To Hunting Of Game Birds.....	399
---	-----

Docket No. 13-0109-1602

100. Tags, Stamps, Permits, And Validations.....	403
600. Pheasant Seasons, Bag And Possession Limits.....	405
900. Migratory Game Bird Seasons, Bag And Possession Limits.....	405

13.01.11 - Rules Governing Fish

Docket No. 13-0111-1601

505. Salmon Special Restrictions.....	409
---------------------------------------	-----

13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals

Docket No. 13-0117-1601

100. Use Of Bait For Hunting.....	414
-----------------------------------	-----

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

15.04.01 - Rules of the Division of Human Resources and
Idaho Personnel Commission

Docket No. 15-0401-1601

010. Definitions -- A Through E.....	417
074. Assignment Of Hay Evaluation Points.....	419
086. Applications.....	420
089. (Reserved).....	420
120. Limited Service Appointments.....	420
122. Temporary Appointments (Non-Classified).....	421
151. Satisfactory Service.....	421
152. Separation During Probation.....	421
200. Problem-Solving And Due Process Procedures.....	422
220. Records.....	423
241. Workers Compensation Or Disability.....	424
250. Special Leaves.....	424

**OFFICE OF THE GOVERNOR - MILITARY DIVISION -
OFFICE OF EMERGENCY MANAGEMENT**

15.06.06 - Rules Governing Use of Disaster Emergency Account Funds

Docket No. 15-0606-1601 (New Chapter)

000. Legal Authority (Rule 0)	431
001. Title And Scope (Rule 1)	431
002. Written Interpretations (Rule 2)	431
003. Administrative Appeals.....	431
004. Incorporation By Reference.	431
005. Office, Office Hours, Mailing Address, Telephone Numbers (Rule 5).....	431
006. Public Records Act.....	431
007. – 009. (Reserved).....	431
010. Definitions	431
011. – 099. (Reserved).....	432
100. State Disaster Emergency Account.	432
101. – 999. (Reserved).....	432

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.01 - Rules of the Idaho Time Sensitive Emergency System Council

Docket No. 16-0201-1601

004. Incorporation By Reference.	434
---------------------------------------	-----

16.02.02 - Rules of the Idaho Emergency Medical Services (EMS) Physician Commission

Docket No. 16-0202-1601

004. Incorporation By Reference.	436
---------------------------------------	-----

16.03.03 - Rules Governing Child Support Services

Docket No. 16-0303-1601

603. Consumer Reporting Agencies.	438
--	-----

16.03.04 - Rules Governing the Food Stamp Program in Idaho

Docket No. 16-0304-1601

251. Able Bodied Adults Without Dependents (ABAWD) Work Requirement.....	440
630. Adequate Notice.....	440

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled

Docket No. 16-0305-1601

402. Self-Employment Allowable Expenses.....	442
403. Self-Employment Expenses Not Allowed.....	442
720. Long-Term Care Resident And Medicaid.....	443
838. Annuity As Asset Transfer.....	444

16.03.08 - Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program

Docket No. 16-0308-1601

010. Definitions.	447
125. Mandatory TAFI Household Members.	448
126. Budgeting For Caretaker Relatives.	448
233. -- 239. (Reserved).....	449

16.03.09 - Medicaid Basic Plan Benefits

Docket No. 16-0309-1601

004. Incorporation By Reference.	451
010. Definitions: A Through H.....	452
011. Definitions: I Through O.	455
200. Provider Application Process.	458

455. Ambulatory Surgical Center Services: Provider Reimbursement.....	459
522. Midlevel Practitioner Services: Coverage And Limitations.....	460
523. (Reserved).....	460
524. Midlevel Practitioner Services: Provider Qualifications And Duties.....	460
525. Midlevel Practitioner Services: Provider Reimbursement.....	460
720. Home Health Services: Definitions.....	460
723. Home Health Services: Procedural Requirements.....	461
732. Therapy Services: Coverage And Limitations.....	462
733. Therapy Services: Procedural Requirements.....	464
751. Durable Medical Equipment And Supplies: Participant Responsibility.....	465
752. Durable Medical Equipment And Supplies: Coverage And Limitations.....	465
753. Durable Medical Equipment And Supplies: Procedural Requirements.....	469
754. (Reserved).....	472
755. Durable Medical Equipment And Supplies: Provider Reimbursement.....	472
Docket No. 16-0309-1602	
665. Prescription Drugs: Provider Reimbursement.....	475
16.07.19 - Behavioral Health Certification of Peer Support Specialists and Family Support Partners	
Docket No. 16-0719-1601 (New Chapter)	
000. Legal Authority.....	480
001. Title And Scope.....	480
002. Written Interpretations.....	480
003. Administrative Appeals.....	480
004. Incorporation By Reference.....	481
005. Office -- Office Hours -- Mailing Address -- Street Address -- Telephone -- Internet Website. .	481
006. Confidentiality Of Records And Public Records Request.....	481
007. -- 009. (Reserved).....	481
010. Definitions.....	481
011. -- 099. (Reserved).....	482
100. Application For Certification.....	482
101. -- 109. (Reserved).....	482
110. Types of Certification.....	482
111. Duration Of Certification.....	482
112. Renewal Of Certification.....	483
113. -- 119. (Reserved).....	483
120. Reciprocity.....	483
121. -- 149. (Reserved).....	483
150. Inactive Status.....	483
151. -- 199. (Reserved).....	484
200. Peer Support Specialist -- Certification Qualifications And Requirements.....	484
201. -- 249. (Reserved).....	485
250. Peer Support Specialists -- Code Of Ethics And Professional Conduct.....	485
251. -- 299. (Reserved).....	486
300. Family Support Partner -- Certification qualifications And Requirements.....	486
301. -- 349. (Reserved).....	487
350. Family Support Partners -- Code Of Ethics.....	487
351. -- 399. (Reserved).....	489
400. Supervisor For Peer Support Specialist Or Family Support Partner -- Qualifications And Requirements.....	489
401. -- 499. (Reserved).....	490
500. Complaints.....	490
501. -- 509. (Reserved).....	490

510. Grievances	490
511. -- 519. (Reserved)	490
520. Denial, Revocation, or Suspension of Certification	490
521. -- 524. (Reserved)	490
525. Immediate Denial, Revocation, Or Suspension	490
526. -- 529. (Reserved)	491
530. Reasons For Denial, Revocation, Or Suspension	491
531. -- 534. (Reserved)	491
535. Appeal Of Department Decision	491
536. -- 539. (Reserved)	491
540. Reapplication For Certification	491
541. -- 999. (Reserved)	491
16.07.37 - Children's Mental Health Services	
Docket No. 16-0737-1601	
003. Administrative Appeals	493
004. Incorporation By Reference	493
010. Definitions And Abbreviations A Through E	494
011. Definitions And Abbreviations F Through K	495
012. Definitions And Abbreviations L Through R	496
013. Definitions And Abbreviations S Through Z	497
014. -- 099. (Reserved)	498
100. Children's Mental Health Services	499
101. Teens At Risk Program	500
102. -- 104. (Reserved)	501
105. Accessing Children's Mental Health Services	501
106. Mental Health Assessment	501
107. Eligibility Determination	501
108. -- 109. (Reserved)	502
110. Notice Of Decision On Eligibility	502
111. -- 114. (Reserved)	502
115. Treatment Plan	502
116. Outcomes For Children's Mental Health Services	503
117. Case Records	503
118. Use Of Public Funds And Benefits	503
119. Financial Responsibility Of Parent(s)	503
120. Sliding Fee Schedule For Children's Mental Health Outpatient Services	503
121. Fee Determination For Children's Mental Health Outpatient Services	503
122. -- 199. (Reserved)	503
200. Authority For Alternate Care Placement	503
201. Protections For Children In Alternate Care	504
202. (Reserved)	505
203. Date A Child Entered Alternate Care	505
204. Title XIX Eligibility	505
205. Alternate Care Licensure	505
206. Alternate Care Case Management	505
207. -- 221. (Reserved)	507
222. Alternate Care Planning	507
223. -- 235. (Reserved)	507
236. Parental Financial Support For Children In Alternate Care	507
237. Support Agreements And Support Orders	508
238. -- 239. (Reserved)	508
240. Insurance Coverage	508

241. Medical Card For Children In Alternate Care	508
242. - 243. (Reserved)	508
244. Medical Emergencies	508
245. Dental Care	508
246. Costs Of Prescription Drugs	508
247. Medical Examination Upon Entering Alternate Care	508
248. -- 250. (Reserved)	509
251. Drivers' Training And Licenses For Children In Alternate Care	509
252. -- 282. (Reserved)	509
283. Payment To Family Alternate Care Providers	509
284. Additional Payments To Family Alternate Care Providers	509
285. -- 599. (Reserved)	510
600. Treatment Foster Care	510
601. -- 699. (Reserved)	511
700. Residential Care Facilities	511
701. -- 799. (Reserved)	511
800. Six-Month Reviews For Children In Alternate Care Placements	511
801. -- 999. (Reserved)	512

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE*18.01.48 - Rule to Implement the Privacy of Consumer Financial Information***Docket No. 18-0148-1601**

150. Annual Privacy Notice To Customers Required	514
--	-----

*18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules***Docket No. 18-0156-1601**

010. Definitions	517
012. Permitted Consumer Information	518
013. Permitted Advertising With Trade Associations	519
014. Permitted Self-Promotional Advertising	519
017. Escrow Closing Charges And Premium Rates	520

IDAPA 20.03.16 - IDAHO DEPARTMENT OF LANDS*20.03.16 - Rules Governing Oil and Gas Leasing on Idaho State Lands***Docket No. 20-0316-1601 (Fee Rule)**

000. Legal Authority	522
001. Title And Scope	523
002. Written Interpretations	523
003. Administrative Appeals	523
004. Incorporation By Reference	523
005. Office – Office Hours – Mailing Address And Street Address	523
006. Public Records Action Compliance	523
007. -- 009. (Reserved)	523
010. Definitions	524
016. Withdrawal Of Lands	525
017. -- 019. (Reserved)	525
020. Qualified Applicants And Lessees	525
021. Exploration	526
023. -- 044. (Reserved)	531
045. Royalties	531
051. Diligent Exploration Required	532
056. Water Rights	533

057. -- 059. (Reserved).....	533
061. -- 069. (Reserved).....	533
071. Termination - Cancellation Of Lease.....	533
081. -- 089. (Reserved).....	534
120. Fees.....	534
20.07.02 - Rules Governing Conservation of Oil and Natural Gas in the State of Idaho	
Docket No. 20-0702-1601	
003. Administrative Appeals.....	537
004. Incorporation By Reference.....	537
005. Office -- Office Hours -- Mailing Address And Street Address.....	538
006. Public Records Act Compliance.....	538
007. -- 009. (Reserved).....	539
010. Definitions.....	539
011. Abbreviations.....	544
012. -- 014. (Reserved).....	545
015. Protection Of Correlative Rights.....	545
030. Notices - General.....	545
040. Permit Processing.....	546
100. Seismic Operations.....	546
101. -- 109. (Reserved).....	551
110. Surface Owner Protections.....	551
111. -- 119. (Reserved).....	552
120. Well Spacing.....	552
121. -- 129. (Reserved).....	554
130. Integration.....	554
131. -- 134. (Reserved).....	556
135. Unit Operation Agreements.....	556
136. -- 139. (Reserved).....	556
141. -- 199. (Reserved).....	557
200. Permit To Drill, Deepen, Or Re-Enter.....	557
201. Multiple Zone Completions.....	558
202. -- 204. (Reserved).....	559
205. Recompletions And Plug Back.....	559
206. Sundry Notices.....	559
207. --209. (Reserved).....	559
210. Well Treatments.....	559
211. Hydraulic Fracturing.....	562
212. -- 219. (Reserved).....	564
220. Bonding.....	564
221. Transfer Of Drilling Permits.....	565
222. -- 229. (Reserved).....	565
230. Pit Requirements.....	565
231. -- 299. (Reserved).....	569
300. Identification Of Wells.....	569
301. Well Site Operations.....	569
310. General Drilling Rules.....	569
314. Vacuum Pumps Prohibited.....	573
315. Pulling Outside Strings Of Casing.....	573
330. Well Directional Control.....	573
331. -- 339. (Reserved).....	574
340. Well Completion/Recompletion Report And Well Report.....	574
341. Well Logs.....	574

342. -- 399. (Reserved).....	575
400. Production Reports.....	575
401. Measurement Of Oil.....	576
403. Gas-Oil Ratio For Well Classifications.....	576
404. Gas-Oil Ratio Limitation.....	576
410. Meters.....	577
420. Tank Batteries.....	577
421. -- 429. (Reserved).....	578
430. Gas Processing Facilities.....	578
431. -- 499. (Reserved).....	579
500. Active Wells.....	580
502. Well Plugging.....	580
503. -- 509. (Reserved).....	582
510. Surface Reclamation.....	582
511. -- 999. (Reserved).....	584

IDAPA 22 - BOARD OF MEDICINE

22.01.03 - Rules for the Licensure of Physician Assistants

Docket No. 22-0103-1601

007. Filing Of Documents -- Number Of Copies.....	586
010. Definitions.....	586
020. Application.....	587
021. Requirements For Licensure.....	588
028. Scope Of Practice.....	589
029. Continuing Education Requirements.....	590
030. Practice Standards.....	590
036. Graduate Physician Assistant.....	592
037. Disciplinary Proceedings And Notification Of Change.....	592
042. Prescription Writing.....	594

IDAPA 23 - BOARD OF NURSING

23.01.01 - Rules of the Idaho Board of Nursing

Docket No. 23-0101-1601 (Fee Rule)

008. Changes In Name And Address -- Address For Notification Purposes.....	596
060. License Renewal.....	596
132. Limited Licenses.....	597
133. Advisory Committee.....	600
315. Prescriptive And Dispensing Authorization For Advanced Practice Registered Nurses.....	600
641. Faculty.....	601
900. Renewal And Reinstatement Fees.....	602
901. Licensure Fees.....	602

23.01.01 - Rules of the Idaho Board of Nursing

Docket No. 23-0101-1602

010. Definitions.....	605
640. Faculty Qualifications.....	607

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.01.01 - Rules of the Board of Architectural Examiners

Docket No. 24-0101-1601

004. Incorporation By Reference (Rule 4).....	611
010. Definitions (Rule 10).....	611

011. -- 099. (Reserved).....	611
100. Organization (Rule 100).....	611
250. Qualifications Of Applicants (Rule 250).....	612
251. -- 299. (Reserved).....	612
300. Application (Rule 300).....	612
301. -- 349. (Reserved).....	613
350. Registration Examination (Rule 350).....	613
375. Architectural Intern (Rule 375).....	614
450. Continuing Education (Rule 450).....	615
551. -- 699. (Reserved).....	617
752. -- 800. (Reserved).....	617
24.03.01 - Rules of the State Board of Chiropractic Physicians	
Docket No. 24-0301-1601 (Fee Rule)	
150. Fees (Rule 150).....	619
600. Chiropractic Peer Review (Rule 600).....	619
24.10.01 - Rules of the State Board of Optometry	
Docket No. 24-1001-1601 (Fee Rule)	
250. Licenses Canceled For Failure To Renew (Rule 250).....	623
300. Continuing Education In Optometry (Rule 300).....	623
575. Fees (Rule 575).....	624
24.12.01 - Rules of the Idaho State Board of Psychologist Examiners	
Docket No. 24-1201-1601	
402. Guidelines For Approval Of Continuing Education Credits (Rule 402).....	626
403. -- 449. (Reserved).....	627
450. Guidelines For Use Of Service Extenders To Licensed Psychologists (Rule 450).....	627
602. -- 624. (Reserved).....	631
24.16.01 - Rules of the State Board of Dentistry	
Docket No. 24-1601-1601	
100. Board Meetings (Rule 100).....	633
101. -- 149. (Reserved).....	633
150. Examinations (Rule 150).....	633
151. -- 199. (Reserved).....	633
200. Applications (Rule 200).....	633
300. Internship (Rule 300).....	634
301. -- 314. (Reserved).....	636
315. Inactive Licensure Status (Rule 315).....	636
450. Standards Of Conduct And Practice (Rule 450).....	637
451. -- 474. (Reserved).....	638
475. Registration Statement (Rule 475).....	638
24.17.01 - Rules of the State Board of Acupuncture	
Docket No. 24-1701-1601	
500. -- 524. (Reserved).....	639
24.18.01 - Rules of the Real Estate Appraiser Board	
Docket No. 24-1801-1602 (Fee Rule)	
010. Definitions (Rule 10).....	641
150. Fees (Rule 150).....	642
200. Application (Rule 200).....	643
201. -- 224. (Reserved).....	643
225. Requirements For Amc Registration (Rule 225).....	643

226. -- 249. (Reserved).....	643
275. Registered Trainee Real Estate Appraiser (Rule 275).....	644
276. -- 299. (Reserved).....	645
276. Registered Trainee Supervisors (Rule 276).....	645
300. Licensed Residential Real Estate Appraiser Classification Appraiser Qualification Criteria (Rule 300).....	646
301. -- 349. (Reserved).....	648
350. Certified Residential Real Estate Appraiser Classification Appraiser Qualification Criteria (Rule 350).....	648
351. -- 399. (Reserved).....	649
400. Certified General Real Estate Appraiser Classification Appraiser Qualification Criteria (Rule 400).....	649
551. -- 699. (Reserved).....	653
700. Uniform Standards Of Professional Appraisal Practice/Code Of Ethics (Rule 700).....	653
701. -- 999. (Reserved).....	653
24.19.01 - Rules of the Board of Examiners of Residential Care Facility Administrators	
Docket No. 24-1901-1601 (Fee Rule)	
401. Continuing Education (Rule 401).....	655
500. Renewal And Reinstatement OF Expired License (Rule 500).....	655
501. -- 599. (Reserved).....	656
600. Fees (Rule 600).....	656
24.22.01 - Rules of the Idaho State Liquefied Petroleum Gas Safety Board	
Docket No. 24-2201-1601	
004. Incorporation By Reference (Rule 4).....	658
24.23.01 - Rules of the Speech and Hearing Services Licensure Board	
Docket No. 24-2301-1601 (Fee Rule)	
010. Definitions (Rule 10).....	660
175. Fees (Rule 175).....	660
211. Support Personnel: Audiology (Rule 211).....	660
212. -- 219. (Reserved).....	664
450. Provisional Permit: Fitting And Dealing Hearing Aids (Rule 450).....	664
461. -- 499. (Reserved).....	666
601. -- 999. (Reserved).....	667
24.25.01 - Rules of the Idaho Driving Businesses Licensure Board	
Docket No. 24-2501-1601	
225. Driving Business License (Rule 225).....	669
227. Driving Business - Course Of Instruction (Rule 227).....	671
250. Driving Instructor License (Rule 250).....	672
24.27.01 - Rules of the Idaho State Board of Massage Therapy	
Docket No. 24-2701-1601 (Fee Rule)	
250. Fees.....	675
251. -- 299. (Reserved).....	675
300. Requirements For Original Licensure.....	675
301. -- 304. (Reserved).....	676
305. Approved Examinations.....	676
311. -- 319. (Reserved).....	677
320. Temporary License.....	677
321. -- 329. (Reserved).....	677
330. Provisional Permit.....	677
331. -- 399. (Reserved).....	677

IDAPA 27 - BOARD OF PHARMACY*27.01.01 - Rules of the Idaho State Board of Pharmacy***Docket No. 27-0101-1606**

114. Prescription Drug Order: Partial Filling.....	679
--	-----

IDAPA 28 - DEPARTMENT OF COMMERCE*28.02.07 - Rules Governing the Administration of the IGEM Grant Program***Docket No. 28-0207-1601**

010. Definitions.....	682
200. Request For Proposal (RFP).....	682
301. Matching Requirement.....	682
302. -- 399. (Reserved).....	682
400. Termination Of Funding.....	682
401. -- 499. (Reserved).....	683
500. Commercialization Revenue.....	683

IDAPA 35 - IDAHO STATE TAX COMMISSION*35.01.01 - Income Tax Administrative Rules***Docket No. 35-0101-1602**

006. Incorporation By Reference (Rule 006).....	685
075. Tax On Individuals, Estates, And Trusts (Rule 075).....	685
263. Idaho Source Income Of Nonresident And Part-Year Resident Individuals -- Distributive Share Of S Corporation And Partnership Income (Rule 263).....	688
771. Grocery Credit: Taxable Years Beginning After December 31, 2007 (Rule 771).....	689
872. Reporting And Paying State Income Tax Withholding (Rule 872).....	691
874. Employee's Wage And Tax Statements (Rule 874).....	692

*35.01.02 - Idaho Sales and Use Tax Administrative Rules***Docket No. 35-0102-1601**

079. Production Exemption (Rule 079).....	696
080. Lumber Manufacturing (Rule 080).....	698
081. Underground Mining (Rule 081).....	700
082. Aboveground, Open Pit, Mining (Rule 082).....	701
083. Farming And Ranching (Rule 083).....	703
096. Irrigation Equipment And Supplies (Rule 096).....	704
100. Prescriptions (Rule 100).....	705
102. Logging (Rule 102).....	706
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).....	708

Docket No. 35-0102-1602

037. Aircraft And Flying Services (Rule 037).....	714
---	-----

Docket No. 35-0102-1603

041. Food, Meals, Or Drinks (Rule 041).....	718
---	-----

*35.01.10 -- Idaho Cigarette and Tobacco Products Tax Administrative Rules***Docket No. 35-0110-1601**

017. Security For Tax Required (Rule 017).....	722
--	-----

*35.02.01 - Tax Commission Administration and Enforcement Rules***Docket No. 35-0201-1601**

310. Interest Rates (Rule 310).....	726
702. Disclosure Of Information: Third Parties (Rule 702).....	727

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - Rules of the Division of Purchasing

Docket No. 38-0501-1601

011. Definitions.....	729
012. -- 020. (Reserved).....	732
021. Delegation Of Authority Of Administrator.....	732
022. -- 030. (Reserved).....	733
031. Cooperative Purchasing Political Subdivisions.....	733
032. Acquisition Of Concession Services.....	733
033. Purchase Of Telecommunications Or Information Technology Property.....	733
034. Public Notice.....	734
042. Exceptions To Competition.....	734
043. Emergency Purchases.....	735
044. Small Purchases.....	735
045. Sole Source Purchases.....	737
046. Determination Of Fair Market Price For Rehabilitation Agency Acquisitions.....	737
047. -- 050. (Reserved).....	737
051. Content Of Solicitations Issued Under A Formal Sealed Procedure.....	737
052. Changes To Invitation To Bid Or Request For Proposals.....	738
053. -- 060. (Reserved).....	738
070. Pre-Proposal Conference.....	738
072. Late Bids/proposals, Late Withdrawals And Late Modifications.....	739
073. Receipt, Opening, And Recording Of Bids And Proposals.....	739
074. Mistakes.....	739
075. -- 080. (Reserved).....	740
081. Evaluation And Award.....	740
082. Tie Responses.....	741
083. Proposal Discussion With Individual Offerors.....	741
084. Negotiations.....	742
085. Price Agreements.....	744
086. -- 090. (Reserved).....	744
091. Acceptance Or Rejection Of Bids And Proposals.....	744
092. Cancellation Of Solicitation.....	744
102. -- 110. (Reserved).....	745
111. Specifications -- Policies And Development.....	745
113. Contract Oversight.....	746
114. -- 999. (Reserved).....	747

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.15 - Rules Governing Excess Weight Permits for Reducible Loads

Docket No. 39-0315-1601

001. Title And Scope.....	749
100. General Requirements and Conditions.....	749

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - Rules of the Idaho Division of Vocational Rehabilitation

Docket No. 47-0101-1601

001. Title And Scope.....	753
004. Incorporation By Reference.....	753
005. -- 009. (Reserved).....	753
010. Definitions.....	753

011. -- 099. (Reserved).....	754
100. Customer Appeals.....	754
200. Order Of Selection.....	754
201. -- 299. (Reserved).....	755
300. Customer Services.....	755

47.01.02 -- Rules and Minimum Standards Governing Extended Employment Services

Docket No. 47-0102-1601

000. Legal Authority.....	757
001. Title And Scope.....	757
005. Office Information.....	757
010. Definitions.....	757
011. -- 099. (Reserved).....	758
100. Program Year.....	758
101. -- 199. (Reserved).....	759
200. Extended Employment Services Provider Agreement.....	759
201. -- 299. (Reserved).....	759
300. Provider Qualifications.....	759
301. -- 399. (Reserved).....	760
400. Termination Or Revocation Of Provider Status.....	760
401. -- 499. (Reserved).....	760
500. Extended Employment Services Customer Referral, Eligibility, and Case Closure.....	760
501. -- 599. (Reserved).....	761
600. Covered Services.....	762
800. Service Provision.....	762
801. Records.....	763
802. -- 899. (Reserved).....	763
900. Payment For Services.....	764

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - Rules of the Commission of Pardons and Parole

Docket No 50-0101-1602

400. Parole Revocation Process.....	765
-------------------------------------	-----

IDAPA 55 - DIVISION OF CAREER-TECHNICAL EDUCATION

55.01.03 - Rules of Career-Technical Schools

Docket No. 55-0103-1601

005. Definitions.....	772
101. Career-Technical School General Approval Criteria.....	772
102. career-Technical Component Criteria.....	773
103. Application Process.....	773
105. Career-Technical School Average Daily Attendance.....	774
108. Accountability.....	774

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - Rules of the Sexual Offender Management Board

Docket No. 57-0101-1601 (Fee Rule)

004. Incorporation By Reference.....	777
010. Definitions.....	777
011. Abbreviations.....	779
041. Levels Of Psychosexual Evaluator Certification.....	780
081. Levels Of Sexual Offender Treatment Provider Certification.....	781

150. Request For Conditional Waiver	781
151. (Reserved)	782
201. Levels Of Post Conviction Sexual Offender Polygraph Examiner Certification.....	782
202. Criteria Exception For Post Conviction Sexual Offender Polygraph Examiners.	783
203. -- 230. (Reserved).....	783
231. Continuing Education For Post Conviction Sexual Offender Polygraph Examiners.....	783
232. -- 299. (Reserved).....	783
300. Standards For Professional Conduct And Client Relations.....	783
332. Fees.	784
333. Certification Period.....	785
350. Central Roster Of Psychosexual Evaluators, Sexual Offender Treatment Providers And Post Conviction Sexual Offender Polygraph Examiners.	785

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION*61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's
Principles of an Indigent Defense Delivery System***Docket No. 61-0107-1601 (New Chapter)**

000. Legal Authority.	789
001. Title And Scope.....	789
002. Written Interpretations.....	789
003. Administrative Appeals.....	789
004. Incorporation By Reference.	789
005. Office—Office Hours—Mailing And Street Address—Telephone—Internet Website.....	789
006. Public Records Act Compliance.....	789
007-009. (Reserved) 789	
010. Definitions	790
011. Abbreviations	791
012. – 019. (Reserved).....	791
020. Public Defense Roster.	791
021. Application Of Established Standards.....	792
021. – 099. (Reserved).....	792

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

The written comment submission deadline is October 19, 2016 unless otherwise noted.

