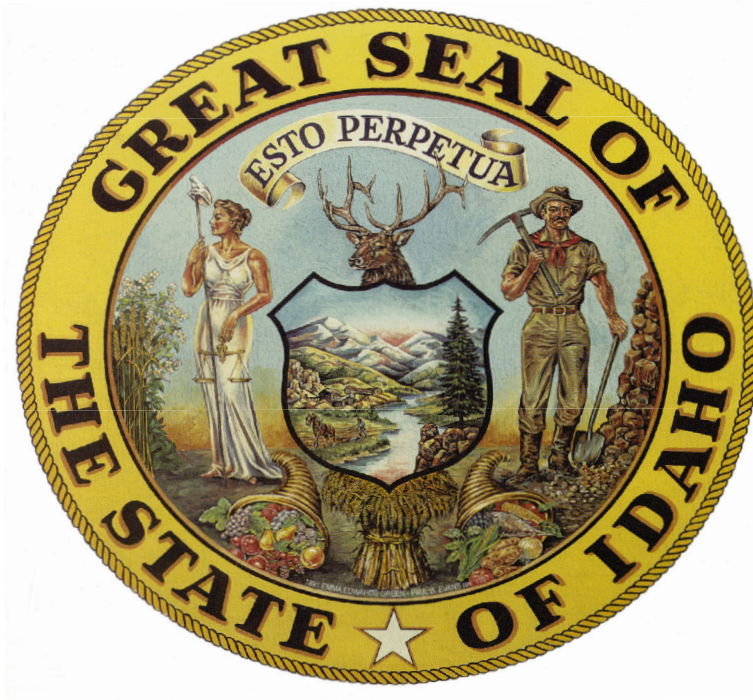


# IDAHO ADMINISTRATIVE BULLETIN

August 3, 2022 – Vol. 22-8

Office of the Governor  
Division of Financial Management  
Office of the Administrative Rules Coordinator



The Idaho Administrative Bulletin is published monthly by the Office of the Administrative Rules Coordinator, Division of Financial Management, Office of the Governor, pursuant to Title 67, Chapter 52, Idaho Code.

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# IDAHO ADMINISTRATIVE BULLETIN

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# PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Division of Financial Management, 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 **19-1** refers to the first Bulletin issued in calendar year **2019**; Bulletin **20-1** refers to the first Bulletin issued in calendar year **2020**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **19-1** refers to January 2019; Volume No. **20-2** refers to February 2020; and so forth. Example: The Bulletin published in January 2019 is cited as Volume **19-1**. The December 2019 Bulletin is cited as Volume **19-12**.

## 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 Bulletin publication. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

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

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

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

## **1. 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.

## **2. 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 very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

## **3. 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 these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. 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.

## **4. 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 statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

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.

## **5. 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.

## 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 sections 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. 38-0501-1901”**

“**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**).

“**1901**” 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 2019**. A subsequent rulemaking on this same rule chapter in calendar year 2019 would be designated as “**1902**”. The docket number in this scenario would be 38-0501-**1902**.

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 2022**

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
22-1	January 2022	November 15, 2022	<b>*November 29, 2021</b>	January 5, 2022	January 26, 2022
22-2	February 2022	December 23, 2022	January 7, 2022	February 2, 2022	February 23, 2022
22-3	March 2022	January 28, 2022	February 11, 2022	March 2, 2022	March 23, 2022
22-4	April 2022	February 25, 2022	March 11, 2022	April 6, 2022	April 27, 2022
22-5	May 2022	March 25, 2022	April 8, 2022	May 4, 2022	May 25, 2022
22-6	June 2022	April 22, 2022	May 6, 2022	June 1, 2022	June 22, 2022
22-7	July 2022	May 20, 2022	June 3, 2022	July 6, 2022	July 27, 2022
22-8	August 2022	June 24, 2022	July 8, 2022	August 3, 2022	August 24, 2022
22-9	September 2022	July 22, 2022	August 5, 2022	September 7, 2022	September 28, 2022
22-10	October 2022	August 19, 2022	<b>**September 2, 2022</b>	October 5, 2022	October 26, 2022
22-11	November 2022	September 23, 2022	October 7, 2022	November 2, 2022	November 23, 2022
22-12	December 2022	October 28, 2022	November 10, 2022	December 7, 2022	December 28, 2022

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2023**

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
23-1	January 2023	November 14, 2022	<b>*November 28, 2022</b>	January 4, 2023	January 25, 2023
23-2	February 2023	December 23, 2022	January 6, 2023	February 1, 2023	February 22, 2023
23-3	March 2023	January 27, 2023	February 10, 2023	March 1, 2023	March 22, 2023
23-4	April 2023	February 24, 2023	March 10, 2023	April 5, 2023	April 26, 2023
23-5	May 2023	March 24, 2023	April 7, 2023	May 3, 2023	May 24, 2023
23-6	June 2023	April 21, 2023	May 5, 2023	June 7, 2023	June 28, 2023
23-7	July 2023	May 26, 2023	June 9, 2023	July 5, 2023	July 26, 2023
23-8	August 2023	June 23, 2023	July 7, 2023	August 2, 2023	August 23, 2023
23-9	September 2023	July 21, 2023	August 4, 2023	September 6, 2023	September 27, 2023
23-10	October 2023	August 18, 2023	<b>**September 1, 2023</b>	October 4, 2023	October 25, 2023
23-11	November 2023	September 22, 2023	October 6, 2023	November 1, 2023	November 22, 2023
23-12	December 2023	October 27, 2023	November 9, 2023	December 6, 2023	December 27, 2023

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

**\*\*Last day to submit a proposed rule to remain on course for rulemaking to be completed and submitted for review by upcoming legislature.**

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
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<b>IDAPA 02</b>	<b>Agriculture</b> , Idaho State Department of
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<b>IDAPA 51</b>	<b>Beef Council</b> , Idaho
<b>IDAPA 55</b>	<b>Career Technical Education</b> , Division of
<b>IDAPA 28</b>	<b>Commerce</b> , Idaho Department of
<b>IDAPA 06</b>	<b>Correction</b> , Idaho Department of
<b>IDAPA 08</b>	<b>Education</b> , State Board of and State Department of
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<b>IDAPA 37</b>	<b>Water Resources, Department of</b>
<b>IDAPA 42</b>	<b>Wheat Commission, Idaho</b>

# IDAPA 08 – STATE BOARD OF EDUCATION

## 08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2202

### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is June 15, 2022.

**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 Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

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

The temporary rule would establish chronic absenteeism as one of the school quality measures used for K-12 school accountability as required by the Elementary Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2015. Additional language being included would establish the continuation of the student and parent engagement surveys for the 2022-2023 school year while a long term solution is negotiated through the negotiated rulemaking process under a separate proposed rule docket.

**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:

As a result of the Omnibus rulemaking process conducted in 2022 a third school quality measure was rejected by the 2022 legislature without having an alternate measure to replace it. The ESEA as amended requires a third school quality indicator that can be applied consistently across the category of school it is being applied to. This temporary rule will bring Idaho back into compliance with the requirements of ESEA as amended and allow Idaho to use chronic absenteeism as the third school quality measure for the 2022-2023 school year while the negotiated rulemaking process is being conducted for establishing an ongoing solution starting in the 2023-2024 school year in compliance with the law.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: Failure to complied with ESEA as amended requirements could result in the last of Idaho's federal education funding.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Tracie Bent at [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov) or (208)332-1582.

DATED this 21st day of April 2022.

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

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-2202  
(Only Those Sections With Amendments Are Shown.)

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. (3-15-22)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-22)
- a. Measure and improve student achievement; (3-15-22)
  - b. Assist classroom teachers in designing lessons; (3-15-22)
  - c. Identify areas needing intervention and remediation, and acceleration; (3-15-22)
  - d. Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-22)
  - e. Inform parents and guardians of their child's progress; (3-15-22)
  - f. Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-22)
  - g. Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-22)
  - h. Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-22)

**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. (3-15-22)

**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. (3-15-22)

- a. All students who are eligible for special education shall participate in the statewide assessment program. (3-15-22)
- 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. (3-15-22)
- c. Limited English Proficient (LEP) students, as defined in Subsection 112.05.g.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 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 112.05.e. However, such LEP students are not required to be counted for accountability purposes as described in Subsection 112.05.i.

(3-15-22)

**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.

(3-15-22)

**a.** All students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier.

(3-15-22)

**b.** Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state.

(3-15-22)

**06. Comprehensive Assessment Program.** The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.n. 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.

(3-15-22)

**a.** Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

**b.** Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

**c.** Grade 2 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

**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.

(3-15-22)

**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.

(3-15-22)

**f.** Grade 5 - Grade 5 Idaho Standards Achievement Tests in English language usage, mathematics, and science; Idaho Alternate Assessment; Idaho English Language Assessment.

(3-15-22)

**g.** Grade 6 - Grade 6 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

**h.** Grade 7 - Grade 7 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

**i.** Grade 8 - National Assessment of Educational Progress; Grade 8 Idaho Standards Achievement Tests in English language usage, mathematics, and science; Idaho Alternate Assessment; Idaho English Language Assessment.