Public hearing request deadline is October 26, 2016 unless otherwise noted.

(Temp & Prop) indicates the rule is both Temporary and Proposed.

*(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 – DEPARTMENT OF AGRICULTURE

PO Box 790, Boise ID 83701

02-0414-1601, Rules Governing Dairy Waste. Addresses statutory requirements that clarify scope of dairy environmental management practices and compliance with IPDES permits; changes requirements related to pasture access for dairy cattle.

02-0415-1601, Rules Governing Beef Cattle Animal Feeding Operations. Conforms rule to statutory changes related to pollutant discharge and compliance with IPDES permits.

02-0416-1601, Rules Governing Agriculture Odor Management. Clarifies that swine and poultry operations are subject to regulation under different rules.

02-0419-1601, Rules Governing Domestic Cervidae. Requires domestic cervidae producers to report the cause of death of each cervid to the department on the official death certificate form; clarifies the minimum surveillance requirements for Chronic Wasting Disease on domestic cervidae facilities.

02-0421-1601, Rules Governing the Importation of Animals. Conforms rule to federal regulations pertaining to official identification of imported dairy cattle; clarifies requirements to participate in the equine approved feedlot program and tuberculosis testing requirements for imported domestic cervidae.

02-0432-1601, Rules Governing Poultry Operations. Defines “Idaho Pollutant Discharge Elimination System” in rule.

IDAPA 07 – DIVISION OF BUILDING SAFETY

1090 E. Watertower St., Ste. 150, Meridian, ID 83542

07-0106-1601, Rules Governing the Use of the National Electrical Code. Incorporates by reference the 2017 National Electrical Code with amendments the section related to installation of an arc-fault circuit-interrupter.

07-0202-1601, Rules Governing Plumbing Permits. Allows a plumbing contractor or homeowner to transfer a plumbing permit to another eligible person with specific limitations; provides for a refund of the permit fee or up to 50% of the fee if less than half the work has been completed; imposes a \$45 permit transfer fee.

07-0206-1601, Rules Concerning Idaho State Plumbing Code. Incorporates by reference the 2015 Uniform Plumbing Code with amendments; provides that the Division may have written interpretations of its rule that are available for review.

07-0301-1601, Rules of Building Safety. Incorporates by reference the 2015 International Building Code, the 2015 International Existing Building Code, and the 2015 International Energy Conservation Code, with amendments and exceptions.

07-0501-1601, Rules of the Public Works Contractors License Board. Requires an electrical license, or specialty electrical license, and a public works contractor's specialty construction electrical license to lawfully perform the installation, alteration, or repair of instrumentation and controls for various mechanical systems on public works projects.

07.07.01 -- Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems.

07-0701-1601, Amends Section 202 of the 2012 International Mechanical Code that is incorporated by reference by redefining electric or gas conveyor pizza oven as a Light-Duty Cooking Appliance which requires a Type II hood; would allow for Division to produce written interpretations when needed to provide guidance to HVAC installers.

07-0701-1602, Allows an HVAC worker to qualify to take the journeyman's exam by demonstrating 8 years of HVAC experience in lieu of the current requirement of 4 years' experience and 4 years of schooling; imposes a \$45 HVAC permit transfer fee.

07.08 -- Idaho Minimum Safety Standards and Practices for Logging:

In each of the following rule chapters under IDAPA 07, Title 08, required informational sections have been added at the beginning of each rule including a provision for an appeals process related to logging safety issues. The following describe additional amendments made to each rule chapter:

07-0801-1601, -- General Provisions. Provides updated references and citations to standards and regulations; removes obsolete language and illustrations; updates definitions; clarifies Division's role and responsibilities; provides for an appeals process.

07-0802-1601, -- Health, Safety, and Sanitation. Identifies practices related to providing first aid and first aid kits; amends provisions for safety and fire equipment usage and use of personal protective equipment.

07-0803-1601, -- Explosives and Blasting. Chapter repeal.

07-0804-1601, -- Garages, Machine Shops, and Related Work Areas. Makes minor clarifications to work area requirements.

07-0805-1601, -- Signals and Signal Systems. Clarifies requirements related to signaling and radio signals systems used in logging operations.

07-0806-1601, -- Truck Road Standards. Clarifies requirements for safe logging road construction and equipment operation.

07-0807-1601, -- Transportation of Employees. Clarifies several requirements related to safe employee transportation during logging operations including emergency situations.

07-0808-1601, -- Falling and Bucking. Updates provisions related to the sage cutting and falling of trees and the use of mechanical delimiters and felling equipment; illustrates and identifies the proper cutting techniques of some common cutting methods.

07-0809-1601, -- Rigging, Lines, Blocks, and Shackles. Clarifies and updates provisions for use of guylines, guyline anchors, ropes and lines; updates specifications for wire rope; replaces old illustrations of equipment.

07-0810-1601, -- Canopy and Canopy Construction for Logging Equipment. Clarifies safe operation of logging tractors and other equipment.

07-0811-1601, -- Skidding and Yarding. Revises and adds provisions related to skidding and yarding, cable yarding, yarding machinery, wire rope, and tree climbing; provides a table for wire rope specifications; updates illustrations.

07-0812-1601, -- Road Transportation. Clarifies provisions related to safe logging truck transportation.

07-0813-1601, -- 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. Makes minor revisions related to log handling.

07-0814-1601, -- Helicopter Logging. Amends requirements related to helicopter logging operations.

07-0815-1601, -- Commonly Used Logging Terms. Makes minor amendments to terms commonly used in logging operations.

07-0816-1601, -- Recommended Safety Program. Updates provisions related to the scope of the rules, fire and safety policies, and the proper reporting of logging injuries and fatalities to appropriate authorities; establishes administrative procedures for the issuance of safety orders by the administrator and the procedural rights for those who may object to a safety order and seek to contest the matter.

**IDAPA 08 – IDAHO STATE BOARD AND DEPARTMENT OF EDUCATION
PO Box 83720, Boise, ID 83720-0037**

08-0102-1601, Rules Governing the Postsecondary Credit Scholarship Program. (Temp & Prop) new chapter establishes procedures for applying for the Postsecondary Credit Scholarship and clarifies the required business or industry matching scholarship.

08-0104-1601, Residency. (Temp & Prop) Removes obsolete definitions and provisions; defines “accredited secondary school” and “armed forces”; sets time limits for submitting request for reclassification of residency determinations; simplifies and clarifies the factors used for determining domicile; simplifies the appeals process.

08-0109-1601, Rules Governing the GEAR UP Idaho Scholarship Program. Chapter repeal.

08.02.01 -- Rules Governing Administration

08-0201-1602, (Temp & Prop) Establishes statewide readiness and improvement metrics, literacy intervention plan requirements and reporting metrics, and college and career advising plan requirements and minimum metrics.

08-0201-1603, (Temp & Prop) Creates statewide growth targets for improving student literacy proficiency.

08-0201-1604, (Temp & Prop) Establishes multiple measures for determining peer groups for school districts based on district size, geographical location and pupil populations; determines how measures are combined for group districts to determine statewide class size for each peer group.

08-0202-1607, Rules Governing Uniformity. Allows for multiple endorsements to be earned through a single certificate that doesn't limit grade ranges; aligns administrator evaluation submittal timeline with statute; aligns certificated staff evaluations regarding student achievement with student achievement requirements that are part of the career ladder; creates middle school/grades endorsement grade ranges; and updates the occupational specialist certificates; updates endorsements to align with current/best practices.

08.02.03 -- Rules Governing Thoroughness.

***08-0203-1601,** (*PH) Revises the Content Standards for Arts and Humanities; English Language Arts/Literacy, Health, Math, PE and Social Studies; adds Computer Science to standards.

***08-0203-1603,** (*PH) (Temp & Prop) Adds provisions and clarity to the Advanced Opportunities section on the administration of the new Early Graduation Scholarship.

***08-0203-1608,** (*PH) Establishes a new public school accountability system framework, including all federally required indicators; makes technical corrections; adds and amends definitions; removes obsolete sections.

08-0203-1609, No longer requires a proficient or advanced score on the grade ten ISAT as a public school graduation requirement; clarifies that students can earn credits toward graduation through mastery of content.

08-0203-1610, Includes the recently approved 2016 Career Technical Education content standards as part of the Idaho Content Standards that are incorporated by reference.

08-0203-1611, (Temp & Prop) Clarifies that each LEA may establish an alternate path for determine if a student has met the state civics and government content standards requirement.

08-0205-1601, Rules Governing Pay for Success Contracting. New chapter establishes the requirements for contracting for services with private entities whose service are reimbursed based on the achievement of outcomes

pursuant to state law.

08-0501-1601, Rules Governing Seed and Plant Certification. Amends the Idaho Rapeseed/Canola/Mustard certification standards, which are incorporated by reference, by adding a limit to the allowable sclerotinia bodies where previously there was none.

**IDAPA 11 – IDAHO STATE POLICE
700 S. Stratford Dr., Meridian, ID 83642**

11-0402-1601, Rules Governing Simulcasting. Deletes all provisions related to historical horse racing that was banned in 2015.

11-0403-1601, Rules Governing Licensing and Fees. Increases fees for taking and processing fingerprints for applicants for licensure to \$25.

11.11.01 -- Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1601, Redefines term “Law Enforcement Profession”; establishes the minimum prohibitions for marijuana use for POST training or certification applicants; simplifies driver license status requirements for applicants; clarifies the “Agreement to Serve” requirements of, exemptions from, and proration for reimbursement of training costs to POST for officers who do not remain in the Idaho law enforcement profession for a minimum of two (2) years.

11-1101-1602, (Temp & Prop) In compliance with Idaho Code, establishes the requirement for a POST compliance review of each applicant to include a provision for inspection of the hiring agency’s background investigation file.

11-1102-1601, Rules of the Idaho POST Council for Juvenile Detention Officers. Clarifies certification requirements for part-time juvenile detention officers; eliminates the use of non-POST certified instructors for basic training.

11-1104-1601, Rules of the Idaho POST Council for Correctional Officers and Adult Probation and Parole Officers. Makes the minimum standards for employment the same for all disciplines regulated by POST.

11.13.01 -- The Motor Carrier Rules

11-1301-1601, (Temp & Prop) Adds reference to Section of Idaho Code that provides for statutory adoption of federal regulations related to transport of hazardous materials; updates incorporation by reference Part 49 of the Code of Federal Regulations.

11-1301-1602, Incorporates by reference the adoption of CFR 49 Part 380 related to driver training requirements for long combinations vehicles.

11-1301-1603, Requires the use of ELD’s by December 2017 to document record of duty status with exceptions.

**IDAPA 12 – DEPARTMENT OF FINANCE
PO Box 83720, Boise, ID 83720-0031**

12-0110-1601, Rules Pursuant to the Idaho Residential Mortgage Practices Act. Updates the latest versions of the Truth in Lending, Regulation Z, the Real Estate Settlement Procedures Act and Regulation X that are incorporated by reference.

**IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME
PO Box 25, Boise, ID 83707**

13-0102-1601, Rules Governing Hunter Education and Mentored Hunting. Implements a mandatory trapping education program for trappers who purchased their first trapping license on or after July 1, 2011; broadens the description of mandatory education; establishes fees for mandatory hunter, archery, and trapping education; integrates reference to existing archery education; deletes an obsolete regarding firearms.

13.01.08 -- Rules Governing the Taking of Big Game Animals in the State of Idaho

*13-0108-1601, (*PH) Provides for the administration of grizzly bear hunting in Idaho if season is ever established.

13-0108-1603, Increases the time to 2 years that a hunter must wait after drawing an antlered-only deer or elk tag to be eligible to apply again.

13.01.09 -- Rules Governing the Taking of Game Birds in the State of Idaho

13-0109-1601, (Temp & Prop) Modifies the current boundary of the Hagerman goose hunting closure area to remove certain private property to allow hunting to reduce goose depredation on crops.

13-0109-1602, Simplifies and makes more consistent the age and mentor requirements for youth-only hunts.

13-0111-1601, Rules Governing Fish. (Temp & Prop) Allows harvest of unclipped summer Chinook salmon in the Clearwater River in 2016.

13-0117-1601, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals. Revises the distance from road and trails for placing bear baits in the Panhandle and Clearwater regions.

**IDAPA 15 – OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION
304 N. 8th St., Boise, ID 83720**

15-0606-1601, Rules Governing Use of Disaster Emergency Account Funds. New chapter specifies what qualifies for disaster emergency fund use during a declared disaster.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

16-0201-1601, Rules of the Idaho Time Sensitive Emergency System Council. Incorporates by reference the 2017-1 edition of the TSE Standards Manual.

16-0202-1601, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission. Incorporates by reference the 2017-1 edition of the EMS Physician Commission Standards Manual.

16-0303-1601, Rules Governing Child Support Services. Requires reporting by Department to a consumer reporting agency a non-custodial parent for non-payment of child support when the accrued arrears exceed 3 months of due child support.

16-0304-1601, Rules Governing the Food Stamp Program in Idaho. Deletes language that requires rule citations to be included as part of the customer notices; aligns the 36-month fixed time limitation for the Able Bodied Adult Without Dependents (ABAWD) program requirements.

16-0305-1601, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled. Clarifies the primary method of determining countable self-employment income that aligns with social security rules; clarifies what establishes disability criteria for residents in a nursing home who receive Medicaid; and removes the interest rate criteria for irrevocable annuities.

16-0308-1601, Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program. Clarifies definitions for parents, step-parents, and caretaker relatives; modifies additional provisions that pertain to the changes made to these definitions.

16.03.09 -- Medicaid Basic Plan Benefits

**16-0309-1601, (*PH)* Clarify requirements for physician orders for home health services and DME; add a requirement for a documented face-to-face encounter prior to delivery of services or equipment and supplies for home health services and DME providers; clarifies the non-physician practitioners who may conduct face-to-face encounters and that home health services and DME cannot be restricted to services provided in the home, and that they may be provided in any setting in which normal life activities take place.

**16-0309-1602, (*PH)* Clarifies the Department's use of the appropriate pricing methodologies to provide reimbursement to pharmacies, for physician-administered drugs, and to 340B covered entities that already receive discounts from the drug manufacturers; aligns language and definitions with recent changes to federal regulations under 42 CFR 447.

**16-0719-1601, Behavioral Health Certification of Peer Support Specialists and Family Support Partners. (*PH)* New chapter establishes the qualifications and requirements for certification of peer support specialists and family support partners and administration for certification including enforcement and actions for denial, revocation, or suspension.

**16-0737-1601, Children's Mental Health Services. (*PH)* Changes reflect the adoption of the Child and Adolescent Needs and Strengths (CANS) assessment tool as specified in the Jeff D court-approved implementation plan; deletes references to federal child welfare requirements in the Alternate Care sections that no longer apply and updates rule

to reflect current practice.

IDAPA 18 – DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-00

***18-0148-1601, Rule to Implement the Privacy of Consumer Financial Information.** (*PH) (Temp & Prop) Provides relief for insurers and producers from sending their customers an annual privacy notice in certain instances.

18-0156-1601, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules. Defines “social media” and clarifies its use; permits photos to be included in listing package if no additional charge is required; allows last deed of record to be provided without charge to specific entities; eliminates the quarterly publication requirement; permits advertising in annual trade association publications; prohibits donating or contributing to or otherwise sponsoring a trade association event; increases amount allowed for self-promotion and amends educational programs offerings restrictions.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

PO Box 83720, Boise, ID 83720-00

***20-0316-1601, Rules Governing Oil and Gas Leasing on Idaho State Lands.** (*PH) Clarifies the lease nomination and lease auction process; lease length is determined by statute and is removed from rule; improves lease area language to minimize unnecessary small acreage leases; adjusts the lease tract application/nomination fee, the annual lease rental rate per acre (and a minimum annual rental rate), the assignment fee, and the shut-in fee to current day cost recovery levels; updates definitions.

***20-0702-1601, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.** (*PH) Makes terminology consistent; aligns role of Commission and Department with statute; conforms appeals process to statute; updates incorporations by reference; updates contact information; conforms public records act compliance to statute; adds and deletes definitions; clarifies protection of correlative rights; amends notice requirements, permit requirements and processing to conform to statute; redefines seismic exploration clarifies requirements; clarifies requirements for spacing units; conforms integration, unitization, and other processes to conform to statute; conditionally authorizes drill pad construction prior to permit approval; adds a setback of wells from occupied structures; modifies other permit requirements to ensure compliance with Commission authorities; application and processing for recompletions and plug backs is added; authorizes sundry notices; amends permit transfer process ensure new operator is registered and in good standing; inventory of wellhead equipment is added; amends well logging and reporting requirements to improve information gathering and retention; changes production reporting requirements; increases gas-oil ratio to 10,000:1 for gas well classification; meter calibration is modified to increase transparency; amends tank battery and processing facility standards to add flexibility; increases the reporting requirements for active wells to provide information to Commission.

IDAPA 22 – BOARD OF MEDICINE

PO Box 83720, Boise, Idaho 83720-0058

22-0103-1601, Rules for the Licensure of Physician Assistants. Clarifies the educational requirements and national certification requirements for licensure and renewal of licensure; addresses record reviews of graduate physician assistants; allows a physician assistant to order controlled substances for office use.

IDAPA 23 – IDAHO BOARD OF NURSING

PO Box 83720, Boise, ID 83720-0061

23.01.01 -- Rules of the Idaho State Board of Nursing.

23-0101-1601, Provides for use of e-mail in correspondence with licensees and in service of certain Board documents in contested case proceedings; deletes provisions requiring renewal and payment of renewal fees for an emeritus nursing license; modernizes language applicable to individuals with impairments; updates and clarifies rules regarding issuance of limited licenses and a Board advisory committee; deletes provisions and required fee related to prescriptive authority for advanced practice nurses.

23-0101-1602, (Temp & Prop) Amends definition of clinical preceptors and requires clinical preceptors to be licensed at or above the license level for which a student nurse is preparing.

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

PO Box 83720, Boise, ID 83720-0063

24-0101-1601, Rules of the Board of Architectural Examiners. Incorporates by reference the most recent NCARB

Certification Guidelines and Rules of Conduct; defines 3 new terms; provides Board more flexibility in approving applicants to sit for exam; clarifies license renewal and reinstatement requirements; deletes requirement that the Attorney General provide legal services to the board.

24-0301-1601, Rules of the State Board of Chiropractic Physicians. Separates and sets application fee and original license fee; clarifies the peer review process.

24-1001-1601, Rules of the State Board of Optometry. Increases number of credited continuing education hours for licensees to 9 annually.

24-1201-1601, Rules of the Idaho State Board of Psychologist Examiners. Clarifies who can provide on-line continuing education; establishes that a service extender cannot provide service until after the Board approves the supervisory plan; creates a new category for a service extender who provides psychometrician services; establishes Telepsychology practice per state law.

24-1601-1601, Rules of the State Board of Dentistry. Provides flexibility for setting meeting dates; clarifies examination times and process; adds supervisor requirements for the apprenticeship program; clarifies the standards of conduct.

24-1701-1601, Rules of the State Board of Acupuncture. Removes requirement for practitioner to register business name with Board.

24-1801-1602, Rules of the Real Estate Appraiser Board. Requires registration of Appraisal Management Companies with Board; clarifies qualifications for appraiser licensure; updates renewal and reinstatement rules; consolidates registered trainee supervisor requirements.

24-1901-1601, Rules of the Board of Examiners of Residential Care Facility Administrators. Requires applicants for reinstatement to complete minimum number of continuing education courses; increase the reinstatement fee for expired residential care administrator licenses to \$35.

24-2201-1601, Rules of the Idaho State Liquefied Petroleum Gas Safety Board. Incorporates by reference the 2017 edition of the Liquefied Petroleum Gas Code, NFPA 58.

24-2301-1601, Rules of the Speech and Hearing Services Licensure Board. Defines audiology support personnel; establish qualifications for Hearing Aid Dealer and Fitter Supervisors; deletes provisions regarding Audiology Provisional Permits which are no longer relevant; reduces fees for original and license renewal.

24-2501-1601, Rules of the Idaho Driving Businesses Licensure Board. Clarifies that current instructors list must be submitted for original and reinstatement applications and list must be kept current and made available to Board; clarifies that if using a third party provider for on-line classroom instruction, licensee is responsible for ensuring the content meets Board-approved requirements; outlines when the business licensee must send performance information to DMV; clarifies who may provide a medical exam and the documents needed for Board verification.

24-2701-1601, Rules of the Idaho State Board of Massage Therapy. Establishes requirements for a temporary license and provisional permit and sets fees for each; lowers fees for original license and annual license renewal; updates list of approved licensure exam.

**IDAPA 27 – BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067**

***27-0101-1606, Rules of the Idaho State Board of Pharmacy (*PH)** Allows a Schedule II controlled substance prescription drug order to be partially filled and dispensed within a certain timeframe as allowed by federal law.

**IDAPA 28 – DEPARTMENT OF COMMERCE
PO Box 83720, Boise, ID 83720-0093**

28-0207-1601, Rules Governing the Administration of the IGEM Grant Program. Conforms rule to statutory language; defines “industry partner”; cites responsibilities that pertain to the department and not IGEM Council; clarifies when funds may be terminated.

IDAPA 35 - IDAHO TAX COMMISSION
PO Box 36, Boise, ID 83722-0410

35-0101-1602 – Income Tax Administrative Rules. Updates incorporation by reference of the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions; adds 2016 tax bracket and applicable grocery credit amounts; updates the amount of guaranteed payments that are sourced as compensation for services; conforms language to HB 353.

35.01.02 -- Idaho Sales and Use Tax Administrative Rules.

35-0102-1601, Clarifies exempt equipment and supplies used for a necessary quality control function; amends production exemption regarding “removal from storage” for agricultural commodities; removes the exclusion of hand tools with a unit cost of less than \$100; amends exemption on prescription eye wear; adds paddleboards to list of vessels that are not exempt when sold to nonresidents.

35-0102-1602, Exempts the sale, lease, purchase, or use of fixed-wing aircraft primarily used as an air tactical group supervisor platform under contract with a governmental entity for wildfire activity.

35-0102-1603, Corrects statutory citations to Older Americans Act.

35-0110-1601, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Clarifies the procedure for determining the amount of the bond required for wholesalers.

35-0201-1601, Tax Commission Administration and Enforcement Rules. Adds interest rate for calendar year 2017 and the Revenue Ruling where the federal rate for the calculation can be found; provides that a power of attorney form for future tax periods is limited to 3 years in the future.

IDAPA 38 – DEPARTMENT OF ADMINISTRATION
PO Box 83720, Boise, ID 83720-0003

38-0501-1601, Rules of the Division of Purchasing. Implements the new State Procurement Act (2016) by establishing the process and factors that influence the decision to grant, continue and revoke delegated purchasing authority; establishes policies and procedures related to the administration, management, monitoring and oversight of contracts entered into by an agency; amends and adds definitions; makes minor modifications to update and clarify language.

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129

39-0315-1601, Rules Governing Excess Weight Permits for Reducible Loads. Expands the scope of the rule to allow statewide permitting by the DMV of commercial vehicle combinations in excess of 80,000 pounds when agreed to by the local highway authority; allows for permitting of 129,000 lb commercial motor vehicles (129K trucks) on the state’s Interstate system.

IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION
PO Box 83720, Boise, ID 83720-0037

47-0101-1601, Rules of the Idaho Division of Vocational Rehabilitation. Incorporates by reference the latest revisions to the IDVR Field Services Manual which include updates and additions to definitions; clarification of the review and assessment data used for eligibility determinations and determination of significance of disability; updates references to the Workforce Innovation and Opportunity Act; aligns Order of Selection procedures with federal guidelines and best practices.

IDAPA 55 – DIVISION OF CAREER-TECHNICAL EDUCATION
PO Box 83720, Boise, ID 83720-0037

55-0103-1601, Rules for Career-Technical Schools. Updates definitions; makes technical corrections; clarifies the application processes and calculation of average daily attendance for Career-Technical Schools for calculating added cost funding.

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD
1299 N. Orchard St., Ste. 110M, Boise, ID 83706

57-0101-1601, Rules of the Sexual Offender Management Board. Adopts the latest revision to the SOMB’s standards and guidelines previously incorporated by reference; extends timeline for applicants to meet the clinical

experience requirements; clarifies training requirements for dual population certification; modifies some supervision requirements for certain providers; clarifies certain conditional waiver provisions for applicants; reduces quality assurance monitoring measures to available SOMB resources; aligns continuing education requirements for polygraph examiners to APA standards; modifies formal education provision for post-conviction sex offender polygraph examiners.

IDAPA 61 – STATE PUBLIC DEFENSE COUNCIL

816 West Bannock St., Suite 201, Boise, ID 83702

61-0107-1601, Rules Governing Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System. Establishes standards for attorneys appointed to represent indigent persons which include conforming to performance standards, carrying a maximum number of cases per year, and attending initial court appearances.

NOTICES OF INTENT TO PROMULGATE OF THE FISH AND GAME COMMISSION

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

13-0107-1601, Rules Governing the Taking of Upland Game Animals

13-0109-1603, Rules Governing the Taking of Game Birds in the State of Idaho

13-0111-1602, Rules Governing Fish

13-0113-1601, Rules Governing the Taking of American Crow in the State of Idaho

13-0116-1601, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

NOTICES OF ADOPTION OF TEMPORARY RULE

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50-0101-1602, Rules of the Commission of Pardons and Parole (eff.date 8-8-16)T

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING

IDAPA 42 - IDAHO WHEAT COMMISSION

42-0101-1601, Rules of the Wheat Commission (2nd Notice) (See Bulletin for Meeting Schedules)

Please refer to the Idaho Administrative Bulletin, **October 5, 2016, Volume 16-10**, 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.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; Fax: 332-1896; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*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.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES (Index of Current and Active Rulemakings)

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

March 25, 2016 -- October 5, 2016

(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 March 25, 2016 - Sine Die, 2015 Legislative Session.)

IDAPA 01 -- IDAHO BOARD OF ACCOUNTANCY

01.01.01, Idaho Accountancy Rules

01-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 02 -- IDAHO DEPARTMENT OF AGRICULTURE

02.02.14, Rules for Weights and Measures

02-0214-1601 Proposed Rulemaking, Bulletin Vol. 16-7

02-0214-1601 Adoption of Pending Rule, Bulletin Vol. 16-9 (eff. PLR 2017)

02.04.08, Rules Governing Grade A Milk and Milk Products

02-0408-1601 Proposed Rulemaking, Bulletin Vol. 16-7

02-0408-1601 Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

02.04.14, Rules Governing Dairy Waste

02-0414-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0414-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.04.15, Rules Governing Beef Cattle Animal Feeding Operations

02-0415-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0415-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.04.16, Rules Governing Agriculture Odor Management

02-0416-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0416-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.04.18, Rules Governing CAFO Site Advisory Team

02-0418-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.19, Rules Governing Domestic Cervidae

02-0419-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0419-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.04.21, Rules Governing the Importation of Animals

02-0421-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0421-1602 Adoption of Temporary Rule, Bulletin Vol. 16-8 (Eff. 7-1-16)T

02-0421-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.04.30, Rules Governing Nutrient Management

02-0430-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.31, Rules Governing the Stockpiling of Agricultural Waste

02-0431-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.32, Rules Governing Poultry Operations

02-0432-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02-0432-1601 Proposed Rulemaking, Bulletin Vol. 16-10

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

02-0602-1601 Proposed Rulemaking, Bulletin Vol. 16-7

02-0602-1601 Adoption of Pending Rule, Bulletin Vol. 16-9 (PLR 2017)

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

- 02-0612-1601** Proposed Rulemaking, Bulletin Vol. 16-7
02-0612-1601 Adoption of Pending Rule, Bulletin Vol. 16-9 (PLR 2017)

02.06.21, Rules for Voluntary Public Services of the Idaho Department of Agriculture Laboratories

- 02-0621-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.06.22, Noxious Weed Rules

- 02-0622-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
02-0622-1601 Proposed Rulemaking, Bulletin Vol. 16-9

02.06.31, Noxious Weed Free Forage and Straw Certification Rules

- 02-0631-1601** Adoption of Temporary Rule, Bulletin Vol. 16-7 (Eff. 6-1-16)T
02-0631-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
02-0631-1602 Proposed Rulemaking, Bulletin Vol. 16-9

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

- 02-0641-1601** Proposed Rulemaking, Bulletin Vol. 16-7
02-0641-1601 Adoption of Pending Rule, Bulletin Vol. 16-9 (PLR 2017)

IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS***05.01.03, Rules of the Custody Review Board***

- 05-0103-1601** Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 06 -- STATE BOARD OF CORRECTION***06.01.02, Rules of Correctional Industries***

- 06-0102-1601** Notice of Proclamation of Rulemaking, Bulletin Vol. 16-9 (eff. 10-7-16)

IDAPA 07 -- DIVISION OF BUILDING SAFETY

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
(Rulemaking affects all Chapters under Title 08 - "Idaho Minimum Safety Standards and Practices for Logging")

07.01.06, Rules Governing the Use of National Electrical Code

- 07-0106-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
07-0106-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.02.02, Rules Governing Plumbing Permits

- 07-0202-1601** Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-10

07.02.05, Rules Governing Plumbing Safety Licensing

- 07-0205-1601** Proposed Rulemaking, Bulletin Vol. 16-9

07.02.06, Rules Concerning the Idaho State Plumbing Code

- 07-0206-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
07-0206-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.02.07, Rules Governing Civil Penalties

07-0207-1601 Proposed Rulemaking, Bulletin Vol. 16-9

07.03.01, Rules of Building Safety

07-0301-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-3

07-0301-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.05.01, Rules of the Public Works Contractors License Board

07-0501-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

07-0701-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

07-0701-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07-0701-1602 Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-10

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

(Rulemaking affects all Chapters under Title 08 - "Idaho Minimum Safety Standards and Practices for Logging")

07.08.01, Idaho Minimum Safety Standards and Practices for Logging -- General Provisions

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0801-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.02, Idaho Minimum Safety Standards and Practices for Logging -- Health, Safety, and Sanitation

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0802-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.03, Idaho Minimum Safety Standards and Practices for Logging -- Explosives and Blasting

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0803-1601 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 16-10

07.08.04, Idaho Minimum Safety Standards and Practices for Logging -- Garages, Machine Shops, and Related Work Areas

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0804-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.05, Idaho Minimum Safety Standards and Practices for Logging -- Signals and Signal Systems

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0805-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.06, Idaho Minimum Safety Standards and Practices for Logging -- Truck Road Standards

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0806-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.07, Idaho Minimum Safety Standards and Practices for Logging -- Transportation of Employees

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0807-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.08, Idaho Minimum Safety Standards and Practices for Logging -- Falling and Bucking

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0808-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.09, Idaho Minimum Safety Standards and Practices for Logging -- Rigging, Lines, Blocks, and Shackles

07-0800-1501 Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12

07-0809-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.10, Idaho Minimum Safety Standards and Practices for Logging -- Canopy and Canopy Construction for Logging Equipment

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0810-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.11, Idaho Minimum Safety Standards and Practices for Logging -- Skidding and Yarding

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0811-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.12, Idaho Minimum Safety Standards and Practices for Logging -- Road Transportation

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0812-1601 Proposed Rulemaking, Bulletin Vol. 16-10

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

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0813-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.14, Idaho Minimum Safety Standards and Practices for Logging -- Helicopter Logging

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0814-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.15, Idaho Minimum Safety Standards and Practices for Logging -- Commonly Used Logging Terms

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0815-1601 Proposed Rulemaking, Bulletin Vol. 16-10

07.08.16, Idaho Minimum Safety Standards and Practices for Logging -- Recommended Safety Program

- 07-0800-1501** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 15-12
07-0816-1601 Proposed Rulemaking, Bulletin Vol. 16-10

**IDAHA 08 -- IDAHO STATE BOARD OF EDUCATION
AND STATE DEPARTMENT OF EDUCATION****08.01.02, Rules Governing Postsecondary Credit Scholarship Program**

- 08-0102-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 16-7
08-0102-1601 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 16-10 (eff. 8-11-16)T

08.01.04, Residency

- 08-0104-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0104-1601 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 16-10 (eff. 8-11-16)T

08.01.09, Rules Governing the GEAR UP Idaho Scholarship Program

- 08-0109-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
08-0109-1601 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 16-10

08.02.01, Rules Governing Administration

- 08-0201-1601*** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6 (*Rulemaking Terminated)
08-0201-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0201-1603 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0201-1604 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0201-1602 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-11-16)T
08-0201-1603 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-11-16)T

08-0201-1604 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-11-16)T

08.02.02, Rules Governing Uniformity

08-0202-1601 Adoption of Temporary Rule, Bulletin Vol. 16-4 (eff. 2-18-16)T
08-0202-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0202-1603 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0202-1604 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0202-1605 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
08-0202-1606 *Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6 (docket pulled prior to publication)*
08-0202-1607 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
08-0202-1602 Proposed Rulemaking, Bulletin Vol. 16-8
08-0202-1603 Proposed Rulemaking, Bulletin Vol. 16-8
08-0202-1604 Proposed Rulemaking, Bulletin Vol. 16-8
08-0202-1605 Proposed Rulemaking, Bulletin Vol. 16-8
08-0202-1607 Proposed Rulemaking, Bulletin Vol. 16-10

08.02.03, Rules Governing Thoroughness

08-0203-1504* Temporary and Proposed Rulemaking, Bulletin Vol. 15-6 (4-16-15)T (**Temporary rule expires Sine Die 2016*)
08-0203-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0203-1602* *Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4 (Rulemaking terminated, promulgated incorrectly under wrong chapter; replaced by docket number 08-0202-1605)*
08-0203-1603 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0203-1604 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0203-1605 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
08-0203-1606 Temporary and Proposed Rulemaking, Bulletin Vol. 16-6 (eff. 4-14-16)T
08-0203-1607* Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6 (**Rulemaking Terminated*)
08-0203-1608 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
08-0203-1609 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
08-0203-1610 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0203-1611 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
08-0203-1604 Proposed Rulemaking, Bulletin Vol. 16-8
08-0203-1605 Proposed Rulemaking, Bulletin Vol. 16-8
08-0203-1504 Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 16-10
08-0203-1601 Proposed Rulemaking, Bulletin Vol. 16-10
08-0202-1603 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-11-16)T
08-0203-1608 Proposed Rulemaking, Bulletin Vol. 16-10
08-0203-1609 Proposed Rulemaking, Bulletin Vol. 16-10
08-0203-1610 Proposed Rulemaking, Bulletin Vol. 16-10
08-0203-1611 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-11-16)T

08.02.05, Rules Governing Pay for Success Contracting

08-0205-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
08-0205-1601 Proposed Rulemaking (New Chapter), Bulletin Vol. 16-10

08.05.01, Rules Governing Seed and Plant Certification - Regents of the University of Idaho

08-0501-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 09 -- IDAHO DEPARTMENT OF LABOR

09.01.30, Unemployment Insurance Benefits Administration Rules

09-0130-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
09-0130-1601 Proposed Rulemaking, Bulletin Vol. 16-9

09.01.35, Unemployment Insurance Tax Administration Rules

09-0135-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

09-0135-1601 Proposed Rulemaking, Bulletin Vol. 16-9

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

10.01.01, Rules of Procedure

- 10-0101-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
- 10-0101-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
- 10-0101-1603 Adoption of Temporary Rule, Bulletin Vol. 16-7 (Eff. 7-6-16)T
- 10-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-8
- 10-0101-1602 Proposed Rulemaking, Bulletin Vol. 16-8
- 10-0101-1601 Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)
- 10-0101-1602 Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

10.01.02, Rules of Professional Responsibility

- 10-0102-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
- 10-0102-1601 Proposed Rulemaking, Bulletin Vol. 16-8
- 10-0102-1601 Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

IDAPA 11 -- IDAHO STATE POLICE

Idaho State Racing Commission

11.04.02, Rules Governing Simulcasting

- 11-0402-1601 Proposed Rulemaking, Bulletin Vol. 16-10

11.04.03, Rules Governing Licensing and Fees

- 11-0403-1601 Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-10

Peace Officer Standards and Training (POST) Council

11.11.01, Rules of the Idaho Peace Officer Standards and Training Council

- 11-1101-1601 Proposed Rulemaking, Bulletin Vol. 16-10
- 11-1101-1602 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 9-1-16)T

11.11.02, Rules of the Idaho POST Council for Juvenile Detention Officers

- 11-1102-1601 Proposed Rulemaking, Bulletin Vol. 16-10

11.11.04, Rules of the Idaho POST Council for Correctional Officers and Adult Probation and Parole Officers

- 11-1104-1601 Proposed Rulemaking, Bulletin Vol. 16-10

Idaho State Police Commercial Vehicle Safety

11.13.01, The Motor Carrier Rules

- 11-1301-1601 Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 9-15-16)T
- 11-1301-1602 Proposed Rulemaking, Bulletin Vol. 16-10
- 11-1301-1603 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 12 -- DEPARTMENT OF FINANCE

12.01.08, Rules Pursuant to the Uniform Securities Act (2004)

- 12-0108-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5

- 12-0108-1601** Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-8
12-0108-1601 Adoption of Pending Fee Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act

- 12-0110-1601** Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 13 -- IDAHO FISH AND GAME COMMISSION***13.01.02, Rules Governing Hunter Education and Mentored Hunting***

- 13-0102-1601** Proposed Rulemaking, Bulletin Vol. 16-10

13.01.07, Rules Governing the Taking of Upland Game Animals

- 13-0107-1601P** Notice of Proposed Proclamation, Bulletin Vol. 16-10

13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho

- 13-0108-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
13-0108-1602 Notice of Proclamation of Rulemaking, Bulletin Vol. 16-8
13-0108-1601 Proposed Rulemaking, Bulletin Vol. 16-10
13-0108-1603 Proposed Rulemaking, Bulletin Vol. 16-10

13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho

- 13-0109-1601** Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-8-16)T
13-0109-1602 Proposed Rulemaking, Bulletin Vol. 16-10
13-0109-1603P Notice of Proposed Proclamation, Bulletin Vol. 16-10

13.01.11, Rules Governing Fish

- 13-0111-1601** Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-8-16)T
13-0111-1603P Notice of Proposed Proclamation, Bulletin Vol. 16-10

13.01.13, Rules Governing the Taking of American Crow in the State of Idaho

- 13-0113-1601P** Notice of Proposed Proclamation, Bulletin Vol. 16-10

13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

- 13-0116-1601P** Notice of Proposed Proclamation, Bulletin Vol. 16-10

13.01.17, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals

- 13-0117-1601** Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 15 -- OFFICE OF THE GOVERNOR***Executive Orders of the Governor***

- Executive Order No. **2015-13** Bulletin Vol. 16-2
Executive Order No. **2016-01** Bulletin Vol. 16-6

Division of Human Resources and Personnel Commission***15.04.01, Rules of the Division of Human Resources and Idaho Personnel Commission***

- 15-0401-1601** Proposed Rulemaking, Bulletin Vol. 16-10

Idaho Military Division

Idaho Public Safety Communications Commission***15.06.01, Rules Governing the Idaho Public Safety Communications Commission***

15-0601-1601* Temporary and Proposed Rulemaking, Bulletin Vol. 16-8 (eff. 7-1-16)T

*Rulemaking changes name of chapter from: “*Rules Governing the Idaho Emergency Communications Commission*”
to: “*Rules Governing the Idaho Public Safety Communications Commission*”

15-0601-1601* Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

15.06.02, Rules Governing the Idaho Public Safety Communications Commission Grants

15-0602-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

15-0602-1601 Proposed Rulemaking, Bulletin Vol. 16-8

15-0602-1602* Temporary and Proposed Rulemaking, Bulletin Vol. 16-8 (eff. 7-1-16)T

*Rulemaking changes name of chapter from: “*Rules Governing the Idaho Emergency Communications Commission Grants*”
to: “*Rules Governing the Idaho Public Safety Communications Commission Grants*”

15-0602-1601 Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

15-0602-1602* Adoption of Pending Rule, Bulletin Vol. 16-10 (eff. PLR 2017)

Idaho Office of Emergency Management***15.06.06, Rules Governing Use of Disaster Emergency Account Funds***

15-0606-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 16-8

15-0606-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE***16.01.02, Emergency Medical Services (EMS) - Rule Definitions***

16-0102-1601 Proposed Rulemaking, Bulletin Vol. 16-9

16.01.03, Emergency Medical Services (EMS) -- Agency Licensing Requirements

16-0103-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

16-0103-1601 Proposed Rulemaking, Bulletin Vol. 16-9

16-0103-1602 Temporary and Proposed Rulemaking, Bulletin Vol. 16-9 (eff. 8-18-16)T

16.01.06, Emergency Medical Services (EMS) -- Date Collection and Submission Requirements

16-0106-1601 Proposed Rulemaking, Bulletin Vol. 16-9

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

16-0107-1501 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5

16-0107-1501 Vacation of Proposed Rulemaking, Bulletin Vol. 15-8

16-0107-1501 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 154, Bulletin Vol. 16-5 (eff. 1-1-15)T

16-0107-1601 Proposed Rulemaking, Bulletin Vol. 16-9

16.02.01, Rules of the Idaho Time Sensitive Emergency System Council

16-0201-1601 Proposed Rulemaking, Bulletin Vol. 16-10

16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission

16-0202-1601 Proposed Rulemaking, Bulletin Vol. 16-10

16.02.19, Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)

16-0219-1601 Proposed Rulemaking, Bulletin Vol. 16-9

16.03.03, Rules Governing Child Support Services

16-0303-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

[16-0303-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.03.04, Rules Governing the Food Stamp Program in Idaho

[16-0304-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

[16-0305-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.03.08, Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program

[16-0308-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

[16-0308-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.03.09, Medicaid Basic Plan Benefits

[16-0309-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

[16-0309-1602](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.03.10, Medicaid Enhanced Plan Benefits

[16-0310-1601](#) Temporary and Proposed Rulemaking, Bulletin Vol. 16-6 (eff. 1-1-16)T

16.03.18, Medicaid Cost-Sharing

[16-0318-1601](#) Temporary and Proposed Rulemaking, Bulletin Vol. 16-6 (eff. 7-1-16)T

16.03.19, Rules Governing Certified Family Homes

[16-0319-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4

[16-0319-1601](#) (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5

[16-0319-1601](#) Proposed Rulemaking, Bulletin Vol. 16-9

16.03.22, Residential Care or Assisted Living Facilities in Idaho

[16-0322-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4

[16-0322-1601](#) (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5

16.04.17, Rules Governing Residential Habilitation Agencies

[16-0417-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4

[16-0417-1601](#) (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5

16.05.06, Criminal History and Background Checks

[16-0506-1602](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

[16-0506-1601](#) Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-7 (eff. 7-1-16)T

[16-0506-1602](#) Proposed Rulemaking, Bulletin Vol. 16-9

16.05.07, The Investigation and Enforcement of Fraud, Abuse, and Misconduct

[16-0507-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4

[16-0507-1601](#) Temporary and Proposed Rulemaking, Bulletin Vol. 16-7 (eff. 7-1-16)T

16.06.01, Child and Family Services

[16-0601-1601](#) Proposed Rulemaking, Bulletin Vol. 16-9

16.06.12, Rules Governing the Idaho Child Care Program (ICCP)

[16-0612-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

[16-0612-1601](#) Temporary and Proposed Rulemaking, Bulletin Vol. 16-9 (eff. 10-1-16)T

16.07.19, Behavioral Health Peer Specialist and Family Support Partner Certification