(3-15-22)

**j.** 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. (3-15-22)

**k.** Grade 10 - High School Idaho Standards Achievement Tests (optional at the discretion of the school district or charter school), Idaho Alternate Assessment, Idaho English Language Assessment. ~~(3-15-22)~~(6-15-22)T

**l.** Grade 11 - High School Idaho Standards Achievement Test in English language usage and mathematics, science, Idaho Alternate Assessment, Idaho English Language Assessment, and college entrance exam. (3-15-22)

**m.** Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment, and college entrance exam. (3-15-22)

**07. Comprehensive Assessment Program Schedule.** (3-15-22)

**a.** The Idaho Standards Achievement Tests will be administered in the Spring in a time period specified by the State Board of Education. (3-15-22)

**b.** The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (3-15-22)

**c.** Idaho's English Language Assessment will be administered in a time period specified by the State Board of Education. (3-15-22)

**08. Costs Paid by the State.** Costs for the following testing activities will be paid by the state: (3-15-22)

**a.** All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-22)

**b.** Statewide distribution of all assessment materials; and (3-15-22)

**c.** Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program. (3-15-22)

**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. (3-15-22)

**10. Test Security, Validity and Reliability.** (3-15-22)

**a.** 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. (3-15-22)

**b.** Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (3-15-22)

**11. 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). (3-15-22)

**12. 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: (3-15-22)

- a. The Idaho Standards Achievement Tests (grades 3-8 and High School). (3-15-22)
- 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. (3-15-22)
  - i. Language Arts/Communications. (3-15-22)
  - ii. Math. (3-15-22)
  - iii. Science. (3-15-22)
  - iv. Social Studies. (3-15-22)
  - v. Health. (3-15-22)
  - vi. Humanities. (3-15-22)

**112. ACCOUNTABILITY.**

School district, charter 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. In addition to those measures identified in the state accountability framework, all school categories will administer an annual satisfaction and engagement survey to parents, students, and teachers. ~~(3-15-22)~~ (6-15-22)T

**01. School Category.** (3-15-22)

- a. Kindergarten through grade eight (K-8): Schools in this category include elementary and middle schools as defined in Subsection 112.05.f. (3-15-22)
- b. High Schools, not designated as alternative high schools, as defined in Subsection 112.05.f. (3-15-22)
- c. Alternative High Schools. (3-15-22)

**02. Academic Measures by School Category.** (3-15-22)

- a. K-8: (3-15-22)
  - i. Idaho Standards Achievement Tests (ISAT) Proficiency. (3-15-22)
  - ii. ISAT growth toward proficiency based on a trajectory model approved by the State Board of Education. (3-15-22)
  - iii. ISAT proficiency gap closure. (3-15-22)
  - iv. Idaho statewide reading assessment proficiency. (3-15-22)
  - v. English Learners achieving English language proficiency. (3-15-22)
  - vi. English Learners achieving English language growth toward proficiency. (3-15-22)

- b. High School: (3-15-22)
  - i. ISAT proficiency. (3-15-22)
  - ii. ISAT proficiency gap closure. (3-15-22)
  - iii. English Learners achieving English language proficiency. (3-15-22)
  - iv. English Learners achieving English language growth toward proficiency. (3-15-22)
  - v. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
  - vi. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
- c. Alternative High School: (3-15-22)
  - i. ISAT proficiency. (3-15-22)
  - ii. English learners achieving English language proficiency. (3-15-22)
  - iii. English learners achieving English language growth towards proficiency. (3-15-22)
  - iv. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
  - v. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
- 03. School Quality Measures by School Category.** (3-15-22)
  - a. K-8: (3-15-22)
    - i. Students in grade 8 enrolled in pre-algebra or higher. (3-15-22)
    - ii. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)
    - iii. Chronic Absenteeism. (6-15-22)T
  - b. High School: (3-15-22)
    - i. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)
    - ii. Students in grade 9 enrolled in algebra I or higher. (3-15-22)
    - iii. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)
    - iv. Chronic Absenteeism. (6-15-22)T
  - c. Alternative High School: (3-15-22)



- i. Credit recovery and accumulation. (3-15-22)
- ii. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)
- iii. State satisfaction and engagement survey administered to parents, students, and teachers ~~(effective starting in the 2018-2019 school year).~~ ~~(3-15-22)~~ (6-15-22)T
- iv. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)

vi. **Chronic Absenteeism.** (6-15-22)T

**04. Reporting.** Methodologies for reporting measures and determining performance will be set by the State Board of Education. (3-15-22)

**05. Annual Measurable Progress Definitions.** For purposes of calculating and reporting progress, the following definitions shall be applied. (3-15-22)

**a. Annual Measurable Progress.** (3-15-22)

i. The State Department of Education will make 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. (3-15-22)

ii. The State Board of Education will set long-term goals and measurements of interim progress targets toward those goals. The baseline for 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. (3-15-22)

**b. Full Academic Year (continuous enrollment).** (3-15-22)

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 progress in any statewide assessment used for determining proficiency. A student is continuously enrolled if the student has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (3-15-22)

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. (3-15-22)

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 progress in any statewide assessment used for determining proficiency. (3-15-22)

**c. Participation Rate.** (3-15-22)

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 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. (3-15-22)

(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. (3-15-22)

(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. (3-15-22)

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. (3-15-22)

d. Schools. As used in this section, schools refers to any school within a school district or charter district and public charter schools. (3-15-22)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-15-22)

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). (3-15-22)

iii. A high school is any school that contains grade twelve (12). (3-15-22)

iv. An alternative high school is any school that contains grade twelve (12) and meets the requirements of Section 110 of these rules. (3-15-22)

v. 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. (3-15-22)

vi. A “new school” for purposes of accountability is a wholly new entity receiving 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. (3-15-22)

e. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-15-22)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-15-22)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-15-22)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-15-22)

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: (3-15-22)

(1) Individuals whose native language is a language other than English; or (3-15-22)

(2) Individuals who come from environments where a language other than English is dominant; or (3-15-22)

(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. (3-15-22)

**f.** 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 a four (4) year or five (5) year period as applicable to the measure being determined. In determining the graduation cohort the school year shall include the students who complete graduation requirements prior to the start of the school district or charter schools next fall term. School districts may only report students as having graduated if the student has met, at a minimum, the state graduation requirements, pursuant to Section 105, and will not be returning to the school in following years to complete required 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 subgroups listed in Subsection 112.05.g. (3-15-22)

**g.** Additional Academic Indicator. The State Board of Education will establish a target for all additional academic and school quality measures. All schools must maintain or make progress toward the additional academic and school quality measure target each year. The additional academic and school quality measure targets will be disaggregated by the subpopulations listed in Subsection 112.05.g. (3-15-22)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.14 – LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**  
**DOCKET NO. 16-0414-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

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

<b>Virtual Public Hearing</b>
<b>Thursday, August 11, 2022</b> <b>11:00 a.m. - 1:00 p.m. (MT)</b>
<b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=mc0cc1f9f9ab4ce65f56d474de7b287bf">https://idhw.webex.com/idhw/j.php?MTID=mc0cc1f9f9ab4ce65f56d474de7b287bf</a>
<b>WebEx Call-in:</b> <b>Dial in: 1-415-527-5035 United States</b>
<b>Meeting number (access code): 2761 050 6261</b>
<b>Meeting password: wAKNqJPd837 (92567573 from phones and video systems)</b>

<b>Virtual Public Hearing</b>
<b>Tuesday, August 23, 2022</b> <b>8:30 a.m. - 10:00 a.m. (MT)</b>
<b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=m56860ec779199284ec7fb5e0f194665d">https://idhw.webex.com/idhw/j.php?MTID=m56860ec779199284ec7fb5e0f194665d</a>
<b>WebEx Call-in:</b> <b>Dial in: 1-415-527-5035 United States</b>
<b>Meeting number (access code): 2760 764 9348</b>
<b>Meeting password: juScf6YMg34 (58723696 from phones and video systems)</b>

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule 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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2)(b), Idaho Code, negotiated rulemaking was not conducted as it was deemed not feasible as the content of this chapter is established by a federal program.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lisa Johnson at (208) 334-5739.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 30th day of June, 2022.