[16-0719-1601](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6

[16-0719-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

16.07.37, Children's Mental Health Services**16-0737-1601** Proposed Rulemaking, Bulletin Vol. 16-10***IDAPA 18 -- DEPARTMENT OF INSURANCE******18.01.10, Producers Handling of Fiduciary Funds*****18-0110-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7**18-0110-1601** Proposed Rulemaking, Bulletin Vol. 16-9***18.01.29, Restrictions on Discretionary Clauses in Health Insurance Contracts*****18-0129-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7.***18.01.48, Rule to Implement the Privacy of Consumer Financial Information*****18-0148-1601** Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 9-1-16)T***18.01.50, Adoption of the International Fire Code*****18-0150-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7**18-0150-1601** Proposed Rulemaking, Bulletin Vol. 16-9***18.01.54, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act*****18-0154-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7**18-0154-1601** Proposed Rulemaking, Bulletin Vol. 16-9***18.01.56, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules*****18-0156-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-8**18-0156-1601** Proposed Rulemaking, Bulletin Vol. 16-10***IDAPA 19 -- BOARD OF DENTISTRY******19.01.01, Rules of the Idaho State Board of Dentistry*****19-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6**19-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-9***IDAPA 20 -- DEPARTMENT OF LANDS******20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands*****20-0214-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6**20-0214-1601** Proposed Rulemaking, Bulletin Vol. 16-8***20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands*****20-0316-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7**20-0316-1601** Proposed Rulemaking, Bulletin Vol. 16-10***20.07.01, Rules of Practice and Procedure Before the Idaho Oil And Gas Conservation Commission*****20-0701-1601** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 16-8***20.07.02, Rules Governing Conservation of Crude Oil and Natural Gas in the State of Idaho*****20-0702-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5**20-0702-1601** Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 22 -- BOARD OF MEDICINE***22.01.03, Rules for the Licensure of Physician Assistants*****22-0103-1601** Proposed Rulemaking, Bulletin Vol. 16-10***IDAPA 23 -- BOARD OF NURSING******23.01.01, Rules of the Idaho Board of Nursing*****23-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7**23-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-10**23-0101-1602** Temporary and Proposed Rulemaking, Bulletin Vol. 16-10 (eff. 8-1-16)T***IDAPA 24 -- BUREAU OF OCCUPATIONAL LICENSES******24.01.01, Rules of the Board of Architectural Examiners*****24-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.03.01, Rules of the State Board of Chiropractic Physicians*****24-0301-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.08.01, Rules of the State Board of Morticians*****24-0801-1601** Temporary and Proposed Rulemaking, Bulletin Vol. 16-9 (eff. 7-12-16)T***24.10.01, Rules of the State Board of Optometry*****24-1001-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.12.01, Rules of the State Board of Psychologist Examiners*****24-1201-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.16.01, Rules of the State Board of Dentistry*****24-1601-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.17.01, Rules of the State Board of Acupuncture*****24-1701-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.18.01, Rules of the Real Estate Appraiser Board*****24-1801-1601** Adoption of Temporary Rule, Bulletin Vol. 16-5 (eff. 4-1-16)T**24-1801-1602** Proposed Rulemaking, Bulletin Vol. 16-10***24.19.01, Rules of the Board of Residential Care Facility Administrators*****24-1901-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.22.01, Rules of the Idaho State Liquefied Petroleum Gas Safety Board*****24-2201-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.23.01, Rules of the Speech and Hearing Services Licensure Board*****24-2301-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.25.01, Rules of the Idaho Driving Businesses Licensure Board*****24-2501-1601** Proposed Rulemaking, Bulletin Vol. 16-10***24.27.01, Rules of the Idaho State Board of Massage Therapy***

24-2701-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 26 -- DEPARTMENT OF PARKS AND RECREATION

26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities

26-0120-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-9

IDAPA 27 -- BOARD OF PHARMACY

27.01.01, Rules of the Idaho State Board of Pharmacy

- 27-0101-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 27-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-9
- 27-0101-1602 Proposed Rulemaking, Bulletin Vol. 16-9
- 27-0101-1603 Proposed Rulemaking, Bulletin Vol. 16-9
- 27-0101-1604 Proposed Rulemaking, Bulletin Vol. 16-9
- 27-0101-1605 Adoption of Temporary Rule, Bulletin Vol. 16-9 (eff. 8-13-16)T
- 27-0101-1606 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 28 -- DEPARTMENT OF COMMERCE

28.02.07, Rules Governing the Administration of the IGEN Grant Program

28-0207-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 31 -- PUBLIC UTILITIES COMMISSION

31.46.02, Rules for Telecommunications Relay Services (TRS)

- 31-4602-1601 Notice of Adoption of Temporary Rule, Bulletin Vol. 16-7 (eff. 5-1-16)T
- 31-4602-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
- 31-4602-1601 Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 35 -- STATE TAX COMMISSION

35.01.01, Income Tax Administrative Rules

- 35-0101-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 35-0101-1602 Proposed Rulemaking, Bulletin Vol. 16-10

35.01.02, Idaho Sales and Use Tax Administrative Rules

- 35-0102-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
- 35-0102-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
- 35-0102-1601 Proposed Rulemaking, Bulletin Vol. 16-10
- 35-0102-1602 Proposed Rulemaking, Bulletin Vol. 16-10
- 35-0102-1603 Proposed Rulemaking, Bulletin Vol. 16-10

35.01.03, Property Tax Administrative Rules

- 35-0103-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
- 35-0103-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
- 35-0103-1603 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
- 35-0103-1604 Adoption of Temporary Rule, Bulletin Vol. 16-8 (eff. 7-1-16)T
- 35-0103-1601 Proposed Rulemaking, Bulletin Vol. 16-9
- 35-0103-1602 Proposed Rulemaking, Bulletin Vol. 16-9

- 35-0103-1603** Proposed Rulemaking, Bulletin Vol. 16-9
35-0103-1605 Proposed Rulemaking, Bulletin Vol. 16-9

35.01.05, Motor Fuels Tax Administrative Rules

- 35-0105-1601** Proposed Rulemaking, Bulletin Vol. 16-5
35-0105-1602 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
35-0105-1602 Proposed Rulemaking, Bulletin Vol. 16-7

35.01.10, Idaho Cigarette and Tobacco Products Tax Administrative Rules

- 35-0110-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
35-0110-1601 Proposed Rulemaking, Bulletin Vol. 16-10

35.02.01, Tax Commission Administration and Enforcement Rules

- 35-0201-1601** Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 37 -- DEPARTMENT OF WATER RESOURCES***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

IDAPA 38 -- IDAHO DEPARTMENT OF ADMINISTRATION***38.05.01, Rules of the Division of Purchasing***

- 38-0501-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
38-0501-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT

- 39-0300-1601** Omnibus Notice of Intent to Promulgate - Negotiated Rulemaking, Bulletin Vol. 16-5
(Rulemaking may affect Chapters under Title 03 - "Vehicles and/or Loads Required to Operate Under an Overlegal Permit")

39.03.06, Rules Governing Allowable Vehicle Size

- 39-0306-1601** Proposed Rulemaking, Bulletin Vol. 16-9

39.03.11, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions

- 39-0311-1601** Proposed Rulemaking, Bulletin Vol. 16-9

39.03.12, Rules Governing Safety Requirements of Overlegal Permits

- 39-0312-1601** Proposed Rulemaking, Bulletin Vol. 16-9

39.03.15, Rules Governing Excess Weight Permits for Reducible Loads

- 39-0315-1601** Proposed Rulemaking, Bulletin Vol. 16-10

39.03.22, Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up To 129,000 Pound Vehicle Combinations

- 39-0322-1601** Proposed Rulemaking, Bulletin Vol. 16-9

39.03.23, Rules Governing Revocation of Overlegal Permits

- 39-0323-1601** Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 42 -- IDAHO WHEAT COMMISSION

42.01.01, Rules of the Idaho Wheat Commission

- 42-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 42-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 16-10

IDAPA 46 -- BOARD OF VETERINARY MEDICAL EXAMINERS

46.01.01, Rules of the State of Idaho Board of Veterinary Medicine

- 46-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 46-0101-1602** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7
- 46-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-9
- 46-0101-1603** Temporary and Proposed Rulemaking, Bulletin Vol. 16-9 (eff. 7-1-16)T

IDAPA 47 -- DIVISION OF VOCATIONAL REHABILITATION

47.01.01, Rules of the Idaho Division of Vocational Rehabilitation

- 47-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 47-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-10

47.01.02, Rules and Minimum Standards Governing Extended Employment Services

- 47-0102-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 47-0102-1601** Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 48 -- GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01, Rules of Procedure of the Idaho Grape Growers and Wine Producers Commission, IAC Vol. 8

- 48-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 48-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7 (2nd Notice)
- 48-0101-1601** Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 50 -- COMMISSION FOR PARDONS AND PAROLE

50.01.01, Rules of the Commission of Pardons and Parole

- 50-0101-1601** Proposed Rulemaking (Rulemaking pulled and not published)
- 50-0101-1602** Adoption of Temporary Rule, Bulletin Vol. 16-10 (eff. 8-8-16)T

IDAPA 55 -- DIVISION OF CAREER TECHNICAL EDUCATION

(Senate Bill 1210 enacted 7/1/16 changed the name of the Division from Professional Technical Education to Career Technical Education)

55.01.03, Rules for Career-Technical Schools

- 55-0103-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-6
- 55-0103-1601** Proposed Rulemaking, Bulletin Vol. 16-10

55.01.05, Rules Governing Industry Partner Fund

- 55-0105-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

IDAPA 57 -- SEXUAL OFFENDER MANAGEMENT BOARD***57.01.01, Rules of the Sexual Offender Management Board***

- 57-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-8
57-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-10

IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY

- 58-0000-1601** Paradise Creek Total Maximum Daily Load (TMDL): 2015 Bacteria Addendum (HUC ID 17060108) Bulletin Vol. 16-1
58-0000-1602 Little Lost River Total Maximum Daily Load (TMDL): 2015 Temperature Addendum (HUC ID 17040217) Bul. Vol. 16-2
58-0000-1603 Medicine Lodge Creek Total Maximum Daily Load (TMDL): 2016 Addendum and Five-Year Review (HUC ID 17040215) Bulletin Vol. 16-4

58.01.01, Rules for the Control of Air Pollution in Idaho

- 58-0101-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-5
58-0101-1602 Proposed Rulemaking, Bulletin Vol. 16-8
58-0101-1603 Proposed Rulemaking, Bulletin Vol. 16-8
58-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-9
58-0101-1604 Proposed Rulemaking, Bulletin Vol. 16-9

58.01.02, Water Quality Standards

- 58-0102-1502** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-10
58-0102-1502 Notice of Rescheduling - Negotiated Rulemaking Meeting, Bulletin Vol. 15-11

58.01.03, Individual/Subsurface Sewage Disposal Rules

- 58-0103-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-10
58-0103-1501 Proposed Rulemaking, Bulletin Vol. 16-1
58-0103-1601 Adoption of Pending Rule, Bulletin Vol. 16-6 (eff. PLR 2017)

58.01.05, Rules and Standards for Hazardous Waste

- 58-0105-1601** Proposed Rulemaking, Bulletin Vol. 16-8

58.01.07, Rules Regulating Underground Storage Tank Systems

- 58-0107-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-4
58-0107-1601 Proposed Rulemaking (Fee Rule), Bulletin Vol. 16-8

IDAPA 59 -- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)***59.02.01, Rules for the Judges' Retirement Fund***

- 59-0201-1601** Temporary and Proposed Rulemaking, Bulletin Vol. 16-1 (eff. 12-1-15)T
59-0201-1601 Adoption of Pending Rule, Bulletin Vol. 16-4 (eff. PLR 2017)
59-0201-1601 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 154, Bulletin Vol. 16-5 (eff. 12-1-15)T
59-0201-1602 Proposed Rulemaking, Bulletin Vol. 16-5

IDAPA 61 -- STATE PUBLIC DEFENSE COMMISSION***61.01.01, Rules Governing the Administration of Training Funds Allocation for Defending Attorneys***

- 61-0101-1601** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 16-8 (eff. 7-1-16)T

61.01.07, Rules Governing the Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System

- 61-0107-1601** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 16-8

[61-0107-1601](#) Proposed Rulemaking, Bulletin Vol. 16-10

Subject Index

A

- Abbreviations 48, 544, 779, 791
APA 779
APHIS, Animal & Plant Health Inspection Service 48
API 544
ATSA 779
AVIC, Area Veterinarian in Charge 48
AZA, Association of Zoos & Aquariums 48
BAPA 48
BBL 545
BPAT 48
CF, Complement Fixation Test 48
CFR, Code of Federal Regulations 48
CWD, Chronic Wasting Disease 48
DSM 779
EIA, Equine Infectious Anemia 48
EVA, Equine Viral Arteritis 48
FPA 48
IDJC 779
IDOC 779
IPIDDS 791
MCF 545
NAEBA, North American Elk Breeders Association 48
NPPI, National Poultry Improvement Plan 48
P. tennis 48
PCR, Polymerase Chain Reaction 48
PCSOT 779
PDC 791
PVC 545
RDGF, Red Deer Genetic Factor 48
SOCB 779
SOMB 779
TB, Tuberculosis 48
U.S. 545
UM&R, Uniform Methods & Rules 48
USDA, United States Department of Agriculture 48
VHSV, Viral Hemorrhagic Septicemia Virus 48
VS, Veterinary Services 48
- Abbreviations, IDAPA 02.04.14 27
ASABE 27
IPDES 27
NMS 27
NRCS 27
USDA 27
- Abbreviations, IDAPA 02.04.15 35
AFO 35
CAFO 35
IPDES 35
NMP 35
NRCS 35
- Abbreviations, IDAPA 02.04.32, Rules Governing Poultry Operations 58
AFO 58
- ASABE 58
CAFO 58
DEQ 58
FEMA 58
IPDES 58
NMP 58
NMS 58
NRCS 58
USGS 58
- Able Bodied Adults Without Dependents (ABAWD) Work Requirement 440
Combination of Work and Work Programs 440
Participate in JSAP or Another Work Program 440
Participate in Work Opportunities 440
Residents of High Unemployment Areas 440
Work at Least Eighty Hours per Month 440
- Aboveground, Open Pit, Mining 701
Exempt Purchases 701
Exemption Certificate 703
Taxable Purchases 702
- Acceptance Or Rejection Of Bids & Proposals 744
Best Interest 744
Bidder Is Not Responsible 744
Deviations 744
Does Not Meet Specifications 744
Not Lowest Responsible Bid 744
- Accepted Agricultural Practices
Applicable Best Management Practices 39
Applicable Rules 38
Excess Odors 39
- Assessing Children's Mental Health Services 501
- Accountability 303, 774
Academic Measures by School Category 304
Accreditation 774
Administrator Responsibility 774
Annual Measurable Achievement Objectives (AMAOs) 307
Annual Measurable Progress Definitions 305
Assessment Process 774
Reporting 305
School Category 304
School Improvement Plan 774
School Quality Measures by School Category 304
- Acquisition Of Concession Services 733
- Active Wells 580
Annual Reports for Active Wells 580
Extension of Active Status 580
Gas Storage Wells 580
Quarterly Reporting 580
- Additional Definitions, IDAPA 07.08.14, Idaho Minimum Safety Standards & Practices For Logging -- Helicopter Logging 205
- Additional Payments To Family Alternate Care Providers 509
Highest Level of Need 510
Lowest Level of Need 509
Moderate Level of Need 509
Reportable Income 510
- Adequate Notice, Written Statement 440
- Administration Of IPDES Program 35
- Administrative Appeals 220, 324
- Adoption & Incorporation By Reference Of The International Mechanical Code, 2012 Edition 103
- Adoption & Incorporation By Reference Of The National Electrical Code, 2017 Edition 60
Availability 61
Documents 60
- Adoption And Incorporation By Reference Of The Idaho State Plumbing Code 66
- Advanced Opportunities 287
Advanced Opportunities Early Graduation Scholarship Funding (Effective July 1, 2016) 287
Advanced Opportunities Requirement 287
- Advisory Committee 600
- Aircraft & Flying Services 714
Aerial Contracting Services 715
Air Ambulance Service 716
Aircraft Held For Resale 716
Definitions 714
Federal Law Prohibits States From Taxing Sales of Air Transportation 715
Flying Instructions 716
Fuel 716
Recreational Flights 716
Rentals & Leases of Aircraft 715
Sales of Aircraft 715
Sales of Aircraft Repair Parts to Nonresidents 715
- Allowable Deviation 573
- Alternate Care Case Management 505
Consent for Medical Care 506
Contact Requirements 506
Financial Arrangements 506
Information for Alternate Care Provider 505
Preparation for Placement 505
Transition Planning 506
- Alternate Care Licensure 505
Alternate Care Placement 503
Alternate Care Planning 507
Alternate Care Plan Required 507
Written Alternate Care Plan 507
- Alternate Routes To Certification 265
Alternate Authorization Renewal 268

- Alternative Authorization -- Content Specialist 266
 - Alternative Authorization - Pupil Personnel Services 267
 - Alternative Authorization -- Teacher To New Certification 265
 - Non-Traditional Route to Teacher Certification 267
 - Ambulatory Surgical Center Services
 - Provider Reimbursement 459
 - Payment for Ambulatory Surgical Center Services 459
 - Payment Methodology 459
 - Amendments 652
 - Annual Inventory Report 41
 - Individual Domestic Cervidae 41
 - Inventory Report 41
 - Annual Privacy Notice To Customers Required 514
 - Delivery 515
 - Exceptions
 - Termination of Customer Relationship & Duplicate Notices 514
 - General Rule 514
 - Annuity As Asset Transfer 444
 - Irrevocable Annuity 444
 - Irrevocable Annuity Life Expectancy Test 444
 - Permitted Annuity 445
 - Revocable Annuity 444
 - State Named as Beneficiary 445
 - Appeal Of Department Decision 491
 - Appeals Procedure
 - Board Appeal 229
 - Institution Appeal 228
 - Applicability
 - Beef Cattle 39
 - Swine & Poultry 39
 - Application 587, 612, 643
 - AMC Registration Application 643
 - Application Deadline Date 643
 - Application Expiration 588
 - Appraiser License Application 643
 - Eligibility for Examination 643
 - Lack of Activity 643
 - License Applications 587
 - Licensure by Endorsement -- Blue Cover 613
 - Licensure by Endorsement - Equivalency 613
 - Licensure By Examination 612
 - Reapplication 588
 - Trainee Registration Application 643
 - Application For Certification 482
 - Code of Ethics
 - Acknowledgment 482
 - Completed Application 482
 - Verification of Education, Training, & Experience 482
 - Application Of Established Standards 792
 - Application Procedures / Professional Development 268
 - State Board of Education
 - Professional Development Requirement 269
 - State Board of Education Requirements for Professional Growth 268
 - Application Process 221, 773
 - Communication with State Officials 221
 - Duration 222
 - Eligibility 222
 - Initial Applications 221
 - Monetary Value of the Opportunity Scholarship 221
 - Payment 222
 - Scholarship Awards 221
 - Selection Process 221
 - Applications 420, 633
 - Application by Disabled Veterans 420
 - Application by Military Personnel 420
 - Application Filing Date 633
 - Application Form for Licensure 633
 - Application Must Be Complete 633, 634
 - Disclosure of Information for Hiring Purposes 420
 - Filing of Applications 420
 - Form 420
 - Promotion of Entrance Probationary Employee 420
 - Approved Examinations 676
 - Date of Exam 677
 - Successful Passage 676
 - Architectural Intern 614
 - Prohibitions 615
 - Record 615
 - Supervision 614
 - Areas Closed To Hunting Of Big Game
 - Animals 390
 - Black Bear, Grizzly Bear, & Gray Wolves 390
 - Mountain Lions & Gray Wolves 390
 - Restricted Areas for Big Game 390
 - Areas Closed To Hunting Of Game
 - Birds 399
 - Geese 400
 - General 399
 - Migratory Game Birds 399
 - Assessment In The Public Schools 300
 - Comprehensive Assessment Program 301
 - Comprehensive Assessment Program Schedule 302
 - Content 300
 - Costs of Additional Services 303
 - Costs Paid by the State 302
 - Demographic Information 303
 - Dual Enrollment 303
 - Philosophy 300
 - Purposes 300
 - Scoring & Report Formats 301
 - Services 303
 - Test Security, Validity & Reliability 303
 - Testing Population 300
 - Assignment Of Hay Evaluation Points 419
 - Approval 420
 - Assignment to Pay Grade 419
 - Factoring Benchmarks 419
 - Factoring Process 419
 - Guide Charts 419
 - Auction Procedure
 - Oral Auction 527
 - Authority For Alternate Care Placement 503
 - Court Order 504
 - Voluntary Placement 504
 - Authority To Inspect
 - Access to Records 35
 - Entry 35
 - Sample or Monitor 35
- B**
- Background Investigation 351
 - Procedures 351
 - Requirements 351
 - Board Meetings 633
 - Meetings 633
 - Bonding 564
 - Additional Bonding 564
 - Authorized Bonds 564
 - Blanket Bond 564
 - Inactive Well Bond 564
 - Individual Bond 564
 - Budgeting For Caretaker Relatives 448
 - Caretaker Relative Applying Only for Relative Child 448
 - Multiple Children 448
 - Relatives 448
- C**
- Cable Yarding 161
 - Safety A 161
 - Safety B 161
 - Safety C 161
 - Safety D 161
 - Cancellation Of Solicitation 744
 - Cancellation Is in the Best Interest of the State 744
 - Inadequate or Ambiguous Specifications 744
 - Specifications Have Been Revised 744
 - Career-Technical Component
 - Criteria 773
 - Career-Technical School Program 773
 - Program Criteria 773
 - Career-Technical School Average Daily Attendance 774
 - Aggregate Attendance 774
 - Aggregate Hours 774

- Career-Technical School General
 - Approval Criteria 772
 - Advanced Opportunities 772
 - Field Experience 772
 - Funded as a Separate School 772
 - High School Attendance Zones 772
 - Separate Site or Cooperative Service Agency 772
- Carrier Safety Requirements 366
 - Adoption of Federal Regulations - Exceptions 366
 - Availability of Incorporated Documents 367
 - Obligation of Familiarity With Rules 366
 - Recognition of Federal Waivers 367
- Case Records 503
 - Electronic & Physical Files 503
 - Storage of Records 503
- Cattle & Bison Imported From Canada 49
 - Idaho Requirements 49
 - Import Permit 49
 - Individually Identified 49
 - USDA Requirements 49
- Cementing & Testing Requirements 571
- Central Roster Of Psychosexual Evaluators, Sexual Offender Treatment Providers & Post Conviction Sexual Offender Polygraph Examiners 785
- Central Roster Of Psychosexual Evaluators, Sexual Offender Treatment Providers & Post Conviction Sexual Offender Polygraph Providers
 - Availability 786
 - Identification 785
- Certificates Issued To Applicants From Regionally Accredited Institutions 242
 - The Department of Education 242
 - The Division of Career-Technical Education 242
- Certification Period 785
 - Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner 785
 - Associate/Supervised Psychosexual Evaluator or Treatment Provider 785
 - Provisional/Supervised Psychosexual Evaluator or Treatment Provider 785
 - Senior/Approved Post Conviction Sexual Offender Polygraph Examiner 785
 - Senior/Approved Psychosexual Evaluator or Treatment Provider 785
- Certified General Real Estate Appraiser Classification Appraiser Qualification Criteria 649
 - Education 649
 - Experience 652
- Certified Residential Real Estate Appraiser Classification Appraiser Qualification Criteria 648
 - Education 648
 - Experience 649
- Changes To Invitation To Bid Or Request For Proposals 738
- Children's Mental Health Services 499
 - Assessment 499
 - Case Management 499
 - Crisis Response 499
 - Day Treatment Services 499
 - Family Support Services 499
 - Inpatient Services 499
 - Outpatient Services 499
 - Residential Treatment 499
 - Respite Care 499
 - Treatment Foster Care 500
 - Wraparound 500
- Chiropractic Peer Review 619
 - Committee Criteria 620
 - Definitions 619
 - Fees for Review 621
 - Form of Request 621
 - Procedures for Review 621
 - Purpose & Composition of Peer Review Committee 619
 - Standards 620
 - Who May Utilize the Services of the Committee 620
- Collection Of Samples For CWD
 - Testing 44
 - Brain Samples 44
 - Failure to Meet Annual CWD Tissue Submission Requirement 45
 - Handling of Samples 45
 - Non-Testable or Samples That Do not Contain Appropriate Tissues 45
 - Sample Submission Time 45
 - Submission of Head 45
- Commercialization Revenue 683
- Complaints 490
 - Complaint Content 490
 - Department Response to Complaint 490
- Compliance Schedules 29
 - Non-Compliance or Unauthorized Release Violations Identified 30
 - Re-Inspection 30
- Compliance With Idaho Pollutant Discharge Elimination System Rules 30, 35
- Conditions for Emergency Order 576
- Consumer Reporting Agencies 438
 - Consumer Reporting Agency 438
 - Reports 438
- Content Of Solicitations Issued Under A Formal Sealed Procedure 737
 - Contract Terms 738
 - Evaluation Criteria 738
 - Incorporation by Reference 738
- Pre-Proposal or Pre-Bid Conference 738
- Specifications 738
- Submission Information 738
- Trade-In Property 738
- Continuing Education 615, 655
 - Approved Credit 616
 - Architectural Health, Safety & Welfare Requirement 616
 - Continuing Education Requirement 615
 - Course Approval 655
 - Credit 655
 - Exemptions 617
 - Failure to Fulfill the Continuing Education Requirements 616
 - Minimum Hours Required 655
 - Special Exemption 655
 - Verification of Attendance 616
- Continuing Education For Post Conviction Sexual Offender Polygraph Examiners 783
- Continuing Education In Optometry 623
 - Additional Hours Required to Use Therapeutic Pharmaceutical Agents 623
 - Audit 624
 - Correspondence/Home Study Courses/Observation 624
 - Documentation of Attendance 624
 - Excess Hours 624
 - Hours Required, Advance Approval 623
 - Renewal Application Form 624
 - Waiver of Requirements 624
- Continuing Education Requirements 590
 - Continuing Competence 590
 - Requirements for Renewal 590
- Continuing Eligibility 222
 - Interruption of Continuous Enrollment 222
- Continuous Improvement Planning & Training 232
 - Audit 233
 - Definitions 232
 - Reimbursement Eligibility 232
 - Statewide Continuous Improvement Measures 233
- Contract Monitoring 327
- Contract Negotiations 326
 - Negotiation Teams 326
 - Negotiation Timeline 326
 - Negotiation Updates 326
 - Time Tracking 327
- Contract Oversight 746
 - Contract Management 746
 - Contract Management & Contract Administration 746
 - Service Contracts Exceeding \$1,500,000 in Total Value 747
- Cooperative Purchasing Political Subdivisions 733

- Correction Officer Certification 360
Mandatory Certification 360
Voluntary Certification 360
Costs Of Prescription Drugs 508
Covered Services 762
Group Community-Based Non-Integrated Supported Employment 762
Individual Community Supported Employment 762
Work Services 762
Criteria Exception For Post Conviction Sexual Offender Polygraph Examiners 783
Customer Appeals 754
Customer Services 755
Authorization for Purchase 755
General Provisions 755
Provision of Community Rehabilitation Program (CRP) Services 755
Provision of Purchased Services Contingent Upon Financial Need of the Customer 755
Residency Requirement 755
- D**
- Dairy Environmental Management Plan Approval 28
Dairy Nutrient Management Plan (DNMP) 28
Dairy Storage & Containment Facility Criteria 28
Date A Child Entered Alternate Care 505
Definitions 205, 431, 481, 517, 777, 790
A Through H 452
AABD, Aid to the Aged, Blind, & Disabled 452
Abortion 452
A-Frame 205
Ambulatory Surgical Center (ASC) 452
Amortization 452
Arch 205
Audit 453
Audit Reports 453
Auditor 453
Back Cut 205
Bad Debts 453
Barber Chair 205
Basic Plan 453
Behavioral Health Program 481
Bell or Cup Hook With Spike 205
Bight 205
Binder 206
Blasting Cap 206
Board 777
Braille 206
Brow Log 206
Buckle Guy Line 206
Bullbuck 206
Bunk 206
Business of Title Insurance 517
Butt Hook 206
Butt Rigging 206
Buy-In Coverage 453
Capped Fuse 206
Carriage Logging 206
Case 790
Caseload 791
Cat Road 206
Central Roster 777
Certificate 481
Certificate Holder 777
Certified Evaluator 778
Certified Post Conviction Sex Offender Polygraph Examiner 778
Certified Registered Nurse Anesthetist (CRNA) 453
Certified Treatment Provider 778
CFR, Code of Federal Regulations 453
Chaser 206
Cheater 206
Chipper 206
Chock (Bunk Block-Cheese Block) 206
Choker 206
Claim 453
Client 778
Clinical Nurse Specialist (CNS) 453
CMS, Centers for Medicare & Medicaid Services 453
CMS/Medicare DME Coverage Manual 453
Cold Deck 206
Cold Shut 206
Connecting Wires 206
Co-Payment 453
Cost Report 453
Crotch Line 206
Customary Charges 453
Cutter 206
D or Strap Socket 206
Dead Man 207
Defending Attorney 791
Department 454, 481
Detonator 207
Director 454, 481
Dog Line 207
Donkey (Short for "Donkey Engine") 207
Drag-Turn 207
Dual Eligibles 454
Durable Medical Equipment (DME) 454
Emergency Medical Condition 454
EPSDT, Early & Periodic Screening, Diagnosis, & Treatment 454
Established Standards 778, 791
Explosive 207
Facility 454
Fair Lead 207
Family Support Partner 481
Family Support Partner Services 482
Federally Qualified Health Center (FOHC) 454
Fiscal Year 454, 791
Forced Sale 454
Gin Pole 207
Grapple 207
Gut Wrapper 207
Guy Lines 207
Haul Back 207
Hazard 207
Healthy Connections 454
Heel Block 207
Heel Boom 207
Home Health Services 455
Hook Tender, Hooker 207
Hospital 455
Hospital-Based Facility 455
I Through O 455
ICF/ID 455
Idaho Behavioral Health Plan (IBHP) 455
Idaho Infant Toddler Program 455
In-Patient Hospital Services 456
Intermediary 456
Intermediate Care Facility Services 456
Legal Representative 456
Legend Drug 456
Level of Care 456
Licensed, Qualified Professionals 456
Lock-In Program 456
Locum Tenens/Reciprocal Billing 456
Medicaid 456
Medicaid-Related Ancillary Costs 456
Medical Assistance 456
Medical Necessity (Medically Necessary) 456
Medical Supplies 457
Medicare Durable Medical Equipment Medicare Administrative Contractor Jurisdiction D Supplier Manual (CMS/Medicare DME Coverage Manual) 457
Midwife 457
Nominal Charges 457
Nonambulatory 457
Non-Legend Drug 457
Nurse Practitioner (NP) 457
Nursing Facility (NF) 457
Orthotic 457
Out-of-State Care 457
Outpatient Hospital Services 457
Oxygen-Related Equipment 457
Indigent Defense Provider 791
Jaggers 207
Jammer 207
Jill Poke 207
Knob 207

- Landing, Rollway 207
Lang Lay Rope 207
Leading Wires 208
Leaners 208
Lived Experience 482
Loading Boom 208
Log Stacker 208
Magazine 208
Mainline 208
Mitigation 431
Operation (Show Woods Layout) 208
Pan (Skidding Pan) 208
Peeling Bar or Spud 208
Peer Support Services 482
Peer Support Specialist 482
Person 517
Pike, Pole 208
Portable Spar or Tower 208
Powder 208
Primer 208
Producer of Title Business 517
Provisional/Supervised Psychosexual Evaluator 778
Provisional/Supervised Sex Offender Treatment Provider 778
Psychosexual Evaluation 778
Quality Assurance 778
Reach 208
Receding Line 208
Recovery 432
Reload 208
Running Line 208
Sail Block 208
Sail Guy 208
Schoolmarm 208
Self Promotional 517
Sexual Offender 779
Sexual Offender Classification Board 779
Side Winders 208
Side, Show, Chance 208
Signalman, Whistle Punk 208
Skidding 208
Skids 208
Skyline 209
Slack Line 209
Slack Puller 209
Snags 209
Snubbing 209
Social Media 517
Spring Board 209
Strap 209
Strawline 209
Strip 209
Supervision 779
Swamp 209
Sweeper 209
Tag Line 209
Tail Hold 209
Tell Tale 209
Things of Value 517
Tight Line 209
Title Entity 517
Tongs 209
Trade Association 517
Transfer 209
Treatment 779
Tree Plates 209
Undercut 209
Violent Sexual Predator 779
Widow Maker 209
Windfall 209
Workload 791
Yarding 209
Definitions & Abbreviations
A Through E 494
Alternate Care 494
Alternate Care Plan 494
Area(s) of Concern 494
Assessment 494
Behavioral Health 494
Case Management 494
Case Record 494
Child 494
Children's Mental Health Services 494
Clinician 494
Crisis Intervention 494
Crisis Plan 494
Crisis Response 495
Day Treatment Services 495
Department 495
Desired Result 495
Director 495
Emergency 495
Extended Family Member of an Indian Child 495
F Through K 495
Face-to-Face Contact 495
Family 495
Family Support Services 495
Federal Poverty Guidelines 495
Guardian 495
Indian 496
Indian Child 496
Indian Child Welfare Act (ICWA) 496
Indian Child's Tribe 496
Indian Tribe 496
Inpatient Services 496
L Through R 496
Licensed 496
Medicaid 496
Outpatient Services 496
Parent 496
Placement Agreement 496
Residential Treatment 497
Respite Care 497
S Through Z 497
Sliding Fee Scale 497
Teen Early Intervention Specialist 497
Teens at Risk 497
Title XIX (Medicaid) 497
Treatment Foster Care 497
Treatment Plan 497
Wraparound 497
Definitions A - G, IDAPA 08.02.03, Rules Governing Thoroughness 295
"C" Average 297
Achievement Standards 295
Advanced Opportunities 296
All Students 296
Alternative Assessment (Other Ways of Testing) 296
Assessment 296
Assessment Standards 296
Asynchronous Course 296
Authentic 296
Basic Educational Skills Training 296
Classic Texts 296
Content Standards 296
Context (of a Performance Assessment) 296
Cooperative Work Experience 296
Criteria 296
Cues 297
Decode 297
Dual Credit 297
Emergent Literacy 297
Employability Skills 297
Entry-Level Skills 297
Evaluation (Student) 297
Experiential Education (Application) 297
Exploratory Experience (Similar to a Job Shadow) 297
Fluency 297
Genre (Types of Literature) 297
Graphophonic/
Graphophonemic 297
Definitions H - S, IDAPA 08.02.03, Rules Governing Thoroughness 279, 297
Career-Technical Education 280, 299
Idaho Standards Achievement Tests 297
Integrated Assessment 279
Interdisciplinary or Integrated Assessment 298
Interdisciplinary Study 279
International Baccalaureate (IB) 279, 298
Laboratory 279, 298
Learning Plan 279, 298
Narrative 279, 298
Norm-Referenced Assessment 279, 298
On-Demand Assessment 279, 298
Performance Assessment 279, 298
Performance Criteria 279, 298
Performance-Based Assessment 279, 298
Phonics 279, 298
Portfolio 279, 298
Print Awareness 280, 299
Professional Development 280, 298
Proficiency 280, 299
Project Based Learning 280

- School-to-Work Transition 280, 299
 Service Learning 280, 299
 Skill Certificate 280, 299
 Standardization 281, 299
 Standards 280, 299
 Standards-Based Education 281, 299
 Structured Work Experience 281, 299
 Student Learning Goals (Outcomes) 281, 300
 Synchronous Course 281, 300
 Definitions, 28.02.07 682
 Department 682
 Eligible Applicant 682
 IGEN Council 682
 IGEN Executive Committee 682
 IGEN Grant Program 682
 Industry Partner 682
 University 682
 Definitions, IDAPA 02.04.14 24
 Agricultural Stormwater Discharge 24
 Best Management Practice 24
 Certified Planner 25
 Certified Soil Sampler 25
 Dairy Animal 25
 Dairy Byproduct 25
 Dairy Environmental Management Plan 25
 Dairy Environmental Management System 25
 Dairy Farm 25
 Dairy Nutrient Management Plan (DNMP) 25
 Dairy Storage & Containment Facilities 25
 Department 25
 Director 25
 Export 26
 Fieldman 26
 Idaho Pollutant Discharge Elimination System (IPDES) 26
 Inspector 26
 Land Application 26
 Modification or Modified 26
 Non-Compliance 26
 Nutrient Management Standard (NMS) 26
 Pasture, Pasturing, & Pastured 26
 Permit 26
 Person 26
 Process Wastewater 26
 Producer 27
 Unauthorized Discharge 27
 Unauthorized Release 27
 Upset Condition 27
 Definitions, IDAPA 02.04.15
 Administrator 32
 Animal 33
 Animal Feeding Operation 33
 Beef Cattle Animal Feeding Operation 33
 Best Management Practices 33
 Compost 33
 Concentrated Animal Feeding Operation 33
 Director 33
 Discharge 33
 Idaho Pollutant Discharge Elimination System (IPDES) 33
 Land Application 33
 Large Concentrated Animal Feeding Operation 33
 Manure 33
 Medium Concentrated Animal Feeding Operation 33
 Modified 34
 Non-Compliance 34
 Nutrient Management Plan (NMP) 34
 Nutrient Management Standard 34
 Operate 34
 Operator 34
 Person 34
 Process Wastewater 34
 Runoff 34
 Slaughter & Feeder Cattle 34
 Small Concentrated Animal Feeding Operation 34
 Unauthorized Discharge 34
 Wastewater Storage & Containment Facility 34
 Waters of the State 34
 Definitions, IDAPA 02.04.16
 Accepted Agricultural Practices 37
 Agricultural Animal 37
 Agricultural Operation 37
 Animal 37
 BAT, Best Available Technology 37
 Beef Cattle 37
 Beef Cattle Animal Feeding Operation 37
 Best Management Practices 37
 Compost 37
 Composting 37
 Department 37
 Director 37
 Land Application 37
 Large Swine & Poultry Operations 37
 Liquid Waste System 38
 Liquid-Solid Separation 37
 Livestock 37
 Manure 38
 Modified 38
 Nutrient Management Plan 38
 Nutrient Management Standard 38
 Odor 38
 Odor Management Plan 38
 Person 38
 Waste Collection & Conveyance Systems 38
 Wastewater 38
 Wastewater Storage & Containment Facilities 38
 Wastewater Treatment 38
 Definitions, IDAPA 02.04.32, Rules Governing Poultry Operations 55
 Administrator 55
 Animal Feeding Operation 55
 Best Management Practices 55
 Concentrated Animal Feeding Operation 55
 Department 55
 Director 55
 Discharge 55
 Idaho Pollutant Discharge Elimination System (IPDES) 55
 Land Application 55
 Land Application Area 55
 Large Poultry CAFO 55
 Manure 56
 Medium Poultry CAFO 56
 Modification or Modified 56
 Noncompliance 56
 Nutrient Management Plan 56
 Operator 56
 Person 57
 Poultry 57
 Process Wastewater 57
 Production Area 57
 Runoff 57
 Unauthorized Discharge 57
 Wastewater Storage & Containment Facility 57
 Waters of the State 57
 Definitions, IDAPA 07.08.01, Idaho Minimum Safety Standards & Practices For Logging -- General Provisions
 Administrator 110
 Division 110
 Equipment 110
 Exposed to Contact 110
 Guarded 110
 Hazard 110
 It is Recommended, or Should 110
 Log or Logs 110
 Safety Factor or Factor of Safety 110
 Shall, Will 110
 Substantial 110
 Definitions, IDAPA 07.08.02, Idaho Minimum Safety Standards & Practices For Logging -- Health, Safety, & Sanitation 116
 Definitions, IDAPA 07.08.04, Idaho Minimum Safety Standards & Practices For Logging -- Garages, Machine Shops, & Related Work Areas 126
 Definitions, IDAPA 07.08.05, Idaho Minimum Safety Standards & Practices For Logging -- Signal & Signal Systems 129
 Definitions, IDAPA 07.08.06, Idaho Minimum Safety Standards & Practices For Logging -- Truck Road Standards 134

- Definitions, IDAPA 07.08.07, Idaho
Minimum Safety Standards &
Practices For Logging --
Transportation Of Employees 137
- Definitions, IDAPA 07.08.08, Idaho
Minimum Safety Standards Practices
For Logging -- Falling &
Bucking 140
- Definitions, IDAPA 07.08.09, Idaho
Minimum Safety Standards &
Practices For Logging -- Rigging,
Lines, Blocks, & Shackles 147
- Definitions, IDAPA 07.08.10, Idaho
Minimum Safety Standards &
Practices For Logging -- Canopy &
Canopy Construction For Logging
Equipment 156, 160
- Definitions, IDAPA 07.08.14, Idaho
Minimum Safety Standards &
Practices For Logging -- Helicopter
Logging 184, 194, 201
- Definitions, IDAPA 07.08.16, Idaho
Minimum Safety Standards &
Practices For Logging --
Recommended Safety Program 211
- Definitions, IDAPA 08.01.02 221
Board 221
Business Scholarship 221
Executive Director 221
Grade Point Average (GPA) 221
Industry Scholarship 221
Merit Based Scholarship 221
- Definitions, IDAPA 08.01.04
Accredited Secondary School 226
Armed Forces 226
Continuously Resided 226
Full-time Employment 226
Full-time Student 227
Support, Financial 227
- Definitions, IDAPA 08.02.02 241
Active Teacher 241
Alternative Routes 241
Credential 241
Endorsement 241
Idaho Student Achievement
Standards 241
Individualized Professional Learning
Plan 241
Institutional Recommendation 241
Local Education Agency (LEA) 242
Orientation 242
Paraprofessional 242
Pedagogy 242
Student Learning Objective
(SLO) 242
Teacher Leader 242
- Definitions, IDAPA 08.02.05 325
Board 325
Department 325
Oversight Committee 325
Pay for Success Contracting 325
- Definitions, IDAPA 11.04.02 335
Association Which Accepts the
Wager 335
- Authorized User 335
Breakage 335
Combined Pools 335
Decoder 335
Designated Area 335
Downlink 335
Enclosure, Enclosure-Public 335
Encryption 335
Foreign Jurisdiction 335
Guest, Guest Association or
Simulcast Operator 335
Handle or Gross Handle 335
Horse 335
Host or Host Association 335
Hub 336
Interstate Simulcast Wagering 336
Intrastate Simulcasting
Wagering 336
Racing Association 336
Racing Commission 336
Satellite Transponder,
Transponder 336
Simulcast 336
Simulcast Facility 336
Simulcast Service Supplier 336
Take or Takeout 336
Terminal 336
Totalizator 336
Uplink 336
- Definitions, IDAPA 11.11.01 343
Act 343
Adult Probation & Parole
Officer 343
Agency 343
Agency Head 343
Applicant 343
Basic Adult Probation & Parole
Academy 343
Basic Correction Academy 343
Basic Detention Academy 343
Basic Juvenile Detention
Academy 343
Basic Juvenile Probation
Academy 343
Basic Patrol Academy 343
College Credit 343
Correction Officer 343
Correction Standards & Training
Council 344
Council 344
County Detention Officer 344
Crime Of Deceit 344
Direction 344
Field Training 344
Full Time 344
In-Service Training 345
Juvenile Detention Center 345
Juvenile Detention Officer 345
Juvenile Probation Officer 345
Juvenile Training Council 345
Law Enforcement Profession 345
Manual 345
Part Time 345
- Part-Time Juvenile Detention
Officer 345
Peace Officer 345
POST 345
POST Basic Training Academy 346
POST Certified Instructor 346
Prosecutor 346
Reserve Peace Officer 346
School 346
School Director or Coordinator 346
Specification 346
Supervision 346
Temporary 346
Trainee 346
- Definitions, IDAPA 15.04.01, Rules of
the Division of Human Resources &
Idaho Personnel Commission
A Through E 417
Administrative Leave 417
Administrator 417
Agency Classification 417
Allocation 417
Appeal 417
Appellant 417
Appointing Authority 417
Appointment, Limited 418
Appointment, Nonclassified 418
Appointment, Permanent 418
Appointment, Probationary 418
Appointment, Project
Exempt 418
Appointment, Provisional 418
Appointment, Seasonal 418
Appointment, Temporary 418
Base Pay 418
Certifiable Range 418
Classified Service 418
Commission 418
Compensation Plan 418
Compensation Schedule 418
Consultant 419
Disabled Veteran 419
Dismissal 419
Due Process 419
Employment History 419
- Definitions, IDAPA 16.03.08 447
Agency Error 447
Applicant 447
Assistance 447
Caretaker Relative 447
Claim Determination 447
Department 447
Dependent Child 447
Earned Income 447
Family 447
Good Cause 447
Household 447
Inadvertent Household Error
(IHE) 447
Noncustodial Parent 447
Parent 447
Participant 448
Personal Responsibility Contract
(PRC) 448

- Temporary Assistance for Families in Idaho (TAFI) 448
Temporary Assistance for Needy Families (TANF) 448
Unearned Income 448
Definitions, IDAPA 17.08.01, Idaho Minimum Safety Standards & Practices For Logging -- General Provisions 109
Approved 110
Standard Safeguard 110
Definitions, IDAPA 20.03.16 524
Board 524
Collateral Surety Bond & Corporate Surety Bond 524
Commission 524
Department 524
Director 524
Discretion 524
Exploration 524
Final Board Approval 524
Lease 524
Legal Subdivision 524
Lessee 524
Lessor 524
Motorized Exploration Equipment 524
Natural Gas Plant Liquids 524
Oil & Gas 525
Person 525
Production in Paying Quantities 525
State Lands 525
Tract 525
Definitions, IDAPA 20.07.02 539
Act 539
Annulus 539
ASTM D1250 Tables 539
Barrel 539
Blowout 539
Blowout Preventer 539
Bonus Payment 539
Borehole 539
Casing Pressure 539
Casinghead 539
Commission 539
Common Source of Supply 539
Completion 539
Conductor Pipe 540
Cubic Foot of Gas 540
Day 540
Department 540
Development 540
Director 540
Drill Cuttings 540
Drill Pad 540
Drilling Mud 540
Exceptional Well Location 540
Fresh Water 540
Gas Processing Facility 540
Gas Well 540
Gas-Oil Ratio 540
Hydraulic Fracturing 541
Inactive Well 541
Intermediate Casing 541
Junk 541
Lease 541
Mechanical Integrity Test 541
Mudlog 541
Occupied Structure 541
Oil & Gas 541
Oil Well 541
Pit 542
Plug Back 542
Pollution 542
Pressure Maintenance 542
Produced Water 542
Production Casing 542
Proppant 542
Recompletion 542
Release 542
Sample Envelope 542
Seismic Operations 542
Shot Hole 543
Spacing Unit 543
Spud 543
Surface Casing 543
Surface Shot 543
Surface Water 543
Systems Approach 543
Tank 543
Tank Battery 543
Tank Dike 543
Tubing 543
U.S. Well Number 543
Vibroseis 544
Volatile Organic Compound 544
Waterflooding 544
Well Logs 544
Well Report 544
Well Site 544
Well Treatment 544
Wildcat Well 544
Definitions, IDAPA 22.01.03 586
Alternate Supervising Physician 586
Approved Program 586
Board 586
Delegation of Services (DOS) Agreement 586
Graduate Physician Assistant 586
Physician 587
Physician Assistant 587
Physician Assistant Trainee 587
Supervising Physician 587
Supervision 587
Definitions, IDAPA 23.01.01 605
Abandonment 605
Accreditation 605
Administration of Medications 605
Approval 605
Assist 605
Assistance With Medications 605
Board 605
Board Staff 605
Charge Nurse 605
Clinical Preceptor 606
Competence 606
Curriculum 606
Delegation 606
Disability 606
Emeritus License 606
License in Good Standing 606
Licensing Examination 606
Limited License 606
Nursing Assessment 606
Nursing Diagnosis 606
Nursing Intervention 606
Nursing Jurisdiction 606
Nursing Service Administrator 606
Organized Program of Study 606
Patient Education 606
Patient/Client 606
Plan of Care 606
Practice Standards 607
Probation 607
Protocols 607
Revocation 607
Scope of Practice 607
Supervision 607
Suspension 607
Technician/Technologist 607
Universal Standards 607
Definitions, IDAPA 24.01.01 611
AXP 611
Board 611
Bureau 611
Direct Supervision 611
NAAB 611
NCARB 611
Responsible Control 611
Definitions, IDAPA 24.18.01 641
Accredited 641
Advisory Committee 641
Appraisal Foundation 641
Appraisal Management Company or AMC 642
Appraisal Standards Board 641
Appraiser Qualifications Board 641
Bureau 641
Chief 641
Classroom Hour 641
Field Real Estate Appraisal Experience 641
FIRREA, Financial Institutions Reform, Recovery & Enforcement Act 641
Real Estate 641
Real Property 641
Residential Unit 641
Uniform Standards of Professional Appraisal Practice or USPAP 642
USPAP Course 642
Definitions, IDAPA 24.23.01 660
Audiology Support Personnel 660
Board 660
Bureau 660
Definitions, IDAPA 38.05.01 729
Administrator 729
Alternate 729
Brand Name or Equal Specification 729
Brand Name Specification 729
Buyer 729