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](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0414-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**16.04.14 – LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

**000. LEGAL AUTHORITY.**

This program is authorized by the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C Sections 8621 to 8629. The Department has rulemaking authority under Section 56-202 Idaho Code. ( )

**001. SCOPE, AND LIMITATIONS.**

**01. Scope.** The intent of the program is to provide assistance to eligible low income households, particularly those with the lowest incomes, that pay the highest proportion of their income for home energy needs. ( )

**02. Program Limitation.** This federally funded program does not entitle any household to a certain amount or form of assistance. An eligible participant household will receive one (1) benefit payment from the standard program funding each program year. ( )

**002. – 009. (RESERVED)**

**010. DEFINITIONS.**

For purposes of this chapter of rules, the following terms apply. ( )

**01. Crisis Assistance.** Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. ( )

**02. Department.** The Department of Health and Welfare or its designee. ( )

**03. Federal Poverty Guidelines (FPG).** The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS) -- see website: <http://aspe.hhs.gov/poverty/>. ( )

**04. Fraud.** A deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. ( )

**05. Head of Participant Household.** The person designated by the household members to receive energy assistance benefit on behalf of the household and in whose favor the energy assistance warrant is written. ( )

**06. Income.** The gross amount of moneys received by the participant household from all sources. ( )

**07. Participant.** An individual or group of individuals who has applied for the Low-Income Home Energy Assistance Program from the state of Idaho. ( )

**08. Participant Household.** A participant household is one (1) of the following: ( )

**a.** An individual who lives alone; or ( )

**b.** A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or they make undesignated payments for energy in the form of rent. ( )

**09. Primary Fuel.** The type of fuel declared by the participant household to be the major source of their home heating. ( )

**10. Undocumented Resident.** Individuals who enter the United States illegally and who have not obtained legal resident status. ( )

**11. Vendor.** A utility company or other provider of fuel utilized for home heating. ( )

**011. -- 099. (RESERVED)**

**100. PARTICIPANT CASE RECORD.**

The participant case record is the documentary basis justifying the expenditure of LIHEAP funds. All material pertinent to a participant household will be retained for a permanent record. Eligibility determinations are supported

by information in the permanent record showing that each eligibility requirement is met, or that one (1) or more eligibility requirements are not met. ( )

**101. ELIGIBLE ACTIVITIES.**

Funds made available through the LIHEAP grant will be used as follows: ( )

**01. Home Utility and Bulk Fuel Costs.** These costs include those incurred by the eligible participant household for electricity, natural gas and bulk fuel for home energy needs, but does not include costs incurred for telephone, water, trash or sewer. ( )

**02. Governor Declared Emergency or Disaster.** A portion of the LIHEAP grant funds may be used for home heating supply shortages experienced by the participant household or a weather-related emergency which threatens the health or lives of an area's inhabitants such that the Governor declares a state of emergency. ( )

**03. Catastrophic Illness Costs.** Households with income exceeding eligibility guidelines may be eligible due to catastrophic illness. The household's unreimbursed medical expenses from the previous twelve (12) months are subtracted from the household's gross income for the same period. If the household then meets income guidelines, the Department makes a final eligibility determination. ( )

**102. PARTICIPANT RIGHTS.**

The Department must inform participants of the following rights during the application and eligibility determination process: ( )

**01. Right to Apply.** Any participant household wishing to apply will be given the opportunity, without delay, to apply for LIHEAP benefits. ( )

**02. Right to a Hearing.** Rules governing hearing rights are contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ( )

**03. Civil Rights.** The rights of participant households must be respected under the U.S. and Idaho Constitutions, the Social Security Act, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant provisions of federal and state law, including the avoidance of practices which violate a person's privacy or subjection to harassment. ( )

**103. PARTICIPANT RESPONSIBILITIES.**

Each participant applying for LIHEAP benefits will, to the extent permitted by their physical and mental condition, provide all necessary and reasonable verification to establish eligibility, and otherwise cooperate in the eligibility determination process. ( )

**104. RELATIONSHIP TO OTHER PROGRAMS.**

LIHEAP benefits paid to eligible participant households will not be counted as income or resources for any purpose under any federal or state law, including any law relating to taxation, public assistance, or welfare programs. ( )

**105. -- 149. (RESERVED)**

**150. ELIGIBILITY REQUIREMENTS AND COLLATERAL CONTACTS.**

All participant households assisted through LIHEAP must provide proof they meet both financial and non-financial eligibility requirements. ( )

**01. Failing to Meet the Financial and Non-Financial Eligibility.** Participant households failing to meet the financial and non-financial eligibility requirements will be denied LIHEAP assistance. ( )

**02. Participant's Signature.** A participant's signature on the application is their consent for the Department to contact collateral sources for verification of the eligibility requirement(s). ( )

**151. INCOME ELIGIBILITY REQUIREMENTS.**

- 01. Households Receiving SSI or Food Stamps.** Households in which one (1) or more individuals are receiving one (1) of the following are eligible for LIHEAP: ( )
- a. Supplemental Security Income (SSI) under Title XVI of the Social Security Act; or ( )
  - b. Food Stamps under the Food Stamp Act of 1977, under 7 USC 2011 through 2027. ( )
- 02. Income Not Counted.** Income listed in Subsections 151.02.a. through 151.02.t. is not counted in determining LIHEAP eligibility or benefit level. ( )
- a. Benefit payments from Medicare Insurance. ( )
  - b. Private loans made to the participant or the household. ( )
  - c. Assets withdrawn from a personal bank account. ( )
  - d. Sale of real property, if the funds are reinvested within three (3) calendar months. ( )
  - e. Income tax refunds. ( )
  - f. Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. ( )
  - g. Wages or allowances for attendant care when the attendant resides in the household of the disabled member. ( )
  - h. Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. ( )
  - i. Legal fees or settlements from Workman’s Compensation paid in a lump sum. ( )
  - j. Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. ( )
  - k. Monies from VA-GI Bill for Education. ( )
  - l. Department of Health and Welfare Adoption subsidies. ( )
  - m. Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. ( )
  - n. Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. ( )
  - o. Value of food stamps or donated food to household. ( )
  - p. Utility allowance. ( )
  - q. TAFI lump sum payments. ( )
  - r. Tribal crop or land payments. ( )
  - s. AmeriCorps stipend. ( )
  - t. Child support income. ( )



**152. NONFINANCIAL ELIGIBILITY REQUIREMENTS.**

**01. Residence.** When the application is completed, the household must reside in the state of Idaho. LIHEAP benefits are not transferable to an out-of-state residence. ( )

**02. Living Situations.** The household resides in housing where they are responsible for home energy costs and incur the costs either directly or as an undesignated portion of their rent. ( )

**03. Native Americans.** Native American households whose tribe has entered into a separate agreement with the federal funding agency and the Department to receive LIHEAP grant funds, are not entitled to benefits under this program unless: ( )

**a.** Tribal funds are not available. ( )

**b.** Funds are depleted and an emergency exists. ( )

**04. Resident Status.** As part of the application process, participants must sign a declaration, under penalty of perjury, attesting to the residency or citizenship status of all household members. At least one (1) household member must be a citizen or legal resident of the United States. ( )

**153. -- 200. (RESERVED)**

**201. APPLICATION PROCESS.**

A participant will be provided a prompt opportunity to complete an application for assistance. ( )

**01. Date of Application.** The participant application process begins the date the completed and signed application is received. ( )

**02. Participant Representation.** A participant household may be assisted by an adult person or persons of their choice and, when accompanied by such persons, may be represented by them. ( )

**03. Signature.** The application must be signed by the participant designated as the head of household, or their designee. Electronic signatures are acceptable. ( )

**a.** Applications signed by a designee must have a letter of authorization or power of attorney from the participant included in the file. ( )

**b.** Employees of the Department are not authorized to sign the application. ( )

**04. Signature by Mark.** A signature by mark requires two (2) witnesses. The signatures and addresses of the witnesses must appear on the application, followed by the word "witness." ( )

**05. Assistance with Application.** When completing the application forms or obtaining required documentation, the Department will assist limited or non-English speaking applicants by providing interpreter services. ( )

**202. APPLICATION TIME LIMITS AND DISPOSAL ACTIONS.**

Unless circumstances beyond the control of the Department prohibit it, each application is to be acted upon within thirty (30) days from the date the application is completed and signed by the participant. An application for LIHEAP assistance will be disposed of by one (1) of the following three (3) methods: ( )

**01. Approval.** A determination the participant household is eligible for LIHEAP benefits. ( )

**02. Denial.** A determination the participant household is ineligible for LIHEAP benefits or that eligibility could not be determined due to lack of necessary information or verification. ( )

**03. Withdrawal.** The participant household voluntarily requests that no further consideration be given

to their application or the participant becomes deceased. ( )

**203. NOTIFICATION OF DECISION.**

Each participant household will be notified, in writing, of the decision made with regard to their LIHEAP application for assistance. ( )

**01. Approvals.** At the time the application is completed, the participant household will receive a copy of their preliminary approval notification. The Department issuance of the benefit payment or denial notice will be the participant household's formal eligibility notification. ( )

**02. Denials or Withdrawals.** The LIHEAP Notice of Denial will be provided to participant households denied assistance and include the reason for the denial and an explanation of the participant household's right to appeal the eligibility decision. ( )

**204. -- 299. (RESERVED)**

**300. VENDOR AGREEMENTS.**

All participating energy suppliers will enter into a vendor agreement with the Department to provide home energy assistance to eligible participant households. ( )

**301. OVERPAYMENTS.**

Payments issued on behalf of a participant household that is not eligible must be repaid to the Department. ( )

**302. RECOUPMENT OF OVERPAYMENT.**

**01. Recoupment of Overpayment.** The Department may recoup or recover the amount issued on behalf of a LIHEAP participant. Interest will accrue on overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from a vendor or participant when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to vendor or participant error, intentional program violations (IPV), or fraud must be recovered in full. ( )

**02. Repayment Requirement.** A vendor or participant must repay any overpayment, but may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in revocation of that agreement and may result in the revocation of the vendor agreement. ( )

**303. -- 309. (RESERVED)**

**310. INTENTIONAL PROGRAM VIOLATIONS (IPV).**

An IPV is an intentionally false or misleading action or statement. An IPV is established when a vendor or participant admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused vendor or participant meets the terms of a court order or an agreement with the prosecutor. The following are IPV's: ( )

**01. False Statement.** Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ( )

**02. Misleading Statement.** Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ( )

**03. Misrepresentation of Fact.** Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ( )

**04. Concealed Fact.** Concealed or withheld from the Department by an individual or vendor to participate in LIHEAP. ( )

- 05. Non-Compliance with Rules and Regulations. ( )
- 06. Violation of Vendor Agreement. ( )
- 07. Failure to Repay. ( )

**311. PENALTIES FOR AN IPV.**

When the Department determines an IPV was committed, the participant or vendor who committed the IPV loses eligibility to participate in LIHEAP. If an individual in a LIHEAP household has committed an IPV, the entire household is ineligible for LIHEAP. If a vendor has committed an IPV, the vendor is ineligible to receive payments. The period of ineligibility for each offense, for both a participant or a vendor, is as follows: ( )

01. **First Offense.** Twelve (12) months, for the first IPV or fraud offense, or the length of time specified by the court. ( )

02. **Second Offense.** Twenty-four (24) months for the second IPV or fraud offense, or the length of time specified by the court. ( )

03. **Third Offense.** Permanent ineligibility for the third or subsequent IPV or fraud offense, or the length of time specified by the court. ( )

**312. -- 319. (RESERVED)**

**320. DENIAL OF PAYMENT.**

The Department may deny payment to the vendor or participant for the following reasons: ( )

01. **Services Not Provided.** Any or all claims for vendor services the Department determines were not provided. ( )

02. **Contrary to Rules or Provider Agreement.** Vendor services provided contrary to these rules or the vendor agreement. ( )

03. **Failure to Provide Immediate Access to Records.** The vendor does not allow immediate access by the Department to LIHEAP records. ( )

04. **Willful Misrepresentation or Concealment of Facts.** The vendor or participant willfully misrepresents or conceals facts relating to LIHEAP. ( )

**321. -- 349. (RESERVED)**

**350. TERMINATION OF VENDOR STATUS.**

Under Section 56-209h, Idaho Code, the Department may terminate the vendor agreement of, or otherwise deny vendor status for up to five (5) years from when the Department's action becomes final to any individual or entity providing LIHEAP. The following are bases for the Department to terminate vendor status: ( )

01. **Knowing Submission of an Incorrect Claim.** ( )

02. **Submission of a Fraudulent Claim.** ( )

03. **False Statements.** Knowingly making a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ( )

04. **Failure to Provide Immediate Access to Required Documentation Upon the Department's Written Request.** ( )

05. **Non-Compliance With Rules and Regulations.** ( )

**06. Violation of Material Term or Condition of the Vendor Agreement.** ( )

**07. Failure to Repay.** Failure by a managing employee or one with an ownership or control interest in any entity to repay overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ( )

**08. Fraudulent or Abusive Conduct in Connection with the Delivery of LIHEAP-Funded Services.** Being found, or being a managing employee in any entity who is found, to have engaged in fraudulent or abusive conduct. ( )

**351. (RESERVED)**

**352. VENDOR OR PARTICIPANT NOTIFICATION.**

When the Department determines any actions defined in Sections 310 through 350 of these rules are appropriate, it will send written notice of the decision to the vendor or participant. The notice will state the basis for the action, the length of the action, the effect of the action on the participant or the vendor's ability to provide services under state and federal programs, and appeal rights. ( )

**353. -- 994. (RESERVED)**

**995. PROVISIONS CONTINGENT UPON FEDERAL FUNDING.**

The provisions in these rules are contingent upon availability and receipt of funds appropriated through federal legislation. When federal funds are not available to the state of Idaho, these provisions or any part therein are considered dormant; there may be no advance notice of termination or reduction of benefits. If additional funds are available, a supplemental payment may be made, in an equitable manner, to each eligible household at the discretion of the Director. ( )

**996. -- 999. (RESERVED)**

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

**16.05.04 – DOMESTIC VIOLENCE COUNCIL GRANTS**

**DOCKET NO. 16-0504-2101 (ZBR CHAPTER REWRITE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-5209, Idaho Code.

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

<b>Virtual Public Hearing</b>
<b>Friday, August 12, 2022 10:00 a.m. (MT)</b>
<b>Join from the meeting link</b> <a href="https://us06web.zoom.us/j/88108527349?pwd=VTltTU9sM1B4Y3pscmlEQTZ1SjhtUT09">https://us06web.zoom.us/j/88108527349?pwd=VTltTU9sM1B4Y3pscmlEQTZ1SjhtUT09</a>
<b>Meeting ID: 881 0852 7349</b> <b>Passcode: zHXh28</b>
<b>Find your local number: <a href="https://us06web.zoom.us/j/88108527349">https://us06web.zoom.us/j/88108527349</a></b> <b>Meeting ID: 881 0852 7349</b> <b>Passcode: 598101</b>

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule 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 is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

**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 November 3, 2021, Idaho Administrative Bulletin, (Vol. 21-11, p. 46), December 1, 2021, Idaho Administrative Bulletin, (Vol. 21-12, p. 20), February 2, 2022, Idaho Administrative Bulletin, (Vol. 22-2, p. 38), and the April 6, 2022, Idaho Administrative Bulletin, (Vol. 22-4, p. 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 Heather Cunningham at (208) 332-1542.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 30th day of June, 2022.

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](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0504-2101**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**16.05.04 – DOMESTIC VIOLENCE COUNCIL GRANTS**

**000. LEGAL AUTHORITY.**

Under Section 39-5209, Idaho Code, the Idaho Council on Domestic Violence and Victim Assistance is authorized to promulgate, adopt, and amend rules regarding applications and grants administered by the Council. ( )

**001. SCOPE.**

These rules define the application process, eligibility determination, and other requirements for the grants administered by the Council. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purpose of these rules, the following definitions apply: ( )

**01. Council.** The Idaho Council on Domestic Violence and Victim Assistance (ICDVVA). ( )

**02. Domestic Violence.** Crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Idaho, or a family or household member. This definition also includes criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts. This definition applies to

individuals and relationships as set forth in 45 CFR 1370.2. ( )

**03. Program Guidelines.** Collectively, the applicable federal and state statutes, these rules, grant applications, application instructions and scoring rubrics published by the Council regarding grant opportunities, Council grant management manuals, Council service standards for funded programs, Council grant management policies and procedures, and written grant or subgrant agreements entered into with successful grant applicants, all of which will be enforced by the Council. ( )

**04. Regions.** The (7) public health districts as defined in Section 39-408, Idaho Code. ( )

**05. Victim.** A person who suffers direct or threatened physical, sexual, emotional, psychological, or financial harm either: ( )

**a.** As a result of an act by someone else and the act causing harm is a crime under state or federal law; or ( )

**b.** As a result of an act by someone with whom they share a relationship as defined in Section 39-6303(1), (2), (3), and (6), Idaho Code. ( )

**011. -- 014. (RESERVED)**

**015. GENERAL GRANT PROGRAM REQUIREMENTS.**

**01. Application Procedure.** All applicants must meet eligibility requirements specified in program guidelines for their application to be considered. Eligible applicants must submit a completed application to the Council and meet the requirements specified in program guidelines prior to the application deadline. ( )

**02. Review and Selection of Applications.** All eligible grant applications will be reviewed, scored, and selected by the Council under the selection criteria specified in the program guidelines. All applicants will be notified of their application status in a reasonable timeframe after the application deadline. The Council may conduct on-site and remote evaluations and follow-up evaluations as specified in the program guidelines. ( )

**03. Written Agreements.** All applicants selected for grant funding must enter into a written grant or subgrant agreement setting forth the terms of their grant. Procedures for payment are set forth in the agreement. Non-compliance with agreement provisions are grounds for non-payment or termination of the grant. ( )

**04. Reporting and Recordkeeping Requirements.** The grantee must maintain accurate, current, and complete client, administrative, and fiscal records, including accurate records of the receipt, obligation, and disbursement of funds, under the requirements specified in the program guidelines. ( )

**05. Termination of Funding.** The grantee may only use the grant funds in accordance with program guidelines. If at any time the Council becomes aware of a grantee's noncompliance with program guidelines, illegal use of grant funds or fraud, or criminal activity, the Council may terminate the agreement. The Council may require an audit of grant funds. The Council may further terminate a grant if the project loses viability or is unlikely to meet the intent of the original application. ( )

**016. GRANT AWARDS AND ELIGIBILITY.**

**01. State Domestic Violence Project Grants.** To be eligible for a state domestic violence grant, a program must comply with the applicable requirements of Sections 39-5210 and 39-5211, Idaho Code, these rules, and any additional requirements in the grant application announcement from the Council. ( )

**02. Federal Family Violence and Services Act (FVPSA).** To be eligible for a FVPSA grant, a program must comply with all the applicable sections of the Family Violence Prevention and Services Act, other federal rules and regulations, and any additional requirements in the grant application announcement from the Council. ( )