- Concession Services 729
Consultant Services 729
Contract 730
Contract Administration 730
Contract Management 730
Director 730
Division 730
Document 730
Equal 730
Formal Sealed Procedure 730
Informal Solicitation 730
Invitation to Bid 730
Offeror 730
Open Contract 731
Professional Services 731
Proposal 731
Public Agency 731
Purchase Order 731
Purchasing Activity or Authority 731
Quote 731
Request for Proposals 731
Request for Quote 731
Requisition 731
Sealed 731
Sealed Procedure Limit 732
Small Purchase 732
Solicitation 732
Specifications 732
State 732
Telecommunications 732
Written 732
- Definitions, IDAPA 47.01.01 753
Authorization for Purchase 753
CFR, Code of Federal Regulations 753
Customer 754
Designated State Agency 754
Designated State Unit 754
IDVR, The Idaho Division of Vocational Rehabilitation 754
IPE, Individualized Plan for Employment 754
Method of Written Notification 754
Most Significant Disability (MSD) 754
PM, Policy Memorandum 754
RSA, Rehabilitation Services Administration 754
State Administrator 754
VRC, Vocational Rehabilitation Counselor 754
- Definitions, IDAPA 47.01.02 757
CARF, The Rehabilitation Accreditation Commission 757
Certified Extended Employment Services (EES) Provider 757
Customer 757
Extended Employment Services 758
Idaho Division of Vocational Rehabilitation (IDVR) 758
Individual Program Plan 758
RSAS, Rehabilitation Services Accreditation Systems 758
- Definitions, IDAPA 55.01.03 772
Administrator 772
Advanced Opportunities 772
Attendance Zones 772
Career-Technical Schools 772
Field Experience 772
Delegation Of Authority Of Administrator 732
Accompaniments to Application 732
Authority Not Transferable 733
Designee Responsibility 733
Failure to Comply 733
Manner of Submission 732
Policy 733
Quarterly Review 733
Sub-delegation 733
Deliverance of Services, Midlevel Practitioner Services 460
Denial, Revocation, or Suspension of Certification 490
Dental Care 508
Costs Paid by Medicaid 508
Emergencies 508
Designated Logging Camps 123
Sanitation 123
Trees & Snags 123
Determination Of Fair Market Price For Rehabilitation Agency Acquisitions 737
Diligent Exploration Required 532
Disciplinary Proceedings & Notification Of Change 592
Discipline 593
Grounds for Discipline 593
Notification of Change or Addition of Supervising Physician 593
Disclosure Of Information Third Parties 727
Audits or Investigations 727
In General 727
Testimony in Judicial or Administrative Proceedings 727
Written Authorization to Disclose Information 727
Drilling, Well Treatment, & Pit Permits 557
Drivers' Training & Licenses For Children In Alternate Care 509
Driving Business - Course Of Instruction 671
Driving Log 671
Grading Criteria 671
In-Car Documentation 671
Maximum Daily Driving & Observation Time 671
Maximum Number of Students In Vehicle 671
Parental Involvement 671
Record Retention 671
Reporting 671
Student Permit Required 671
Driving Business License 669
Applicant Identity 669
- Certificate of Vehicle Insurance 669
Classroom Locations & Certificates of Occupancy 669
Course of Instruction 670
Criminal History Background Check 669
Instructor Apprenticeship Training Program 671
Licensed Instructors 670
On-line Instruction 671
Vehicles 670
Driving Instructor License 672
Age 672
Application 672
Criminal History Background Check 672
Driving Record & Drivers License 672
Education 672
Instructor Apprenticeship Training Program 672
Medical Certificate 672
Waiver of Instructor Apprenticeship Training Program 673
Drug Use 346
Drug Trafficking, Manufacturing, & Related Offenses 347
Juvenile Drug Offense Convictions 347
Marijuana 346
Other Controlled Substances 346
Prescription Drugs 347
Durable Medical Equipment & Supplies Coverage & Limitations 465
Coverage Conditions -- Equipment 466
Coverage Conditions -- Supplies 468
Medical Necessity Criteria -- Equipment & Supplies 465
Prior Authorization -- Equipment & Supplies 466
Participant Responsibility 465
Procedural Requirements 469
Equipment Rental -- Purchase Procedures 470
Face-to-Face Encounter for Home Health Medical Supplies, Equipment, & Appliances 470
Notice of Decision 472
Notification of Changes to Prior Authorization Requirements 470
Physician Orders 469
Plan of Care Requirements for Home Health Medical Supplies, Equipment, & Appliances 470
Prior Authorizations 470
Provider Reimbursement 472
Billing Procedures 472
Date of Service 472
Fees & Upper Limits 472
Items Included in Per Diem Excluded 472

- Least Costly Limitation 472
- Manually Priced Codes 472
- Warranties & Cost of Repairs 473
- Duration Of Certification 482
- Full Certification 482
- Six-Month Certification 482
- E**
- Electric Signal Systems 130
 - All Connections to Be Weatherproof 130
- Electric Signal Systems to be Properly Installed & Adjusted 130
- Weatherproof Wire & Attachments to be Used 130
- Eligibility Determination 501
 - Court-Ordered Assessment, Treatment, & Services 501
 - Eligibility Requirements 501
 - Ineligible Conditions 501
 - The Department Determines Eligibility for Mental Health Services 501
- Emergency Purchases 735
 - Conditions 735
 - Definition of Emergency Conditions 735
- Employee's Responsibility 113
 - Employee Accidents 113
 - Employee Responsibilities 113
 - General Requirements 113
 - Study Requirements 113
- Employee's Wage & Tax Statements 692
 - Corrected Forms W-2 693
- Employers With Fifty or More Idaho Employees 693
- Extension of Time to File Form W-2 693
- Filing Forms W-2 With the Tax Commission 692
- Form & Information Required 692
- Furnishing Forms W-2 to Employees 692
- Services Performed Within & Without Idaho 693
- Employer's Responsibility 111
 - General Requirements 111
 - Management Responsibility 112
- Endorsements 255
 - Alternative Authorization to Endorsement 255
 - Clinical Experience Requirement 255
- Endorsements A - D 256
 - Agriculture Science & Technology (6-12) 256
 - All Subjects (K-8) 256
 - American Government /Political Science (6-12) 256
 - Bilingual Education (K-12) 256
 - Biological Science (5-9 or 6-12) 256
 - Blended Early Childhood Education Birth through Grade Three (3) 257
 - Business Technology Education (6-12) 257
 - Chemistry (5-9 or 6-12) 257
 - Communication (5-9 or 6-12) 257
 - Computer Science (5-9 or 6-12) 257
 - Deaf/Hard of Hearing (K-12) 260
 - Endorsements E - L 260
 - Early Childhood Special Education (Pre-K-3) 260
 - Earth & Space Science (5-9 or 6-12) 260
 - Economics (6-12) 260
 - Engineering (5-9 or 6-12) 260
 - English (5-9 or 6-12) 260
 - English as a New Language (ENL) (K-12) 261
 - Exceptional Child Generalist (K-8, 6-12, or K-12) 261
 - Family & Consumer Sciences (5-9 or 6-12) 261
 - Geography (5-9 or 6-12) 261
 - Geology (5-9 or 6-12) 261
 - Gifted and Talented (K-12) 261
 - Health (5-9, 6-12, or K-12) 261
 - History (5-9 or 6-12) 262
 - Humanities (5-9 or 6-12) 262
 - Journalism (5-9 or 6-12) 262
 - Literacy (K-12) 262
 - Endorsements M - Z 262
 - Early Childhood Special Education Pre-K through Grade Six (6) Endorsement 264
 - Marketing Technology Education (6-12) 262
 - Mathematics - Basic (5-9 or 6-12) 262
 - Mathematics (5-9 or 6-12) 262
 - Music (5-9 or 6-12 or K-12) 262
 - Natural Science (5-9 or 6-12) 263
 - Online-Teacher Endorsement (Pre-K-12) 263
 - Physical Education (PE) (5-9 or 6-12 or K-12) 263
 - Physical Science (5-9 or 6-12) 264
 - Physics (6-12) 263
 - Psychology (5-9 or 6-12) 264
 - Social Studies (5-9 or 6-12) 264
 - Sociology (5-9 or 6-12) 264
 - Sociology/Anthropology (5-9 or 6-12) 264
 - Teacher Librarian (K-12) 264
 - Technology Education (5-9 or 6-12) 264
 - Theater Arts (5-9 or 6-12) 264
 - Visual Arts (5-9, 6-12, or K-12) 265
 - Visual Impairment Endorsement (K-12) 265
 - World Language (5-9, 6-12 or K-12) 265
- Equidae 51
- Approved Equine Feedlot 52
- EIA Test Requirements 52
- Reciprocal Agreements 52
- Working Horses Included on Grazing Permits 52
- Escrow Closing Charges & Premium Rates 520
- Evaluation & Award 740
 - Extension of Time for Acceptance 740
 - General 740
 - Information Pertaining to Responsibility 740
 - Only One Submission Received 741
 - Partial Award 741
 - Standards of Responsibility 740
 - Written Determination of Nonresponsibility Required 740
- Examinations 633
 - Content 633
 - Date of Licensure Examination 633
 - Grading 633
 - Re-Examination 633
- Exceptions To Competition 734
 - Correctional Industries 734
 - Emergency Purchases 734
 - Exempt Purchases 735
 - Existing Open Contracts 734
 - Federal Government Acquisitions 734
 - Purchases from General Services Administration Federal Supply Contractors 734
 - Rehabilitation Agency Acquisitions 734
 - Reverse Auctions 734
 - Sole Source Purchases 734
- Exploration 526
 - Permit Conditions 526
 - Written Permit Required 526
- Exploration & Development 546
- Extended Employment Services
 - Customer Referral, Eligibility, & Case Closure 760
 - Case Closure 761
 - Eligibility 760
 - Referral 760
- Extended Employment Services
 - Provider Agreement 759
 - Agreement Revision 759
 - Annual Agreement 759
 - Standard Form 759
- F**
- Factors For Determining Domicile 227
 - Idaho Elementary & Secondary Students 228
 - Multiple Factors 228
 - Tax Returns & Employment 227
- Faculty 601
 - Faculty-Student Ratio 601
 - Numbers Needed 601
 - Faculty Qualifications 607

- Advanced Practice Registered Nurse Program Faculty Qualifications 608
Clinical Preceptors in Registered Nurse, Practical Nurse, & Advanced Practice Registered Nurse Programs 608
Continued Study 609
Practical Nurse Program Faculty Qualifications 607
Programs for Unlicensed Assistive Personnel 607
Registered Nurse Program Faculty Qualifications 608
Failure To Meet Annual Measurable Progress 308
Compliance with Federal Law 308
State Department of Education 308
Falling & Bucking 140
General Requirements 140
Family Support Partner -- Certification qualifications And Requirements 486
Educational Requirements 486
Person Self-Identified with Lived Experience 487
Supervision Requirements 487
Training Requirements 486
Work or Volunteer Experience Requirements 487
Family Support Partners -- Code Of Ethics 487
Certified Family Support Partner Integrity 487
Certified Family Support Partner Professional Responsibility 489
Certified Family Support Partner Safety 488
Comply with Code of Ethics 489
Ethics Training 489
Family Support Principles 487
Farming & Ranching 703
Directly Used 703
Disinfectants Used in the Dairy Industry 703
Exemption Certificate 704
Farming Exemption Does Not Include 704
In General 703
Plants 703
Property Primarily & Directly Used 703
Quality Control 704
Safety Supplies 703
Transportation Activities 703
Fee Determination For Children's Mental Health Outpatient Services 503
Fees 534, 619, 624, 642, 656, 660, 675, 784
AMC Registration Renewal 642
Annual Fund Fee 624
Annual Renewal Fee 619, 624, 656, 660, 675
Annual Renewal Fee for Inactive License 660
Application 642
Application Fee 619, 660, 675
Application for Reciprocity 642
Certificate to Obtain & Use
Pharmaceutical Agents Fee 624
Change in Certification Level 785
Continuing Education Provider Application Fee 642
Duplicate License Fee 675
Examination & Reexamination Fees 642
Examination Fee 675
Examination/Reexamination Fee 660
Exploration Permit 534
Fee Adjustment 535
Fees are Non-Refundable 642
Fees Followed By "*" Means 642
Inactive License 619
Initial Certification 784
Intern Permit Fee 619
License Application Fee 624, 656
License by Endorsement Fee 675
License Renewal 642
Non-Refundable 619
Nonrefundable Nominal Fee 534
Original AMC Registration 642
Original License 642
Original License Fee 619, 660, 675
Original License Via Reciprocity 642
Processing Fee 535
Provisional Permit 660, 675
Provisional/Temporary 656
Refund of Fees 660, 675
Reinstatement 642
Reinstatement Fee 624, 656, 675
Re-Issuance of Lost License 656
Renewal Certification 785
Temporary License 675
Temporary Permit 642
Temporary Permit Fee 619
Trainee Registration Fee 642
Financial Responsibility Of Parent(s) 503
Fingerprints 341
Existing Licensees 341
Fees 341
License Applicants 341
Fire & Safety Policy 212
Assignment of Responsibilities 214
Elements 212
Employer, Employee, & Labor Representative Cooperation 216
Environmental Hazards Inherent to the Operation 213
Fatalities 213
First Aid Training 215
Foreman Responsibilities 214
Hazard Appraisal 213
Injury Record & Reporting System 215
Maintenance of Safe Working Conditions 216
Management Discharge of Duty 212
Management Leadership 212
Management of Personnel 213
Planning 212
Remedial Measures of Corrective Action 217
Reporting of Injuries 213
Safety Director (Part-Time or Full-Time) 214
Safety Order By the Administrator 217
Training & Education 215
Work Procedures & Practices 213
Fire Prevention, Protection & Suppression 121
Flammable Liquids 122
General Requirements 121
Transferring Flammable Liquids & Powdered Materials 122
Transportation of Flammable Liquids 123
First Aid 116
Attendance for Seriously Injured 117
Communication 117
First Aid Kits 117
First Aid Training 117
Stretcher or Spine Board 117
Transportation 116
Fluid Containment 572
Food, Meals, Or Drinks 718
Boarding Houses 719
Church Organizations 719
Clubs & Organizations 718
Colleges, Universities, & Schools 718
Commercial Establishments 718
Food or Beverage Tastings 719
Fraternities, Sororities, & Cooperative Living Group 718
Free Giveaways to Employees 720
Honor System Snack Sales 719
In General 718
Senior Citizens 719
Taxable Purchases by Establishments Selling Meals or Beverages 720
Fraudulent, Dishonest & Unethical Practices - Broker-Dealer, Broker-Dealer Agents, Issuer Agents, Investment Advisers, Investment Adviser
Fraudulent, Dishonest & Unethical Practices 372
Loans to Customers 372
Fraudulent, Dishonest & Unethical Practices - Broker-Dealer, Broker-Dealer Agents, Issuer Agents, Investment Advisers, Investment Adviser Representatives 372

G

Garages & Machine Shops & Related

- Areas 126
 - General Requirements 126
- Gas Processing Facilities 578
 - Flaring 579
 - Inspections 579
 - Location of Gas Processing Facilities 578
 - Meters & Facility Plans 579
 - Operational Details 579
 - Operations 579
 - Reports 579
- Gas-Oil Ratio For Well
 - Classifications 576
- Gas-Oil Ratio Limitation 576
 - Determination of Inefficient Ratios 577
 - Final Orders 576
 - Waste Prevention 576
- General Drilling Rules 569
 - Conductor Pipe or Casing Requirements 570
 - Drilling Mud Disposal 572
 - General Design Requirements for Casing & Cementing 569
 - High Temperature Conditions 570
 - Interim Drill Site Clean Up 573
 - Intermediate Casing 571
 - Mud Pits 572
 - Production Casing 571
 - Report of Water Encountered 572
 - Requirements for BOP Equipment 570
 - Spill Prevention, Control, & Countermeasures Plan 572
 - Step-off 572
 - Surface Casing Requirements 570
 - Well Control (Cable Tools) 572
 - Well Control (Rotary Tools) 572
 - Wildcat & High-Pressure Conditions 570
- General Requirements 129, 156, 201
 - Approach & Departure Zones 202
 - Approaching or Leaving Helicopter 202
 - Areas to Avoid in Helicopter 202
 - Briefings 201
 - Canopy Framework 157
 - Canopy Structure 157
 - Clearance Above the Deck 157
 - Compliance With FAA Regulations 202
 - Daily Test Required 129
 - Driver Protection Guard 156
 - External Loads 202
 - Gusset Plates or Braces 157
 - Loose-Fitting Clothing 201
 - Open Fires 202
 - Overhead Covering 157
 - Personal Protective Equipment 201
 - Personnel in Clear Before Moving Logs or Turns 129
 - Pin Connections 157
 - Protective Precautions 202
 - Rear Covering 157
 - Reduced Visibility 202
 - Rigging 129
 - Sideguards 158
 - Unauthorized Personnel 202
- General Requirements & Conditions 749
 - Permit Types to Exceed Eighty Thousand Pounds Gross Weight 749
 - Weights Allowed on Interstate 749
 - Weights Allowed on Non-Interstate Highways 749
- Graduate Physician Assistant 592
 - Licensure Prior to Certification Examination -- Board Consideration 592
 - Licensure Prior to College Baccalaureate Degree -- Board Consideration 592
 - No Prescribing Authority 592
 - Weekly Record Review 592
- Grievances 490
 - Department Response to Grievance 490
 - Grievance Content 490
- Grocery Credit
 - Taxable Years Beginning After December 31, 2007 689
 - Circumstances Causing Ineligibility 690
 - Claiming the Credit 690
 - Donating the Credit 691
 - Illegal Residents 690
 - Members of the Uniformed Services 690
 - Nonresidents 690
 - Part-Year Residents 690
 - Residents 689
 - Spouse or Dependents of Members of the Uniformed Services 690
- Guidelines For Approval Of Continuing Education Credits 626
 - Board Assessment of Continuing Education Activities 626
 - Continuing Education Credit 626
 - Credit for International, National & Regional Meetings of Psychological Organizations 626
 - Credit for Other Relevant Workshops, Licensed Psychologist Classes or Training Experiences 626
 - On-Line Education 627
 - Presentation of Papers 626
 - Self-Study, Lectures or Public or Professional Publications & Presentations 626
 - Teleconferences 627
- Guidelines For Use Of Service Extenders To Licensed Psychologists 627
 - Conditions for Use of Service Extenders 628
- General Provisions for Licensed Psychologists Extending Their Services Through Others 627
- Qualifications for Service Extenders 628
- Guylines 148
 - Anchoring Guylines 149
 - Effectiveness of Guys 150
 - General Requirements 148
 - Minimum Guyline Requirements 151
- H**
- High School Graduation Requirements 281, 310, 318
 - Arts & Humanities 282
 - Civics & Government Proficiency 320
 - College Entrance Examination 283, 311, 319
 - Content Standards 283, 311, 319
 - Credit Requirements 281, 310, 318
 - Foreign Exchange Students 285, 313, 322
 - Health/Wellness 282, 311, 319
 - Humanities 311, 319
 - Middle School 283, 312, 320
 - Proficiency 284, 321
 - Senior Project 283, 312, 320
 - Social Studies 282, 311, 319
 - Special Education Students 285, 313, 322
- Home Health Services
 - Definitions 460
 - Home Health Plan of Care 460
 - Home Health Services 460
 - Place of Residence 461
 - Procedural Requirements 461
 - Face-to-Face Encounter for Home Health Medical Supplies, Equipment, & Appliances 461
 - Face-to-Face Encounter for Home Health Services -- Excluding Medical Supplies, Equipment, & Appliances 461
 - Home Health Plan of Care 462
 - Physician Orders 461
- Hunter & Archery Education 376
 - Fees 376
 - Mandatory Hunter & Archery Education Programs 376
 - Parent to Attend Shooting Clinic with Student 376
- HVAC Journeyman Certificates Of Competency Requirements 106
 - Education 106
 - Examination 106
 - Experience 106
 - Out of State Journeyman Applications 106
- HVAC Permits 107
 - Home Owners 107

- HVAC Contractors & HVAC
 Specialty Contractors 107
 Refunds of Permits 107
 Serial Number 107
 Transferring a Permit 107
 Hydraulic Fracturing 562
 Application Requirements 562
 Post Treatment Report 563
 Pressure Monitoring 563
 Volatile Organic Compounds &
 Petroleum Distillates 563
 Well Integrity 563
- I**
- Idaho Educator Credential 242
 Additional Renewal
 Requirements 253
 Administrator Certificate 248
 American Indian Language 253
 Certification Standards For Career-
 Technical Educators 249
 Degree Based Career-Technical
 Certification 249
 Junior Reserved Officer Training
 Corps (Junior ROTC)
 Instructors 253
 Occupational Specialist
 Certificate 250
 Postsecondary Specialist 252
 Pupil Personnel Services
 Certificate 246
 Standard Instructional
 Certificate 242
 Idaho Interim Certificate 254
 Foreign Institutions 255
 Idaho Comprehensive Literacy
 Course 254
 Interim Certificate Not
 Renewable 254
 Mathematical Thinking for
 Instruction 255
 Reinstatement of Expired
 Certificate 255
 Technology 255
 Idaho Source Income Of Nonresident
 And Part-Year Resident Individuals -
 - Distributive Share Of S Corporation
 & Partnership Income 688
 Distributions 689
 Guaranteed Payments Treated As
 Compensation 689
 In General 688
 Nonbusiness Income 688
 Pass-Through Items 688
 Identification Of Animals That Legally
 May Be Taken 386
 Big Game Animals of Either
 Sex 386
 Seasons Restricted to Antlered or
 Male Animals Only 386
 Seasons Restricted to Antlerless or
 Female Animals Only 387
 Identification of Services, Midlevel
 Practitioner Services 460
 Identification Of Sex, Size, &/Or
 Species In Possession & During
 Transportation Or Shipment
 Evidence of Sex 388
 Evidence of Size 388
 Evidence of Species 388
 Other 388
 Identification Of Sex, Size, And/Or
 Species In Possession & During
 Transportation Or Shipment 388
 Identification of Wells 569
 Signs 569
 Illustration Of Undercuts 142
 Illustration of Undercuts 142
 Immediate Denial, Revocation, Or
 Suspension 490
 Importation Of Cattle Into Idaho 48
 Approved Slaughter
 Establishments 48
 Feedlots Approved by the
 Administrator 49
 Post Entry Inspection 49
 Specifically Approved Livestock
 Market 49
 Importation Of Domestic Cervidae 53
 Certificate of Veterinary
 Inspection 53
 Deworming Requirement 53
 Meet Testing Requirements 53
 National CWD Herd Certification
 Program Participation 53
 P. tenuis Statement 53
 Importation Of Swine 52
 Animals Inspected 52
 Garbage 52
 Slaughter Swine Exceptions 53
 Vaccination 52
 Inactive Licensure Status 636
 License Fee for Inactive Status 636
 License Inactive Over Five
 Years 636
 Reactivating Inactive License 636
 Request License be Placed on
 Inactive Status 636
 While on Inactive Status 636
 Inactive Status 483
 Inactive Certification Status 483
 Reactivation of Certification 484
 Request for Inactive Status 483
 Incorporation By Reference 47, 220,
 277, 294, 315, 324, 329, 374, 434,
 753, 777
 "Idaho Sexual Offender Management
 Board Standards and Guidelines
 for Practitioners, Evaluations &
 Treatment of Juvenile Sexual
 Offenders" 777
 "Association for the Treatment of
 Sexual Abusers Practice
 Guidelines for the Assessment,
 Treatment & Management of Male
 Adult Sexual Abusers" 777
 "Association for the Treatment of
 Sexual Abusers Professional Code
 of Ethics" 777
 "Bylaws & Constitution of the
 American Association of Police
 Polygraphists" 777
 "Bylaws of the American Polygraph
 Association" 777
 "Idaho Sexual Offender Management
 Board Standards & Guidelines for
 Adult Sexual Offender
 Management Practices" 777
 Availability of Documents 374
 Availability of Incorporated
 Documents 363, 366, 370
 Availability of Reference
 Material 753
 Carrier Safety Requirements 363,
 365, 369
 Documents Incorporated by
 Reference 753
 General 753
 Idaho Alfalfa Certification
 Standards 329
 Idaho Bean Certification
 Standards 329
 Idaho Birdsfoot Trefoil Certification
 Standards 330
 Idaho Blue Flax Certification
 Standards 329
 Idaho Chickpea Certification
 Standards 329
 Idaho Grain Certification
 Standards 329
 Idaho Grass Certification
 Standards 329
 Idaho Lentil Certification
 Standards 329
 Idaho Milkvech Certification
 Standards 329
 Idaho Pea Certification
 Standards 330
 Idaho Penstemon Certification
 Standards 330
 Idaho Potato Certification
 Standards 329
 Idaho Rapeseed/Canola/Mustard
 Certification Standards 329
 Idaho Red Clover Certification
 Standards 329
 Idaho Sanfoin Certification
 Standards 330
 Idaho White Clover Certification
 Standards 330
 NMLS Policy Guidebook 374
 Pre-Variety Germplasm Certification
 Regulations in Idaho 329
 Prohibited Noxious Seed in Idaho
 Certified Seed 329
 Regulation X 374
 Regulation Z 374
 Safety Fitness Procedures 362, 365,
 369
 Seed Certification Fee & Application
 Schedule 329

- The English Language Development (ELD) Standards 278, 295, 316
- The Idaho Alternate Assessment Achievement Standards 278, 295, 316
- The Idaho Content Standards 277, 294, 315
- The Idaho English Language Assessment (IELA) Achievement Standards 278, 316
- The Idaho Extended Content Standards 278, 295, 316
- The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors 278, 295
- The Idaho Standards Achievement Tests (ISAT) Achievement Standards 316
- The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired 278, 295, 316
- The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing 278, 295, 316
- The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures 278, 295, 316
- The Real Estate Settlement Procedures Act 374
- The Sexual Offender Management Board's "Required Format for Juvenile Psychosexual Evaluation Reports" 777
- The Sexual Offender Management Board's "Required Format for Adult Psychosexual Evaluation Reports" 777
- The Truth in Lending Act 374
- Transportation of Hazardous Materials, Substances, & Wastes 362, 365, 369
- Incorporation By Reference (Rule 4) 362, 365, 369
- Initiating Contracting 325
- Additional Information 325
- Format 325
- Initiated by Department 325
- Initiated by Interested Party 325
- Inspection Report Forms 29
- Inspections 29
- Insurance Coverage 508
- Integration 554
- Integration Application Requirements 554
- Processing Integration Applications 555
- Interest Rates 726
- Idaho Interest Rates & Applicable Revenue Rulings 726
- In General 726
- Internship 634
- Denture Clinic Requirements 635
- Internship Equivalency 634
- Internship Not to Exceed One Year 635
- Internship Supervisor Requirements 636
- Reporting Requirements 635
- Requirements & Conditions for Internship 634
- Training Requirements 635
- Interpretation And Application Of These Rules 110
- Additional Standards 111
- Enforcement 110
- Exceptions 111
- Existing Buildings, Structures, & Equipment 111
- Interpretations 111
- Issues Not Covered 111
- Jurisdiction 110
- Scope 110
- Intrastate Movement Certificate, Domestic Cervidae 43
- Intrastate Movement Of Domestic Cervidae 43
- Intrastate Movement Certificate 43
- Movement of Cervidae Between Accredited AZA or USDA Licensed Facilities 43
- TB Test 43
- Introduction 212
- Accident Prevention 212
- Enforcement 212
- Scope 212
- Irrigation Equipment & Supplies 704
- Agricultural Irrigation 704
- Exemption Certificate 705
- Nonagricultural Irrigation Equipment or Supplies 704
- Real Property Improvements 704
- Title to Equipment 705
- J**
- Jail Training
- Agreement To Serve
- Agreement 348
- Disqualifications 348
- Fulfillment of Agreement 348
- Multiple POST Basic Training Academies 349
- Pay Back 348
- Proration 348
- Reimbursement 348
- L**
- Late Bids/Proposals, Late Withdrawals & Late Modifications 739
- Lease Access Roads 569
- Lease Aquisition Process 529
- Acquiring a Lease 529
- Auction Conditions 530
- Auction Procedure 530
- Execution of Lease 531
- Lease Information for Auction 530
- Lease Provisions 529
- Nominating a Tract for Auction 530
- Withdrawing a Tract for Auction 530
- Legal Authority 220, 324
- Levels Of Post Conviction Sexual Offender Polygraph Examiner Certification 782
- Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner 782
- Senior/Approved Post Conviction Sexual Offender Polygraph Examiner 782
- Levels Of Psychosexual Evaluator Certification 780
- Associate/Supervised Psychosexual Evaluator 780
- Provisional/Supervised Psychosexual Evaluator 780
- Senior/Approved Psychosexual Evaluator 780
- Levels Of Sexual Offender Treatment Provider Certification 781
- Associate/Supervised Sexual Offender Treatment Provider 781
- Provisional/Supervised Sexual Offender Treatment Provider 781
- Senior/Approved Sexual Offender Treatment Provider 781
- License Renewal 596
- Date License Lapsed 597
- Effective Period 597
- Final Date to Renew 597
- Renewal Applications 597
- Renewal Notice - Advanced Practice Professional Nurse 597
- Renewal Notice - Licensed Practical Nurse 597
- Renewal Notice - Licensed Professional Nurse 597
- Licensed Residential Real Estate Appraiser Classification Appraiser Qualification Criteria 646
- Education 647
- Examination 648
- Experience 648
- Licenses Canceled For Failure To Renew 623
- Licensure Fees 602
- Advanced Practice Registered Nurses 602
- Emeritus License Fee 603
- Licensure by Endorsement 602
- Licensure by Examination 602
- Limited License Fee 603
- Records Verification Fee 603
- Temporary License Fee 603
- Verification of Licensure Fee 602
- Limited Licenses 597
- Compliance Required 599

- Disability Due to Substance Use
 Disorder or Mental Health
 Disorder 598
 Following Disciplinary Action 597
 Non-Practicing Status 597
 Restricted Status 598
 Summary Suspension - Lack of
 Compliance 600
 Limited Service Appointments 420
 Designation 421
 Limited Service Agreement 421
 Permanent Status & Expedited
 Layoff 421
 Lines, Shackles & Blocks 151
 Blocks 153
 Cable Cutting 153
 Clips 152
 Damaged or Worn Wire Rope 153
 General Requirements 151
 Pins 153
 Shackles 153
 Splices 151
 Literacy Growth Targets 237
 Annual Review 237
 Statewide Trajectory Growth
 Targets 237
 Local District Evaluation Policy -
 School Principal 272
 Evaluation Policy - Content 274
 Evaluation Policy - Frequency of
 Evaluation 275
 Evaluation Policy - Personnel
 Records 275
 Evaluation System Approval 275
 Professional Practice 274
 Standards 272
 Student Achievement 274
 Local District Evaluation Policy --
 Teacher & Pupil Personnel
 Certificate Holders 269
 Evaluation Policy - Content 271
 Evaluation Policy - Frequency of
 Evaluation 272
 Evaluation Policy - Personnel
 Records 272
 Evaluation System Approval 272
 Participants 271
 Professional Practice 270
 Standards 269
 Student Achievement 270
 Log Truck Transportation 184
 Adequate Reaches Required 190
 Binder Placement
 Requirements 190
 Binders & Wrappers to be Placed
 Before Leaving Landing
 Area 190
 Bunks to be Kept in Good Condition
 & Repair 191
 Construction of Wrappers 189
 Following Other Vehicles 191
 General 184
 Inserting of Compensating Pin 191
 Lighting Equipment Required 185
 Linkage for Stakes or Chocks 185
 Metal Parts Between Bunk & Cab to
 be Covered 191
 Notify Engineer When Around
 Truck 186
 Number of Wrappers Required 186
 Precautions When Placing or
 Removing Binders &
 Wrappers 190
 Proper Lay of Logs in Stakes or
 Bunks 190
 Reaches to Be Clamped When
 Towing Unloaded Trailer 191
 Requirements for Crosswise Loaded
 Trucks 189
 Safe Operating Requirements 185
 Safety Chains 191
 Scaling & Branding 191
 Stake & Chock Tripping
 Mechanisms 185
 Stake Extensions 185
 Stakes, Bunks, or Chock Blocks 185
 Stopping & Holding Devices for Log
 Trucks 184
 Towing of Trucks 190
 Traffic Travel on Right Side of Road
 Except Where Posted, Log Truck
 Transportation 190
 Logging 706
 Directly Used 707
 Election to Pay Sales Tax 708
 In General 706
 Logging Exemption 707
 Logging Process Begins & Ends 706
 Not Included in Logging
 Exemption 707
 Property Used in Logging
 Operations 706
 Real Property 706
 Long-Term Care Resident &
 Medicaid 443
 Income Not Counted 443
 Medicaid Income Limit of Long-
 Term Care Resident Less Than
 Thirty Days 443
 Medicaid Income Limit of Long-
 Term Care Resident Thirty Days or
 More 443
 Medicaid Participant Residing in a
 Skilled Nursing Facility 444
 Resources of Resident 443
 Lumber Manufacturing 698
 Exemption Certificate 700
 Nontaxable Activities 699
 Taxable Activities 700
- M**
- Mandatory Check & Report
 Requirements 388
 Authorized Representative 389
 Harvest Report 389
 Presentation of Animal Parts 389
 Mandatory TAFI Household
 Members 448
 Children 448
 Parents 448
 Pregnant Woman 448
 Spouses 448
 Mandatory Wolf Telephone
 Report 389
 Gray Wolf 389
 Grizzly Bear 390
 Matching Requirement 682
 Measurement Of Oil 576
 Correction for Impurities 576
 Gravity Determination 576
 Temperature Correction 576
 Mechanical Delimiters & Feller
 Bunchers 145
 General Requirements 145
 Medical Card For Children In Alternate
 Care 508
 Medical Emergencies 508
 Medical Examination Upon Entering
 Alternate Care 508
 Mental Health Assessment 501
 Meters 577
 General Requirements 577
 Meter Calibration 577
 Visibility 577
 Midlevel Practitioner Services
 Coverage & Limitations 460
 Provider Reimbursement 460
 Billing of Services 460
 Payments Made Directly to
 CRNA 460
 Reimbursement Limits 460
 Migratory Game Bird Seasons, Bag &
 Possession Limits 405
 Ducks Including Mergansers &
 American Coot 406
 Geese Including Dark Geese - Black
 Brant, Canada, Emperor, & White-
 Fronted, & Light Geese - Ross' &
 Snow 406
 Mourning Dove 406
 Wilson's Snipe 406
 Youth Waterfowl Hunt 406
 Minimum Standards For Employment
 For Correction Officers 357
 Mistakes 739
 Mistakes Discovered After
 Award 740
 Mistakes Discovered After Opening
 But Before Award 739
 Mistakes Discovered Before
 Opening 739
 Mistakes in Submission 739
 Written Approval or Denial
 Required 740
 Multiple Zone Completions 558
 Application Processing 558
 Commingling Production 559
 Requirements of the Owner or
 Operator 558
 Zone Effectiveness 559

N

- Negotiations 742
 - Conditions of Use 743
 - Examples 743
 - Timing of Use 743
 - Use of Negotiations 742
 - Nontaxable Purchases by
 - Establishments Selling Meals or Beverages 719
 - Notice Of Death Of Domestic Cervidae 42
 - Notice of Death Of Domestic Cervidae
 - Individual Domestic Cervidae 42
 - Submission of Death Certificates 42
 - Notice Of Decision On Eligibility 502
 - Notification of Eligibility Determination 502
 - Other Information that Must be Provided to the Parent 502
 - Parental Rights 502
 - Reapplication for Mental Health Services 502
 - Notices - General 545
 - Emergency Authorization 545
 - Publication of Legal Notices 546
 - Written Authorization Required 545
 - Notices -- Posted 338
 - ADA Access 338
 - Contact Information In Designated Areas 338
 - Notice To Minors Posted At Entrances 338
- O**
- Office Information 220, 324
 - Electronic Address 221
 - Facsimile 220
 - Mailing Address 220
 - Office Hours 220
 - Street Address 220
 - Telephone Number 220
 - Official Identification Of Imported Cattle 50
 - Beef Cattle 50
 - Dairy Cattle 50
 - Order Of Selection 754
 - Priority 1 755
 - Priority 2 755
 - Priority 3 755
 - Organization 611
 - Board Members & Duties 611
 - Organization of the Board 611
 - Outcomes For Children's Mental Health Services 503
 - Owner's or Operators Duties 572
- P**
- Parental Financial Support For Children
 - In Alternate Care 507
 - Financial Arrangements with Parent(s) 507
 - Notice of Parental Responsibility 507
 - Parole Revocation Process 765
 - Attorney 767
 - Due Process 766
 - Findings/Decisions 769
 - Forfeiture of Time on Parole 769
 - Hearings 768
 - Inability to Assist in Defense 769
 - Initiated 765
 - Intermediate Sanctions on Parole
 - Violations & Absconding 766
 - Miscellaneous Revocation Information 769
 - Warrants 766
 - Witnesses 767
 - Payment For Services 764
 - Audits 764
 - Billing Procedures 764
 - Denial/Revocation of Payment 764
 - Fee for Service 764
 - Pre-Authorization 764
 - Payment To Family Alternate Care Providers 509
 - Clothing 509
 - Gifts 509
 - School Fees 509
 - Peer Support Specialist -- Certification
 - Qualifications And Requirements 484
 - Educational Requirements 484
 - Person Self-Identified with Lived Experience 485
 - Supervision Requirements 485
 - Training Requirements 484
 - Work or Volunteer Experience Requirements 484
 - Peer Support Specialists -- Code Of Ethics And Professional Conduct 485
 - Certified Peer Support Specialist Professional Conduct 485
 - Certified Peer Support Specialists 485
 - Comply with Code of Ethics 486
 - Ethics Training 486
 - Peer Support 485
 - Permit Processing 546
 - Appeals 546
 - Denial If Incomplete 546
 - General Review Process 546
 - Resubmittal 546
 - Permit To Drill, Deepen, Or Plug Back
 - Application 557
 - Permit Denial 558
 - Permit to Drill, Deepen, or Re-Enter 557
 - Application Processing 557
 - Location of Wells 557
 - Permits Required 557
 - Time Required to Commence Operations 557
 - Permits
 - Expiration of Permit 63
 - Home Owners, Commercial, Industrial, & Others 63
 - Plumbing Contractors 63
 - Refunds of Permits 64
 - Serial Number 63
 - Transferring a Permit 63
 - Permitted Advertising With Trade Associations 519
 - Advertisements 519
 - Donations 519
 - Permitted Consumer Information 518
 - Additional Information That May Be Provided 518
 - Information That May Be Provided 518
 - Listing Package 518
 - Permitted Self-Promotional Advertising 519
 - Self-Promotional Functions 519
 - Self-Promotional Items 519
 - Social Media 519
 - Pheasant Seasons, Bag & Possession Limits 405
 - WMA Upland Game Permit 405
 - Youth Pheasant Season 405
 - Pit Requirements 565
 - Application Processing 565
 - Closure of Pits 568
 - Condemnation Due to Improper Impoundment 569
 - Emergency Pits 568
 - Location 565
 - Minimum Plans & Specifications for Long Term Pits 567
 - Minimum Plans & Specifications for Reserve, Well Treatment, & Other Short Term Pits 566
 - Operating Requirements 568
 - Pit Sizing Criteria 566
 - Plans Required 565
 - Site Preparation 566
 - Time Limits for Short Term Pits 567
 - Power to Limit Production 577
 - Practice Standards 590
 - Advertise 590
 - Delegation of Services Agreement 590
 - Identification 590
 - Notification of Change or Addition of Supervising or Alternate Supervising Physician 591
 - On-Site Review 591
 - Supervising Physician 590
 - Preference for Commercially Available Products, Specifications -- Policies & Development 745
 - Pre-Proposal Conference 738
 - Prescription Drug Order
 - Partial Filling 679
 - Partial Filling of Schedule II Prescriptions 679
 - Partial Filling of Schedule II Prescriptions for LTCF or Terminally Ill Patients 679
 - Partial Filling of Schedule III, IV, & V Prescriptions 680

- Schedule II Partial-Fill Documentation 679
- Prescription Drugs
 - Provider Reimbursement 475
 - Billed Charges 475
 - Claim Form Review 475
 - Claims Volume Survey for Tier-Based Dispensing Fees 476
 - Cost Appeal Process 478
 - Dispensing Fee 476
 - Pharmacy Reimbursement 475
 - Reimbursement 475
 - Remittance Advice 476
 - Return of Drugs 477
 - Prescription Writing 594
 - Application 594
 - Approval & Authorization Required 594
 - Controlled Substances for Office Use 594
 - Pharmaceutical Samples 594
 - Prescriber Drug Outlet 594
 - Prescription Forms 594
 - Record Keeping 594
 - Prescriptions 705
 - Dental & Orthodontic Appliances 706
 - In General 705
 - Purchases by Nursing Homes & For Profit Hospitals 705
 - Purchases by Practitioners 705
 - Sale Of Eyeglasses, Contact Lenses, & Related Products 706
 - Seller Must Document Exempt Sale 705
 - Prescriptive & Dispensing
 - Authorization For Advanced Practice Registered Nurses 600
 - Expiration of Temporary Prescriptive Authorization 601
 - Initial Authorization 600
 - Prescribing & Dispensing Authorization 601
 - Temporary Authorization 601
 - Price Agreements 744
 - Dollar Value 744
 - Multiple Agreements 744
 - Non-exclusive Agreements 744
 - Property 744
 - Problem-Solving & Due Process Procedures 422
 - Assistance to Agencies 423
 - Elements of Due Process Procedure 423
 - Elements of the Problem-Solving Procedure 422
 - Eligibility & Time for Filing Under Problem-Solving Procedure 422
 - Establishment of Agency Problem-Solving & Due Process Procedures 422
 - Filings Alleging Sexual Harassment or Other Illegal Discrimination 423
 - Notification 423
 - Overview of Procedures 422
 - Processing Applications Not Listed In Idaho Code § 47-320(1) 556
 - Applications Covered By This Section 556
 - General Review Process 556
 - Preapplication Meeting 556
 - Reimbursement for Mailing Costs 556
 - Resubmittal 556
 - Production 575
 - Production Exemption 696
 - Change in Primary Use of Property 698
 - Exempt Purchases 696
 - Exemption Certificate 698
 - In General 696
 - Production Process Beginning & End 697
 - Qualifying Businesses 696
 - Real Property 698
 - Special Rules 698
 - Taxable Purchases 697
 - Transportation Activities 698
 - Production Reports 575
 - Annual Production Report 576
 - Frequency 576
 - Required Content 575
 - Program Year 758
 - Program Year & Application Submission Date 758
 - Proposal Discussion With Individual Offerors 741
 - Application to Other Solicitation Types 742
 - Best & Final Offer 742
 - Classifying Proposals 741
 - Conduct of Discussions 742
 - Offerors Defined 742
 - Purposes of Discussions 742
 - Proposal Evaluation 325
 - Oversight Committee Action 326
 - Proposal Resubmittal 326
 - Timeline 325
 - Protections For Children In Alternate Care 504
 - Least Restrictive Setting 504
 - Notification to Parents or Guardians of Change in Placement 505
 - Out-of-State Placement 504
 - Requirement for Licensure 504
 - Statutory Requirements 504
 - Visitation for Child's Parent or Guardian 505
 - Provider Application Process 458
 - Denial of Provider Agreement 458
 - Disclosure of Information by Providers & Fiscal Agents 458
 - Mandatory Denial of Provider Agreement 458
 - Medicare Enrollment Requirement for Specified Providers 458
 - Provider Application 458
 - Screening Levels 458
 - Provider Qualifications 759
 - Accreditation 759
 - Experience 759
 - Staff 759
 - Provisional Permit 677
 - Audiology
 - Issuance of a Provisional Permit 666
 - Duration & Renewal 677
 - Fitting & Dealing Hearing Aids 664
 - Adequate Personal Contact -- Requirements 664
 - Application -- Quarterly Reports 665
 - Exemptions 666
 - Issuance of a Provisional Permit 664
 - Supervisor -- Qualifications -- Responsibilities -- Restrictions 665
 - General 677
 - Public Defense Roster 791
 - Application for Roster Inclusion 792
 - Approval 792
 - Roster Membership 791
 - Public Notice 734
 - Public Records Act Compliance 221, 325
 - Pulling Outside Strings Of Casing 573
 - Purchase 731
 - Purchase Of Telecommunications Or Information Technology Property 733

Q

 - Qualifications Of Applicants 612
 - ARE Applicants 612
 - Experience in Lieu of Degree Applicants 612
 - Qualified Applicants & Lessees 525

R

 - Radio Signaling Systems 130
 - Activating Pulse-Tone Limitations 131
 - Adjustment, Repair or Alteration 131
 - Description on Outside of Case 131
 - Interference, Overlap, Fade-Out or Blackout 131
 - Number of Transmitters Required 131
 - Testing of Tone-Signal Controlled Devices 131
 - Use of Conventional Space Transmission of Radio Signals 130
 - Voice Communication 131
 - Reapplication For Certification 491
 - Reasons For Denial, Revocation, Or Suspension 491
 - Conflict of Interest 491

- Failure to Comply 491
 - Failure to Correct 491
 - Failure to Perform 491
 - Failure to Provide Information 491
 - Misrepresentation of Information Provided 491
 - Negligent Performance or Fraud 491
 - Receipt, Opening, & Recording Of Bids & Proposals 739
 - Reciprocity 483
 - Code of Ethics
 - Acknowledgment 483
 - Completed Application 483
 - Documentation From Other State 483
 - Provide Verification of Education, Training, & Experience 483
 - Recompletions & Plug Back 559
 - Application 559
 - Application Processing 559
 - Records 423, 763
 - Administrative Records 423
 - Customer Files 763
 - Employee Personnel Action Documents 424
 - Employee Service Records 423
 - Storage 763
 - Transfers, Reemployment & Promotions Between Agencies 424
 - Registered Trainee Real Estate Appraiser 644
 - Continuing Education 645
 - Qualification 644
 - Renewal & Reinstatement 645
 - Scope & Practice 644
 - Registered Trainee Supervisors 645
 - Registered Trainee Supervisor Requirements 645
 - Registration Examination 613
 - Grading 614
 - Passing (ARE) 614
 - When Taken 614
 - Registration Statement 638
 - Date of Filing 638
 - Failure to Timely File 638
 - Other Business Locations 638
 - Statement 638
 - Renewal & Reinstatement Fees 602
 - Advanced Practice Registered Nurse Renewal Fee 602
 - Delay in Processing 602
 - Licensed Practical Nurse Renewal Fee 602
 - Licensed Registered Nurse Renewal Fee 602
 - Reinstatement Fee 602
 - Renewal And Reinstatement Of Expired License 655
 - Renewal Of Certification 483
 - Code of Ethics
 - Acknowledgment 483
 - Continuing Education 483
 - Submit Renewal Application 483
 - Reporting & Paying State Income Tax Withholding 691
 - Extension of Time to Pay or File Returns 692
 - Filing of Annual Reconciliation Returns 692
 - Payment of State Income Tax Withheld 691
 - Valid Returns 692
 - Request for Approval 558
 - Request For Conditional Waiver 781
 - Conditional Waiver 781
 - Duration 782
 - Frequency 782
 - Good Cause 782
 - Request For Proposal (RFP) 682
 - Requirement for Production Testing 559
 - Requirements For Licensure 588
 - Certification 589
 - Completion of Form 589
 - Educational Requirement 588
 - English Language 588
 - Personal Interview 589
 - Residence 588
 - Requirements For Original Licensure 675
 - Education 676
 - Examination 676
 - General 675
 - Reserve Mud Tanks 572
 - Residency Classification Process 227
 - Resident Classification By All Institutions 227
 - Residential Care Facilities 511
 - Payment 511
 - Prior Authorization 511
 - Rigging 147
 - Allowable Loading or Stress 148
 - Arrangement & Operation 148
 - Equipment Classification 148
 - General 147
 - Inspection of Rigging 148
 - Line Hazards 148
 - Placing, Condition, & Operation of Rigging 148
 - Reefing 148
 - Safe Loading 148
 - Royalties 531
 - Oil, Gas, & Natural Gas Plant Liquids Royalty Calculation & Reporting 531
 - Overriding Royalty 532
 - Royalty Not Reduced 531
 - Royalty Payments 531
 - Rules Of Procedure Under The Administrative Procedure Act 653
- S**
- Safety Equipment & Personal Protective Equipment 118
 - Additional Information & Requirements 121
 - Eye Protection 119
 - Foot & Leg Protection 119
 - General Requirements 118
 - Hand Protection 119
 - Head Protection 119
 - Hearing Protection 121
 - Inspection, Maintenance & Sanitizing 118
 - Life Jackets, Vests & Life Rings 119
 - Life Lines -- Safety Belts 120
 - Respiratory Equipment 120
 - Work Clothing 120
 - Salmon Special Restrictions 409
 - Cease Fishing 409
 - Fish Counted in Limit 409
 - Keeping Unmarked Fish 409
 - Legal Catch 409
 - Method of Take 409
 - No Harvest or Closed to Harvest 409
 - Snagging 409
 - Special Limits 409
 - Satisfactory Service 421
 - Scope Of Practice 589
 - Scope 589
 - Security For Tax Required 722
 - Failure to File Timely After Release from Security 723
 - New Wholesaler Application 722
 - Reviewing Security on File 722
 - Security for Payment of Taxes 722
 - Taxpayer Petition for Release from Security Requirements 723
 - Types of Security 722
 - Seismic Operations 546
 - Bond Required 548
 - Client-Contractor Responsibility 550
 - Department Notifications 549
 - Forfeiture of Seismic Operation Bond 551
 - Newspaper Notice 549
 - Operating Requirements 547
 - Owner Agreement & Occupant Notification 549
 - Permit Required 546
 - Plugging 550
 - Reports & Notices Required 549
 - Self-Employment Allowable
 - Expenses 442
 - Advertising 442
 - Business Transportation 442
 - Depreciation 442
 - Insurance 442
 - Interest 442
 - Labor 442
 - Legal 442
 - Lodging 442
 - Maintenance 442
 - Materials 442
 - Meals 442
 - Rent 442
 - Shipping 442
 - Taxes 442
 - Uniforms 442