**03. Federal Victims of Crime Act (VOCA) Grant.** To be eligible for a VOCA grant, a program must comply with all the applicable sections of the Victims of Crime Act, any other federal rules and regulations that apply, these rules, and any additional requirements listed in the grant application announcement from the Council. ( )

**04. State Offender Intervention Program Grants.** The Council may offer and administer grant funds to offender intervention programs. ( )

**05. Tribes.** All federally acknowledged tribes in the State of Idaho are eligible for Council funding. ( )

**06. Other Grants.** The Council may administer other state or federal grants or funds, or both, within its authority under Section 39-5208, Idaho Code, under these rules, and within its discretion. ( )

**017. TIME FRAMES.**

**01. Grant Applications for Annual Grants from the Council.** ( )

**a.** When each funding opportunity becomes available, the Council will publish a “Grant Application Announcement” (GAA) on the Council website at [icdv.idaho.gov](http://icdv.idaho.gov). The GAA will specify the deadline for submission of proposals. In no event will the deadline be less than sixty (60) days from the date of the publication of the GAA. ( )

**b.** The Council will comply with all other applicable state or federal laws requiring the publication of a GAA notice. ( )

**c.** A copy of each GAA will also be sent to current grantees and to persons and organizations who have requested notification. Anyone requesting notification of solicitations of grant proposals must email their request to [info@icdv.idaho.gov](mailto:info@icdv.idaho.gov) with “Grant Application Notice Request” in the subject line. ( )

**d.** Applications for annual grants must be delivered as specified in the GAA, no later than the date and time specified therein. ( )

**02. Proposals or Supplemental Grants.** Applications for supplemental grants may be submitted for consideration at any time during the effective period of a grant as specified in the program guidelines. ( )

**018. DISPOSITION OF APPLICATIONS.**

The Council will grant or deny funding as specified below, and all applicants will be notified in writing as to the disposition of their application. ( )

**01. Applications.** The Council will grant or deny funding for applications within ninety (90) days of the application deadline. ( )

**02. Supplemental Applications.** Allocation of supplemental funding is made at the discretion of the Council, based upon the availability of funds. Need is determined by evaluating the best available data. ( )

**03. Late Applications.** If funds remain after the Council’s consideration of all timely initial and renewal applications, applications for funding received after the deadline specified in any GAA may be acted upon at a regularly scheduled meeting of the Council. ( )

**019. EVALUATION OF APPLICATIONS.**

Applications are evaluated according to the following criteria: ( )

**01. Threshold Factors.** Before an application is evaluated and scored, an affirmative determination must be made that the application is complete and the applicant’s program meets the eligibility requirements under Section 016 of these rules. Ineligible projects will not be considered or approved. ( )

**02. Scoring of Applications.** ( )



a. Use of Rubric. When the GAA is released, the Council will specify the criteria to be used in evaluating the applications and the scoring rubric to be used. When the Council announces its funding decision for a project, the Council will include the applicant's score. ( )

b. Scoring. There will be two (2) Council members and two (2) Council staff responsible for evaluating and scoring each eligible application using the scoring rubric released with the application. Council members may not score applications from applicants within the region that they represent. ( )

**03. Evaluation Criteria.** The specific criteria used by the Council may vary with each funding opportunity and will be based upon best available data regarding statewide and regional needs and federal program requirements. However, the criteria will generally include at least consideration of the following: ( )

a. Compliance with federal and state grant requirements; ( )

b. Assessment of existing victim services in the community and demonstrated need for current and proposed services; ( )

c. Adequate training of employees and volunteers in trauma-informed care and the implementation of such care; ( )

d. Plans for expansion where service gaps exist, especially among underserved populations; ( )

e. Resourcefulness and efficiency of program; ( )

f. Stability of program and succession planning to ensure continuity of service delivery; ( )

g. Appropriate and responsible fiscal management of program; and ( )

h. Collaboration between and among programs. ( )

**020. PROJECT EVALUATIONS.**

**01. Initial Evaluation.** Prior to the awarding of an initial grant, the Council is authorized to conduct an on-site evaluation of the program to ensure that the program is in substantial compliance with these rules and applicable program guidelines, and to determine the capability of the program to provide the services for which funding is requested. The program must provide for review of any and all client records, program records, financial statements, and other documents needed by the Council to make its determination, including any information that may have changed since the time the application was submitted. ( )

**02. Federally Required Monitoring.** The Council will comply with all federal monitoring requirements, including the requirement to regularly monitor projects. The Council will evaluate projects at least every two (2) years. These evaluations may be conducted on-site or remotely. ( )

**03. Follow-Up Evaluations.** In addition to any initial on-site evaluation, the Council is authorized, upon reasonable notice to the program, to conduct such on-site evaluations of the program: ( )

a. To determine continued compliance with these rules and the program guidelines and any other applicable requirements; or ( )

b. To determine the continued capability of the program to provide the services for which funding has been granted. ( )

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

**030. DENIAL, SUSPENSION, OR TERMINATION OF GRANT.**

**01. Compliance Issues.** A grant may be suspended pending investigation to determine compliance with these rules and the program guidelines. An application for a grant may be denied or a grant terminated if the program is not in compliance with these rules or the program guidelines. ( )

**02. Misconduct.** In cases of criminal conduct within a funded program, the Council may suspend or terminate funding until the matter is resolved and the program is again in compliance with grant requirements. ( )

**03. Disincorporation.** In the event a legal entity which is the recipient of a grant disincorporates, the Council must be informed in writing within twenty (20) days and the grant terminated. Grant funds for all but the portion of the fiscal year during which services required under the grant were performed must be recovered by the Council. Reallocation of remaining grant funds may be made by the Council to other eligible recipient(s). ( )

**04. Internal Take-Over.** If there is a change in legal control and operation of any entity which is a grant recipient, including substantial changes in the governing board, the Council must be notified in writing within twenty (20) days. The grant may continue in effect without interruption. ( )

**031. -- 099. (RESERVED)**

**STATE DOMESTIC VIOLENCE GRANTS**  
**(Sections 100-199)**

**100. STATE DOMESTIC VIOLENCE PROJECT GRANTS.**

**01. Overview.** Money may be granted to a program under the State Domestic Violence Project Grants, Sections 39-5201 through 39-5213, Idaho Code, and any applicable policies, rules, and regulations. ( )

**02. Distribution.** The Council annually awards grants totaling no less than fifty-one percent (51%) of the funds collected under Section 39-5212, Idaho Code, during the last completed state fiscal year. On an annual basis, following determination by the Council of the total funds available for domestic violence grants, the Council will establish and announce the amount of funding available to eligible projects throughout the state. Grants will be awarded consistent with the requirements under Section 39-5212, Idaho Code. ( )

**a.** At its discretion, the Council may award any domestic violence grant funds not obligated or expended during any grant period. ( )

**b.** At its discretion, the Council may solicit proposals for specific types of programs or services to fill identified domestic violence shelter needs in any region. ( )

**101. -- 199. (RESERVED)**

**VICTIM ASSISTANCE GRANTS**  
**(Sections 200-299)**

**200. VICTIMS OF CRIME ACT (VOCA) VICTIM ASSISTANCE GRANTS.**

**01. Overview.** Money may be granted to a program under Victims of Crime Act of 1984, P.L. 98-473, Title II, Chapter XIV, 42 U.S.C. 10601, et seq (VOCA), and any applicable rules and regulations. ( )

**02. Distribution.** On an annual basis, following the Council's receipt of a grant award letter from the U.S. Justice Department announcing the amount available for Idaho's victim assistance grant under VOCA, the Council will establish the amount of funding to be subgranted to qualifying projects. Determination of the actual percentage and amount of funds to be subgranted for the priority categories and any other categories, or for each region, or both, and for statewide projects will be based on best available data to the Council. ( )

**a.** Allocations for Priority and Other Categories. The Council will allocate the federal crime victim

assistance funds granted to Idaho to programs in compliance with applicable VOCA regulations. ( )

**b.** Allocations for Service Areas. ( )

**i.** The Council will subgrant at least five percent (5%) of the available amount to eligible programs in each of the seven (7) regions of the state and five percent (5%) to eligible programs offering statewide services; if there are not statewide programs with eligible applicants and acceptable applications, the Council will use discretion in allocating the statewide portion elsewhere. The Council has the discretion to allocate remaining funds (sixty percent (60%)) throughout the state where needed. In all decisions regarding fund allocation, the Council will consider the best available data, including the type of services offered by each applicant and the types of services available or lacking in each region, and endeavor to fund programs in each region that ensure services to meet identified needs of victims are available. ( )

**ii.** At its discretion, the Council may solicit proposals for specific types of programs or services to fill identified victim service gaps in any region. ( )

**c.** Unexpended Funds. Any victim assistance grant funds not obligated or expended during any grant period will be apportioned by the Council at its discretion, within the established federal limits governing use of the funds. In the event that a program is unable to use all of its grant or subgrant within the time limits of the agreement, the Council has discretion to work with the program to reallocate funds to other programs. ( )

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

**FAMILY VIOLENCE GRANTS  
(Sections 300-399)**

**300. FAMILY VIOLENCE PREVENTION AND SERVICES ACT (FVPSA) GRANTS.**

**01. Overview.** Money may be awarded to a program under the Family Violence Prevention and Services Act (FVPSA) Grant, Title III of the Child Abuse Amendments of 1984 P.L. 98-457, 42 U.S.C. 10401, et seq. and any applicable rules and regulations. ( )

**02. Distribution.** If all seven (7) regions have qualified and eligible applicants, then ten percent (10%) of the FVPSA Grant funds will be awarded to each region. ( )

**a.** The Council has discretion to disperse the remaining funds (thirty percent (30%)) throughout the state based on need and demand for services, as determined by considering best available data, and consistent with FVPSA guidelines. If any regions do not have eligible applicants with acceptable applications, the Council will use discretion in allocating that region's remaining percentage to other programs as described above. ( )

**b.** At its discretion, the Council may solicit proposals for specific types of programs or services to fill identified victim service gaps in any region. ( )

**301. -- 999. (RESERVED)**

## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

### 16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

#### DOCKET NO. 16-0506-2201 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule 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 is not anticipated to have any fiscal impact on State General Funds, or any other known funds.