- Use of Home 442
- Utilities 442
- Self-Employment Expenses Not
 - Allowed 442
 - Labor Paid to Family Member 443
 - Loss of Farm Income 443
 - Net Losses 443
 - Payments on the Principal of Real Estate 442
 - Personal Transportation 443
 - Purchase of Capital Assets or Durable Goods 442
 - Savings 443
 - Taxes 442
- Separation During Probation 421
 - During Entrance & Voluntary Probation 422
 - Notification 421
- Service Provision 762
 - Development of Individual Program Plan 762
 - Progress Reports 763
 - Revision 763
 - Services on Individual Program Plan 762
 - Submission of the Individual Program Plan 763
 - Timeline for Submission 763
- Signaling 130
 - Audible Signaling Device at the Machine to be Activated 130
 - Audible Signaling to be Installed & Used 130
 - Hand Signal Use Restricted 130
 - One Worker to Give Signals 130
 - Persons in Clear Before Signal Given 130
 - Signal Must Be Clear & Distinct 130
 - Throwing Material Prohibited 130
 - Use of Jerk Wire Prohibited 130
- Six-Month Reviews For Children In Alternate Care Placements 511
 - Considerations in Six-Month Review 512
 - Members of Six-Month Review Panel 511
 - Notice of Six-Month Review 511
 - Procedure in the Six-Month Review 511
 - Recommendations & Conclusions of Six-Month Review Panel 512
- Skidding & Yarding 161
 - General Requirements 161
- Sliding Fee Schedule For Children's Mental Health Outpatient Services 503
- Small Purchases 735
 - Limitations 736
 - Procedure 736
 - Small Purchase Categories 736
- Sole Source Purchases 737
 - Administrator Makes Determination 737
 - Examples of Sole Source 737
 - Negotiation in Sole Source Purchase 737
 - Only a Single Supplier 737
- Special Leaves 424
 - Bone Marrow & Organ Donor Leave With Pay 426
 - Court & Jury Services & Problem-Solving & Due Process Leave 425
 - Employee Assistance Program Leave 426
 - Leave Defaults 425
 - Leave During Facility Closure or Inaccessibility 426
 - Leave of Absence With Pay 425
 - Leave of Absence Without Pay 424
 - Military Leave With Pay 425
 - Military Leave Without Pay 425
 - Red Cross Disaster Services Leave 426
 - Religious Leave 426
- Specific Requirements 194, 202
 - Boom Sticks & Foot Logs 198
 - Booms-Rafting-Towing 198
 - Hooks & Chokers 203
 - Loading & Landing Areas 203
 - Loading Logs 202
 - Log Dumps, Landings, Log Handling Equipment, Loading, & Unloading 194
 - Log Ponds 198
 - Pond Boats & Tow Boats 199
 - Signal Systems 202
 - Stiff Booms 198
 - Trailer Loading Hoist/Sawmill Log Dump 199
- Specifications -- Policies & Development 745
 - Brand Name or Equal Specification 745
 - Brand Name Specification 746
 - Purpose 745
 - Specification of Alternates May Be Included 746
 - Use of Functional or Performance Descriptions 745
- Sprayed on Fireproofing, 07800 96
- Standards For Professional Conduct & Client Relations 783
 - General Considerations for Certified Evaluators & Certified Treatment Providers 783
 - General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners 784
- Standards Of Conduct & Practice 637
 - Advertisements 637
 - General Conditions 637
 - Office Standards 637
 - Patient Record 637
 - Sanitation 637
- State Disaster Emergency Account 432
- Availability 432
- Cost Share 432
- Mitigation 432
- Statewide Average Class Size 239
 - Group 1 239
 - Group 2 239
 - Group 3 239
 - Group 4 239
- Steered Trailers 191, 192
 - Audible & Visual Warning Devices 192
 - Responsibility 192
 - Steered Trailers 191
 - Train Operations 192
- Sundry Notices 559
- Supervisor For Peer Support Specialist Or Family Support Partner -- Qualifications And Requirements 489
 - Bachelor's Degree or Higher 490
 - Supervisory Position 490
- Support Agreements & Support Orders 508
 - Support Agreement for Voluntary Placement 508
 - Support Order for Payment of Involuntary Placement Costs 508
- Support Personnel
 - Audiology 660
 - Audiology Support Personnel -- Pre-Service and In-Service Instruction 664
 - Audiology Support Personnel -- Roles -- Restrictions 661
 - Audiology Support Personnel certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) -- Roles -- Restrictions 663
 - Supervising Audiologist -- Responsibilities -- Restrictions 660
- Surface Owner Protections 551
 - Forfeiture of Surface Use Bond 552
 - Hearing to Determine Surface Use Bond 551
 - Release of Surface Use Bond 551
 - Surface Owner Notification 551
 - Surface Owner Objection 551
 - Surface Use Agreement 551
 - Surface Use Bond 551
- Surface Reclamation 582
 - Compacted Areas 583
 - General Clean Up 583
 - Reclamation Under a Surface Use Agreement 584
 - Regrading 583
 - Revegetation 583
 - Road Removal 583
 - Timing of Reclamation 582
 - Topsoiling 583
- Surveillance For CWD 44
 - Domestic Cervidae Ranch Surveillance 44
 - Slaughter Surveillance 44

T

- Tag Validation & Attachment & Proxy Statement 387
 - Proxy Statement 387
 - Tag 387
- Tags For Controlled Hunts 380, 392
 - Applicant Requirements 384, 396
 - Applications 384, 395
 - Controlled Hunt Drawing 386, 397
 - Eligibility 383, 394
 - Nonresident Tag Limitations 382, 394
 - Refunds of Controlled Hunt Fees 385, 397
 - Second Drawing Exclusion 386, 397
 - Unclaimed Tags 386, 397
 - Use of Controlled Hunt Tags 380, 392
- Tags, Stamps, Permits, & Validations 403
 - Early September Canada Goose Hunts 405
 - Migratory Game Birds 403
 - Sage Grouse or Sharp-Tailed Grouse 403
 - Wild Turkey 403
- Tank Batteries 577
 - Containment Requirements 578
 - Location of Tank Batteries 577
- Tax On Individuals, Estates, & Trusts 685
 - In General 685
 - Tables Identifying the Idaho Tax Rates and Income Tax Brackets 685
 - Tax Computation 685
- Teens At Risk Program 500
 - Application 500
 - Contracting Process 500
 - Outcomes 500
 - Services 500
- Telepsychology 630
 - Assessment 631
 - Definitions 630
 - General 630
 - Informed Consent 630
 - Interjurisdictional Practice 631
 - Security & Confidentiality 631
- Temporary Appointments (Non-Classified) 421
 - Hours Limitation 421
 - Transition to Classified Service 421
- Temporary License 677
 - Duration 677
 - General 677
- Term of Permit 557
- Termination - Cancellation Of
 - Lease 533
 - Cause 533
 - Equipment Removal 534
 - Failure to Pay Rental 533
 - Other Wells 534
 - Surrender After Termination 533
- Termination Of Funding 682
- Termination Or Revocation Of Provider Status 760
 - Business Practices 760
 - Customer Rights 760
 - Loss of Accreditation 760
 - Out of Compliance 760
- Testing Requirements 53
 - Brucellosis 53
 - Exceptions 53
 - Red Deer Genetic Factor 53
 - Tuberculosis 53
- The Basic Certificate 360
 - Basic Training 360
 - Correction Field Training Manual 360
 - Probation 360
 - The Basic Certificate
 - Private Prison Contractor's Correction Officer Training Program 360
- The Part-Time Juvenile Detention Officer Certificate 354
 - Applications for Certification 354
 - Basic Training 354
 - Decertification 355
 - Employment 354
 - Full-Time Juvenile Detention Officer Status 355
 - Part-Time Juvenile Detention Officer Packet 354
 - Part-Time Juvenile Detention Orientation Training 354
 - Retaining Certification 354
- Therapy Services
 - Coverage & Limitations 462
 - Non-Covered Services
 - Occupational Therapy, Physical Therapy, & Speech-Language Pathology 463
 - Service Description
 - Occupational Therapy & Physical Therapy 462
 - Speech-Language Pathology 463
 - Service Limitations 463
 - Procedural Requirements 464
 - Face-to-Face Encounter for Home Health Therapy Services 465
 - Level of Supervision 465
 - Physician Orders 464
 - Therapy Plan of Care 465
 - Tie Responses 741
 - Award 741
 - Drawing Lots 741
 - Tie Responses - Definition 741
- Title & Scope 220
 - Scope 220
 - Title 220
- Title And Scope 324
- Title XIX Eligibility 505
- Tractors & Similar Logging Equipment 158
 - Blades or Similar Equipment 158
 - Brakes & Steering 158
 - Guards 158
 - Operating Condition 158
 - Pin Connections 158
 - Repairs or Adjustments 158
 - Seatbelts 158
 - Sideguards 158
 - Starting of Equipment 158
- Traffic Record Investigation
 - Procedures 348
 - Requirements 347
- Transfer Of Drilling Permits 565
 - During Drilling or After Completion 565
 - Prior to Drilling Well 565
 - Terms for Acceptance of Transfer 565
- Transportation Of Employees 137
 - General Requirements 137
- Trapper Education 377
 - Effective Date 377
 - Exemption 377
 - Fee 377
 - Mandatory Trapper Education Program 377
- Treatment Foster Care 510
 - Availability 510
 - Continuing Education 510
 - Payment 510
 - Payment to Contractors 511
 - Qualifications 510
 - Treatment Plan 511
- Treatment Plan 502
 - Annual Development of Treatment Plan 502
 - Development of Treatment Plan 502
 - Goals & Tasks 502
 - One Hundred Twenty Day Review 502
- Tree Climbing 176
 - Before Leaving the Ground 176
 - Climbing Equipment 176
 - Climbing Operations 177
 - Rescue Plan 176
 - Topping Trees 177
- Truck Road Standards 134
 - Building Roads 134
 - Main Truck Roads 135
 - Operation of Equipment 135
- Tuberculosis 44
 - Change of Ownership 44
 - Rules & UM&R 44
- Tuberculosis Test Requirements 50
 - Rodeo Stock 51
 - Tuberculosis Accredited Free Herd 50
 - Tuberculosis Accredited Free State or Zone 50
 - Tuberculosis Accredited Preparatory State or Zone 51
 - Tuberculosis Modified Accredited Advanced State or Zone 50
 - Tuberculosis Modified Accredited State or Zone 51

- Tuberculosis Non-Accredited State or Zone 51
- Type 4-Specialty Construction Categories 91
- Acoustical Treatment, 09500 97
- Alarm Systems, 13850 99
- Aquatic Recreational Equipment, 13165 99
- Asphalt Maintenance & Repair, Seal Coating, Crack Sealing & Chip Sealing, 02785 93
- Asphalt Paving, 02740 93
- Athletic & Recreational Surfaces, 02790 93
- Blasting, 02319 92
- Boiler & Steam Fitting, 15510 100
- Bridge Crossings & Box Culverts, 02855 94
- Bridge Expansion Joints & Repair, 05830 95
- Bridges & Structures, 02850 94
- Building Cleaning & Maintenance, 18600 101
- Carpentry, Framing & Remodeling, 06100 95
- Cathodic Protection, 13110 98
- Caulking & Joint Sealants, 07920 96
- Chemical Cleaning & Masonry Restoration, 04900 95
- Chimney Repair, 15550 100
- Circular Prestressed Concrete Storage Tanks (Liquid & Bulk), 13201 99
- Climbing Wall Structures & Products, 11485 98
- Cold Milling, Rumble Strip Milling, Asphalt Reclaiming & Pavement Surface Grinding, 02965 94
- Communication, 16700 100
- Concrete Demolition, Concrete Sawing & Cutting, Core Drilling, Joint Sealing & Hydrocutting, 03900 95
- Concrete Grouting, 03600 95
- Concrete Reinforcing Rebar Installation, 03200 94
- Concrete, 03300 94
- Construction Zone Traffic Control, 01550 91
- Craning & Erection, 01542 91
- Crushing, 02720 93
- Demolition, 02220 91
- Develop Gas & Oil Wells, 18300 101
- Dewatering & Subsurface Drainage, 02240 92
- Docks - Log & Wood Structures, 06139 96
- Doors, Gates, Specialty Doors & Activating Devices, 08100 96
- Dredging, 02325 92
- Drilled Piers, Pile Driving, Caisson Drilling, Geopier & Helical Piers, 02450 92
- Drilling, 02210 91
- Drywall, 09250 97
- Dust Control, Dust Abatement & Dust Oiling, 02312 92
- Earth Retention Systems, Mechanical Stabilized Earth Walls & Retaining Walls, 02260 92
- Electrical Specialty Contractor as Defined by Electrical Bureau, 16800 100
- Elevator, Dumbwaiter, Escalator or Moving-Walk Electrical 101
- Irrigation Sprinkler Electrical 101
- Limited Energy Electrical License (low voltage) 101
- Manufacturing or Assembling Equipment 101
- Refrigeration, Heating & Air Conditioning Electrical Installer 101
- Sign Electrical 101
- Well Driller & Water Pump Installer Electrical 101
- Electrical, 16000 100
- Elevators, Lifts & Hoists, 14200 99
- Engineering, 01107 91
- Environmental Remediation, Restoration & Soil Stabilization, 02195 91
- Excavation & Grading, 02310 92
- Excavation, Removal & Handling of Hazardous Material, 02110 91
- Fencing, 02820 93
- Finish Carpentry & Millwork, 06200 96
- Fire Extinguisher & Fire Suppression Systems, 13970 99
- Fire Suppression Systems (Wet & Dry-Pipe Sprinklers), 13930 99
- Floor Covering & Carpeting, 09680 97
- Flooring, 09600 97
- Golf Course Construction, 18100 101
- Guardrails & Safety Barriers, 02840 94
- Gypcrete, 03500 95
- Hauling, 02318 92
- Hazardous Material Remediation, 13280 99
- Heating, Ventilation, & Air Conditioning (HVAC), 15700 100
- Horizontal & Directional Earth Boring, Trenching & Tunneling, 02404 92
- Installation of Communication Towers, 02580 93
- Installation of School Playground Equipment, 02880 94
- Institutional Equipment, 10150 98
- Instrumentation & Controls, 13800 99
- Landscape Maintenance, 02935 94
- Landscaping, Seeding & Mulching, 02900 94
- Lath & Plaster, 09200 97
- Log & Heavy Timber Construction, 06130 96
- Logging, 02231 92
- Masonry, 04000 95
- Membrane Liners for Ponds & Reservoirs, 02660 93
- Non-Electrical Signs, 10445 98
- Nonstructural Restoration After Fire or Flood, 18400 101
- Ornamental Metals, 05700 95
- Painting & Decorating, 09900 97
- Pest Control, Sterilization & Herbicide Applications, 02937 94
- Petroleum & Vehicle Service Equipment, Installation & Repair, 11140 98
- Pipe Fitter & Process Piping, 15100 100
- Pipeline Cleaning, Sealing, Lining & Bursting, 02955 94
- Plumbing, 15400 100
- Post-Tensioned Concrete Structures or Structural Members, 03380 95
- Pre-Engineered Building Kits, 13125 99
- Prefabricated Equipment & Furnishings, 12011 98
- Pre-Manufactured Components & Modular Structures, 13121 98
- Pressure Grouting & Slab Jacking, 03650 95
- Radon Mitigation, 13290 99
- Raised Access Flooring, 10270 98
- Refrigeration, 15600 100
- Removal of Underground Storage Tanks, 02115 91
- Roadway Cleaning, Sweeping & Mowing, 18800 101
- Rock Trenching, 02317 92
- Rockfall Mitigation & High Scaling, 02270 92
- Roofing & Siding, 07400 96
- Sand Blasting, 09950 97
- Scaffolding & Shoring, 01541 91
- Sheet Metal Flashings, Roof Specialties & Accessories, 07700 96
- Siding & Decking, 07450 96
- Site Clearing, 02230 91
- Slope Stabilization, Hydroseeding, Hydromulching, Native Plant Revegetation for Erosion Control, 02910 94
- Slurry Walls, 02265 92
- Snow Removal, 18700 101
- Specially Placed Concrete, Concrete Pumping & Shotcreting, 03370 95
- Specialty Coatings, 09960 98

Specialty Machinery & Equipment
 Installation & Servicing,
 11001 98
 Sprinkler & Irrigation Systems,
 02810 93
 Steel Fabrication, Erection &
 Installation, 05100 95
 Steel Stud Framing, 09110 97
 Structural Moving, 02990 94
 Stucco & Exterior Insulation Finish
 Systems (EIFS), 07240 96
 Swimming Pools & Spas, 13150 99
 Temporary Erosion & Sediment
 Controls, 01570 91
 Testing & Balancing of Systems,
 15950 100
 Thermal Insulation, 07200 96
 Tile & Terrazzo, 09300 97
 Traffic Marking & Striping,
 02761 93
 Traffic Signs & Signals, 02890 94
 Tree Removal & Trimming,
 02232 92
 Underwater Installation & Diving,
 18200 101
 Utilities, 02500 93
 Water/Wastewater & Chemical
 Treatment, 11200 98
 Waterproofing & Dampproofing,
 07100 96
 Welding, 05090 95
 Well Drilling, 02520 93
 Window, Wall Coverings, Drapes &
 Blinds, 12490 98
 Windows, Glass & Glazing,
 08500 97
 Types Of Certification 482
 Family Support Partner 482
 Peer Support Specialist 482
 Typical Rigging Systems 178
 Figures 013.01-A Through 013.01-
 N 178

U

Unauthorized Discharges &
 Unauthorized Releases --
 Penalties 30
 Non-Compliance 30
 Penalties 30
 Suspend Planners or Soil Samplers
 Certification 30
 Unauthorized Discharge 30
 Unauthorized Release 30
 Underground Mining 700
 Exemption Certificate 701
 Nontaxable Purchases 700
 Taxable Purchases 701
 Uniform Standards Of Professional
 Appraisal Practice/Code Of
 Ethics 653
 Unit Operation Agreements 556
 Unit Operation Application 556
 Unit Operation Application

Processing Unit Operation
 Applications 556
 Use Of Bait For Hunting 414
 Containers 414
 Establishment of Bait Sites 414
 Location 414
 Time 414
 Types 414
 Use of Negotiations 742
 Use Of Public Funds & Benefits 503

V

Vacuum Pumps Prohibited 573
 Vehicles & Vessels - Gifts, Military
 Personnel, Nonresident, New
 Resident, Tax Paid To Another State,
 Sales To Family Members, Sales To
 American Indians, & Other
 Exemptions 708
 Bulk Sale Transfers 711
 Gifts of Motor Vehicles 708
 In General 708
 Military Personnel 709
 Motor Vehicles & Trailers Used in
 Interstate Commerce 711
 New Residents 709
 Nonresidents 709
 Related Party Transfers & Sales 712
 Sales to American Indians 710
 Sales to Family Members 710
 Tax Paid to Another State 709
 Vehicles & Vessels Purchased in
 Idaho by Nonresidents for Use
 Outside Idaho 711

W

Water Rights 533
 Well Activity & Reclamation 580
 Well Completion/Recompletion Report
 & Well Report 574
 Well Directional Control 573
 Angular Deviation & Directional
 Survey 574
 Application for Exceptions 574
 Application Processing 574
 Controlled Directional Drilling 573
 General Restrictions 573
 Well Logs 574
 Bottom Hole Survey 575
 Cement Bond Log 575
 Cuttings & Sidewall Cores 575
 Log Submittal 575
 Minimum Required Logs 574
 Other Logs 575
 Other Records 575
 Whole Core 575
 Well Plugging 580
 Application Contents 580
 Application Required 580
 Plugged Intervals 581
 Plugging Dry Holes 581
 Plugging of Wells 581
 Plugging Required 580

Subsequent Report of
 Abandonment 582
 Wells Used for Fresh Water (Cold
 Water 212 Degrees
 Fahrenheit) 582
 Well Site Operations 569
 Fencing 569
 Storage 569
 Trash 569
 Vegetation 569
 Wellhead Equipment 569
 Well Sites 569
 Well Sites & Drilling 569
 Well Spacing 552
 Applicant Notification of Exceptional
 Location 553
 Exceptional Well Location Combined
 with Integration 553
 Exceptional Well Locations & Well-
 Spacing Orders 552
 Meaning of Well Location for
 Spacing 552
 Spacing Unit Changes 553
 Standard Spacing Units & Well
 Locations 552
 Well Locations Adjacent to Spaced
 Areas 552
 Well Treatments 559
 Application Denial 561
 Application Processing 561
 Application Required 559
 Fresh Water Protections for Well
 Treatments 562
 Inspections 561
 Master Drilling/Treatment
 Plans 561
 Reporting Requirements 561
 Time Limit 561
 When Permits Are Required For
 Cattle 49
 Beef Bulls 49
 Canadian Cattle & Canadian
 Domestic Bison 49
 Dairy 49
 Domestic Bison 49
 Female Beef Cattle 49
 Other 50
 Restricted Areas 49
 Wire Rope 166
 Additional Precautions 168
 Brush Blocks 175
 Chains & Straps 175
 Dynamic Loads 171
 General Characteristics 166
 Inspection & Care 168
 Knobs, Ferrules, & Eyes 174
 Line Connections 171
 Other Common Wire Rope
 Considerations 171
 Safety Factor 168
 Shackles & Hooks 173
 Synthetic Rope 168
 Typical Wire Rope
 Specifications 166

Wire Labeling 169
Wire Line Life 169
Wire Rope Terms 166
Withdrawal Of Lands 525
Workers Compensation Or
Disability 424
Layoff After Twelve Weeks'
Disability 424
Use of Leave in a Workers
Compensation Claim 424
Written Interpretations 220, 324

Y

Yarding Machinery 161
Equipment Assessment 162
Manufacturer's Manual 162
Types of Yarding Equipment 162