**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, 2022, Idaho Administrative Bulletin, ([Vol. 22-4, pp. 30-31](#)).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Fernando Castro at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 30th day of June, 2022.

Tamara Prisock  
DHW – Administrative Rules Unit  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-2201  
(Zero Based Regulation (ZBR) Chapter Rewrite)**

**16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS**

**000. LEGAL AUTHORITY.**

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. US Public Law 92-544, authorizes the Department to submit fingerprints and receive responses from the Federal Bureau of Investigations for the processing of background checks. IRS Publication 1075 requires the Department to submit fingerprints and establish a personnel screening program for its employees who have access to the Federal Tax Information File as part of their duties. Under 42 USC Section 9858f, the Department is required to check specific records for federal child care programs. ( )

**001. SCOPE AND POLICY.**

**01. Scope.** These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to children or vulnerable adults. Individuals requiring a criminal history check are identified in Department rules. ( )

**02. Policy.** It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: ( )

- a. Federal Bureau of Investigation; ( )
- b. Idaho State Police Bureau of Criminal Identification; ( )
- c. Any state or federal Child Protection Registry; ( )
- d. Any state or federal Adult Protection Registry; ( )
- e. Any state Sexual Offender Registry; ( )
- f. Office of Inspector General List of Excluded Individuals and Entities; ( )
- g. Idaho Department of Transportation Driving Records; ( )
- h. Nurse Aide Registry; and ( )
- i. Other states and jurisdictions records and findings. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

For the purposes of this chapter of rules, the following terms apply: ( )

**01. Agency.** An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. ( )

**02. Application.** An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. ( )

**03. Background Check Unit.** The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. ( )

**04. Clearance.** A clearance is a document designated by the Department as the official result of a completed criminal history and background check with no disqualifying crimes or relevant records found. ( )

**05. Conviction.** An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.04.a. through 010.04.d. of this rule: ( )

**a.** When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; ( )

**b.** When there has been a finding of guilt against the individual by any federal, state, military, or local court; ( )

**c.** When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; ( )

**d.** When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: ( )

**i.** When the individual has entered into participation in a drug court; or ( )

**ii.** When the individual has entered into participation in a mental health court. ( )

**06. Criminal History and Background Check.** A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. ( )

**07. Denial.** A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: ( )

**a.** Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. ( )

**b.** Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. ( )

**08. Department.** The Idaho Department of Health and Welfare or its designee. ( )

**09. Direct Patient Access Employee.** Any individual who has access to a patient or resident of a long-term care provider or facility whether through employment or contract, and who has duties or performs tasks that involve (or may involve) one-on-one (1:1) contact with a patient or resident or has access to his personal belongings. Volunteers are not considered a Direct Patient Access employee of a long-term care provider or facility unless volunteers are required to undergo a criminal history background check per the rules applicable to that specific type of facility or provider. ( )

**10. Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. ( )

**11. Employer.** An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. ( )

**12. Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. ( )

**13. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. ( )

**14. Good Cause.** Substantial reason, one that affords a legal excuse. ( )

**15. Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code, and these rules. ( )

**011. -- 049. (RESERVED)**

**050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check. At the discretion of the Department, the fee may be waived for certain individuals. An applicant is responsible for any additional costs incurred by the Department paid to agencies, judicial, or law enforcement jurisdictions in other states. The Department will collect the additional funds to cover its costs. ( )

**051. -- 059. (RESERVED)**

**060. AGENCY RESPONSIBILITIES.**

**01. Initial Registration.** Agencies required to have Department criminal history and background checks on individuals must register with the Department and receive an agency identification number before criminal history and background check applications are processed or accessed. ( )

**02. Change in Name or Ownership.** An agency or facility must: ( )

**a.** If acquired by another entity, the new ownership will register as a new agency and provide contact information to obtain a new agency identification number and website access within thirty (30) calendar days of acquisition. New ownership occurs when the agency obtains a new federal Employer Identification Number with the Internal Revenue Service. ( )

**b.** The previous ownership will settle any background check debt with the Department prior to the completion of the acquisition. The Department reserves the right to not acknowledge the transfer to the new ownership if the previous ownership background check debt is not settled. ( )

**c.** If there is a change to its name or location, the agency will update their profile on the Department website with their new name, location, and contact information within thirty (30) calendar days of the change. ( )

**03. Screen Applicants.** The agency should screen applicant criminal history and background check disclosures that are submitted to the Department website to determine the suitability of the applicant for employment or program participation. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment or program participation should be made during the initial application review. ( )

**04. Ensure Time Frames Are Met.** The agency is responsible for ensuring the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. ( )

**05. Review Background Check Results.** The agency is responsible for reviewing the results of the

criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The agency must complete this review within fourteen (14) calendar days of the clearance being accessible on the Department’s website. ( )

**06. Employment Determination.** The Department does not make the final fitness determination for employment or program participation for the applicant. The agency will make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults after reviewing the applicant’s background check results when the applicant is cleared. ( )

**07. Discovery of Criminal Convictions or Disqualifying Records After Clearance is Issued.** Once the Department has issued a clearance, if the agency discovers that the applicant may no longer be eligible to hold a Department clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record, the agency is required to report their discovery to the Background Check Unit. The Department may compel the applicant to be processed for a new background check as described in Subsection 195.04 of these rules if it deems it appropriate to do so. The disqualifying offenses are listed in Section 210 of these rules. Other disqualifying relevant records are listed in Section 200 of these rules. ( )

**08. Retention of Records.** The agency will retain all applicant criminal history and background check documentation as provided in Subsection 300.02.c of these rules. ( )

**061. -- 069. (RESERVED)**

**070. NON-COMPLIANCE WITH THESE RULES.**

The Department will report an agency’s non-compliance with these rules to the applicable licensing or certification unit or appropriate program integrity unit. ( )

**071. -- 099. (RESERVED)**

**100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.**

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. ( )

<b>Required Classes</b>	<b>Idaho Code and IDAPA Chapter(s)</b>
<b>01.</b> Adoptive Parent Applicants	IDAPA 16.06.01, “Child and Family Services” IDAPA 16.06.02, “Child Care Licensing”
<b>02.</b> Behavioral Health Programs	IDAPA 16.07.17, “Substance Use Disorders Services” IDAPA 16.07.33, “Adult Mental Health Services” IDAPA 16.07.37, “Children’s Mental Health Services.” IDAPA 16.07.39, “Appointment of Designated Examiners and Dispositioners.”
<b>03.</b> Certified Family Homes	Section 39-3520, Idaho Code IDAPA 16.03.19, “Certified Family Homes” IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits”
<b>04.</b> Children’s Agency Facility Staff	IDAPA 16.06.02, “Child Care Licensing”
<b>05.</b> Children’s Residential Care Facilities	Section 39-1210, Idaho Code IDAPA 16.06.02, “Child Care Licensing”
<b>06.</b> Children’s Therapeutic Outdoor Programs	Section 39-1208, Idaho Code IDAPA 16.06.02, “Child Care Licensing”
<b>07.</b> Citizen Review Panel Members	Public health district volunteers who must comply with Section 16-1647, Idaho Code, “Citizen Review Panels - Child Protection Legislative Review Panel”



<b>Required Classes</b>	<b>Idaho Code and IDAPA Chapter(s)</b>
<b>08.</b> Contracted Non-Emergency Medical Transportation Providers	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
<b>09.</b> Court Appointed Guardians and Conservators	Title 15, Chapter 5, Idaho Code, & Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules
<b>10.</b> Designated Examiners and Dispositioners	IDAPA 16.07.39, "Appointment of Designated Examiners and Dispositioners"
<b>11.</b> Developmental Disabilities Agencies	IDAPA 16.03.21, "Developmental Disabilities Agencies" (DDA) IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>12.</b> Emergency Medical Services (EMS)	IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements"  IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"
<b>13.</b> High Risk Providers of Medicaid	IDAPA 16.03.09, "Medicaid Basic Plan Benefits" The Medicaid Provider Handbook
<b>14.</b> Home and Community-Based Services (HCBS)	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" IDAPA 16.04.17, "Residential Habilitation Agencies"
<b>15.</b> Home Health Agencies	IDAPA 16.03.07, "Home Health Agencies"
<b>16.</b> Idaho Behavioral Health Plan (IBHP)	IDAPA 16.03.09, "Medicaid Basic Plan Benefits"
<b>17.</b> Idaho Child Care Program (ICCP)	IDAPA 16.06.12, "Idaho Child Care Program" (ICCP)
<b>18.</b> Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	IDAPA 16.03.11, "Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)"
<b>19.</b> Licensed Foster Care	Section 39-1211, Idaho Code IDAPA 16.06.02, "Child Care Licensing"
<b>20.</b> Licensed Day Care	Sections 39-1105, 39-1113, and 39-1114, Idaho Code IDAPA 16.06.02, "Child Care Licensing"
<b>21.</b> Mental Health Services	IDAPA 16.07.33, "Adult Mental Health Services" IDAPA 16.07.37, "Children's Mental Health Services"
<b>22.</b> Personal Assistance Agencies	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>23.</b> Personal Care Service Providers	Section 39-5604, Idaho Code IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>24.</b> Residential Assisted Living Facilities	IDAPA 16.03.22, "Residential Assisted Living Facilities"
<b>25.</b> Service Coordinators and Paraprofessional Providers	IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"
<b>26.</b> Skilled Nursing Facilities	IDAPA 16.03.02, "Skilled Nursing Facilities"
<b>27.</b> Substance Use Disorders Services	IDAPA 16.07.17, "Substance Use Disorders Services"
<b>28.</b> Support Brokers and Community Support Workers	IDAPA 16.03.13, "Consumer-Directed Services"

( )

**101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.**

The following Department employees, contractors, and volunteers are subject to criminal history and background checks. ( )

**01. Employees, Contractors, and Volunteers.** Employees, contractors, and volunteers, providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. ( )

**02. Employees of Bureau of Compliance.** ( )

**a.** Fraud Investigators; ( )

**b.** Utilization Review Analysts; and ( )

**c.** Background Check Unit staff. ( )

**03. Employees at State Institutions.** All employees of the following state funded institutions; ( )

**a.** Southwest Idaho Treatment Center, Nampa, Idaho; ( )

**b.** State Hospital North, Orofino, Idaho; ( )

**c.** State Hospital South, Blackfoot, Idaho; and ( )

**d.** State Hospital West, Nampa, Idaho. ( )

**04. Emergency Medical Services (EMS) Employees.** EMS communication specialists and managers. ( )

**05. Other Employees.** Other Department employees as determined by the Director. ( )

**102. -- 119. (RESERVED)**

**120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.**

Individuals who are subject to a criminal history and background check must submit their application on the Department website. ( )

**01. Application Form.** The applicant requests a criminal history and background check by completing and submitting the Department's application on the Department website. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: ( )

**a.** Name, current and former names, or aliases; ( )

**b.** Current and former addresses as requested in the application; ( )

**c.** Date of birth, that appears on a valid identification document issued by a governmental entity; ( )

**d.** State and country of birth; ( )

**e.** Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. ( )

**f.** Other identifying information, including Social Security Number, Alien Registration Number,

gender, race, height, weight, eye color, and hair color; ( )

**g.** Agency information; ( )

**h.** Any criminal record or criminal offense information; ( )

**i.** Any pending charges or outstanding warrants; ( )

**j.** Any child or adult protection involvement; ( )

**k.** Any current Medicare or Medicaid Provider Exclusion; and ( )

**l.** Any other information requested on the application. ( )

**02. Disclosures.** The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. ( )

**03. Failure to Disclose Information.** ( )

**a.** An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. ( )

**b.** An applicant required to obtain a criminal history and background check under Section 126 of these rules that knowingly makes a materially false statement in connection to their background check will receive an unconditional denial as provided in Section 200 of these rules. ( )

**121. -- 124. (RESERVED)**

**125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.**

The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal, state, or local law. The Department will process those requests as described in this rule. ( )

**01. Request for an Idaho Child Protection Central Registry Check.** A request for an Idaho Child Protection Central Registry check must be submitted on the Department form by mail, facsimile transmission, or e-mail attachment. ( )

**02. Fee Amount.** The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. ( )

**03. Department Response.** A response will be returned to the agency initiating the request for the check within fourteen (14) days of receipt of the request. The Department's response will be limited to confirmation whether the subject is listed in the Registry. If detailed information is wanted, the requestor may contact the Department's Division of Family and Community Services for assistance. ( )

**126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.**

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. If the applicant's previous background check included checks of out-of-state Central Child Protection Registries within the previous six (6) months, the applicant is not required to complete them again. ( )

**01. Adoptive Parent Applicants.** ( )

**02. Behavioral Health Programs.** ( )

- 03. Certified Family Homes. ( )
- 04. Children’s Agency Facility Staff. ( )
- 05. Children’s Residential Care Facilities. ( )
- 06. Children’s Therapeutic Outdoor Programs. ( )
- 07. Citizen Review Panel Members. ( )
- 08. Idaho Child Care Program (ICCP). ( )
- 09. Licensed Foster Care. ( )
- 10. Licensed Day Care. ( )
- 11. Mental Health Services. ( )
- 12. Substance Use Disorders Services. ( )

**127. -- 139. (RESERVED)**

**140. SUBMISSION OF FINGERPRINTS.**

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. ( )

**01. Department Fingerprinting Locations.** A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website. The applicant may contact the Background Check Unit for additional guidance. ( )

**02. Submitting Fingerprints by Mail.** When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's agency, a federal FD-258 Applicant fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the applicable fee to the address indicated on the Department's website. The applicant fingerprints and fees must be received by the Department in the time frame required in Section 150 of these rules. ( )

**03. Submission of Reprints.** In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. ( )

**141. -- 149. (RESERVED)**

**150. TIME FRAME FOR SUBMITTING FINGERPRINTS.**

The applicant fingerprints must be received by the Department within twenty-one (21) days from the date of submission in the Department background check system whether the fingerprints are sent by mail or collected at a Department fingerprinting location. If the Department does not receive the applicant fingerprints within sixty (60) calendar days from the background check submission date on the Department website, the applicant must complete a new application. ( )

**01. Availability to Provide Services.** The applicant may provide services on the day the application is submitted on the Department website, provided the applicant has not disclosed any disqualifying crimes or relevant records. ( )

**02. Unavailability to Provide Services.** The applicant is not eligible to provide services when their fingerprints have not been collected within this timeframe, Failure to meet the timeframe designates the applicant background check as incomplete. ( )

**03. No Extension of Time Frame.** The Department will not extend the twenty-one (21) day time frame, unless the agency provides just cause. If the Department does not extend the time frame, the applicant must be removed from any situation where they can have direct access to the vulnerable person or their belongings. ( )

**151. -- 159. (RESERVED)**

**160. WITHDRAWAL OF APPLICATION.**

An individual may withdraw their application for a criminal history and background check at any time. An individual who withdraws their application cannot provide services, or receive licensure or certification. Fees paid for the cost of the criminal history and background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. ( )

**161. -- 169. (RESERVED)**

**170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.**

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The individual must have submitted their application and fingerprints in the time frame required in Section 150 of these rules, in order to provide services. ( )

**01. Employees of Providers, Contractors, Bureau of Emergency Medical Services (EMS), or the Department.** An individual is available to provide services on a provisional basis at the discretion of the agency or EMS Bureau if no disqualifying crimes or relevant records are disclosed on the application. The agency must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Section 230 of these rules. The agency determines whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. ( )

**02. Individuals Licensed or Certified by the Department.** Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: ( )

- a. Adoption or foster care applicants and adults in the home; ( )
- b. Certification or licensure applicants; ( )
  - i. Certified family homes; ( )
  - ii. Licensed Emergency Medical Services applicants; and ( )
  - iii. Department licensed child care providers. ( )

**171. -- 179. (RESERVED)**

**180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.**

The Department will issue a clearance or denial once the criminal history and background check is completed. ( )

**01. Results of Criminal History and Background Checks.** The results may be accessed by the individual on the Department's website. The agency may access the information that is provided by the applicant and information obtained from the state, county, or through registries. ( )

**02. Findings for Court Required Criminal History and Background Checks.** As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. ( )

**03. Department Employees That Have Access to the Internal Revenue Service Federal Tax Information File.** Employees assigned to the Self Reliance Division that access the Internal Revenue Service Federal Tax Information file as part of their duties will be processed for a background check by the Background Check Unit. The Self Reliance Division will make their fitness determination based on their own policies. ( )

**181. APPLICATION STATUS.**

An individual and their agency may check on the criminal history and background check status and the individual's availability to work on the Department website at <https://healthandwelfare.idaho.gov/chu>. ( )

**182. -- 189. (RESERVED)**

**190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.**

**01. Clearance.** A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and is available for printing to the individual and their agency. ( )

**02. Clearance Types.** An applicant required to pass a criminal history and background must receive a clearance as provided below: ( )

**a.** A clearance for an applicant who is not seeking an enhanced clearance for employment in classes listed in Section 126 of these rules, may receive a clearance for a criminal history and background check when a relevant record identified on any child protection registry is disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01, 210.02, 210.03 of these rules. ( )

**b.** An applicant who receives an enhanced clearance has met the criteria to have obtained a clearance as provided in Subsection 190.02.a. of this rule. An enhanced clearance is required for each of the classes listed in Section 126 of these rules and requires searches from states and jurisdictions where the applicant has resided in the previous five (5) years. A relevant record on any child protection registry will result in a denial under Subsection 200.01 of these rules and no clearance will be issued. An applicant who applies to work in any of these classes must receive or have an enhanced clearance. ( )

**03. Revocation of Clearance.** An individual's previously issued clearance may be revoked for the following: ( )

**a.** The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. ( )

**b.** The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. ( )

**c.** The applicant withdraws their application from the background check process as described in Section 160 of these rules. ( )

**d.** The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. ( )

**191. -- 194. (RESERVED)**

**195. USE OF PREVIOUSLY COMPLETED CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The agency is responsible for confirming that the applicant has completed a criminal history and background check under Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same agency eliminates the requirement for a new background check. ( )

**01. New Criminal History and Background Check.** Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: ( )

**a.** An applicant is accepting employment with a new agency, and their last Department criminal history and background check was completed more than three (3) years prior to their employment date; or ( )

**b.** An applicant is applying for licensure or certification with the Department, and their last Department criminal history and background check was completed more than three (3) years prior to their employment date or licensure application date; ( )

**c.** An applicant is terminated by the agency, is subsequently rehired by the same agency, and the applicant background check is older than three (3) years at the time of the rehire, the provisions of Subsections 300.01.a through 300.01.b of these rules apply. ( )

**02. Use of Criminal History Check Within Three Years of Completion.** Any agency may use a Department criminal history and background check clearance obtained under these rules if: ( )

**a.** The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; ( )

**b.** Prior to allowing the individual to provide services, the agency must affiliate itself to the individual's clearance through the Department's website by having the agency's identification number added to the individual's background check; and ( )

**c.** The agency completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. ( )

**i.** The action must be initiated by the agency within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and ( )

**ii.** The agency must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a and 300.02.c of these rules. ( )

**d.** An applicant is terminated by the agency, is subsequently rehired by the same agency, and the applicant background check was completed less than three (3) years from the time of the rehire, the provisions of Subsections 300.02.b and 300.02.c of these rules apply. ( )

**e.** An agency not listed in Section 126 of these rules may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. ( )

**f.** An individual with a current clearance that is not Enhanced but is completed within three (3) years from date of employment, who applies to a new agency or employer identified in Section 126 of these rules, must submit an application for a new criminal history and background check to obtain an enhanced clearance. An agency or employer identified in Subsections 126.08 and 126.10 of these rules may not hire an employee with a clearance obtained prior to January 1, 2020, unless the Enhanced clearance complies with the requirements found in 42 USC Section 9858. ( )

**03. Agency Discretion.** Any agency or employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. ( )

**04. Department Discretion.** The Department may, at its discretion or as provided in program rules,

require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. ( )

**196. -- 199. (RESERVED)**

**200. UNCONDITIONAL DENIAL.**

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. ( )

**01. Reasons for an Unconditional Denial.** Unconditional denials are issued for: ( )

**a.** Disqualifying crimes described in Section 210 of these rules; ( )

**b.** A relevant record on any Child Protection Registry for the classes of individuals listed in Section 126 of these rules; ( )

**c.** A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules; ( )

**d.** A relevant record on the Nurse Aide Registry; ( )

**e.** A relevant record on either the state or federal sex offender registries; ( )

**f.** A relevant record on the U. S. Health and Human Services, Office of the Inspector General List of Excluded Individuals and Entities (LEIE); ( )

**g.** A relevant record on the state Medicaid Exclusion List; or ( )

**h.** A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. ( )

**02. Issuance of an Unconditional Denial.** The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. ( )

**03. Challenge of Department's Unconditional Denial.** An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Background Check Unit. ( )

**a.** If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," Section 152. ( )

**b.** If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," Section 152. ( )

**04. No Exemption Review.** No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. ( )

**05. Appeal of an Unconditional Denial.** Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of



the Department. ( )

**201. -- 209. (RESERVED)**

**210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on their record as described in this rule. ( )

**01. Disqualifying Crimes.** The disqualifying crimes, described in Subsection 210.01 of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. ( )

- a.** Crimes against vulnerable adults: ( )
  - i.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; ( )
  - ii.** Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; ( )
  - iii.** Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. ( )
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; ( )
- c.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6604, Idaho Code; ( )
- d.** Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; ( )
- e.** Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; ( )
- f.** Incest, as defined in Section 18-6601, Idaho Code; ( )
- g.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; ( )
- h.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; ( )
- i.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ( )
- j.** Mayhem, as defined in Section 18-5001, Idaho Code; ( )
- k.** Manslaughter:
  - i.** Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; ( )
  - ii.** Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; ( )
  - iii.** Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; ( )
- l.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ( )
- m.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; ( )
- n.** Rape, as defined in Section 18-6101, Idaho Code; ( )

- o.** Robbery, as defined in Section 18-6501, Idaho Code; ( )
  - p.** Felony stalking, as defined in Section 18-7905, Idaho Code; ( )
  - q.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ( )
  - r.** Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; ( )
  - s.** Female Genital Mutilation, as defined in Section 18-1506B, Idaho Code; ( )
  - t.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; ( )
  - u.** Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; ( )
  - v.** Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; ( )
  - w.** Video voyeurism, as defined in Section 18-6605, Idaho Code; ( )
  - x.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ( )
  - y.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ( )
  - z.** Any felony punishable by death or life imprisonment; ( )
  - aa.** Attempted strangulation, as defined in Section 18-923, Idaho Code; ( )
  - bb.** Felony domestic violence, as defined in Section 18-918, Idaho Code; ( )
  - cc.** Battery with intent to commit a serious felony, as defined in Section 18-911, Idaho Code; ( )
  - dd.** Assault with intent to commit a serious felony, as defined in Section 18-909, Idaho Code; or ( )
  - ee.** Aggravated sexual battery, as defined in Section 18-925, Idaho Code; ( )
  - ff.** Sexual abuse of an animal, as defined in Section 18-6602, Idaho Code; ( )
  - gg.** Sexual abuse of human remains, as defined in Section 18-6603, Idaho Code; or ( )
  - hh.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-304, 18-305, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ( )
- 02. Disqualifying Five-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: ( )
- a.** Any felony not described in Subsection 210.01, or 210.03 of this rule; ( )
  - b.** Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; ( )
  - c.** Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ( )
  - d.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; ( )

- e. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ( )
  - f. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; ( )
  - g. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ( )
  - h. Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; ( )
  - i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ( )
  - j. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; ( )
  - k. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; ( )
  - l. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ( )
  - m. Sexual Battery, as defined in Section 18-924, Idaho Code; ( )
  - n. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ( )
- or
- o. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-204, 18-205, 18-304, 18-306, 18-307, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ( )

**03. Disqualifying Three-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for three (3) years from the date of the conviction for the crimes listed in this rule, or any substantially conforming foreign criminal violation: ( )

- a. A controlled substance manufacture, delivery, or possession with intent to deliver or manufacture offense, as defined in Section 37-2732, Idaho Code, felony; ( )
  - b. A controlled substance paraphernalia offense, as defined in Section 37-2734B, Idaho Code, felony; ( )
- or
- c. Operating a motor vehicle under the influence of alcohol, drugs, or any other intoxicating substance offense, as defined in Section 18-8004, Idaho Code, felony. ( )

**04. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: ( )

- a. A withheld judgment; ( )
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ( )
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or ( )
- d. A sealed record. ( )

**211. -- 219. (RESERVED)**

**220. CONDITIONAL DENIAL.**

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history and background check. An individual who receives a conditional denial is not available to provide services or be licensed or certified by the Department. ( )

**01. Reasons for a Conditional Denial Issuance.** A conditional denial is issued when the criminal history and background check reveals a relevant record as described in Section 230 of these rules. ( )

**02. Effective Date of a Conditional Denial.** A conditional denial is effective immediately. An applicant may not reapply for a criminal history and background check for three (3) years from the date of the conditional denial. ( )

**03. Request an Exemption Review.** An individual may request an exemption review as described in Section 250 of these rules when a conditional denial has been issued. ( )

**221. -- 229. (RESERVED)**

**230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on their record as described Subsections 230.01 and 230.02 of this rule. ( )

**01. Individuals Licensed or Certified by the Department or a Department Employee.** A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.d. of this rule: ( )

- a. A substantiated child protection complaint or a substantiated adult protection complaint; ( )
- b. The Department determines there is a potential health and safety risk to vulnerable adults or children; ( )
- c. The individual has falsified or omitted information on the application form; or ( )
- d. The Department determines additional information is required. ( )

**02. Employees of Providers or Contractors.** A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.b. of this rule. ( )

- a. A substantiated child protection complaint or a substantiated adult protection complaint; or ( )
- b. The Department determines additional information is required. ( )

**03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: ( )

- a. A withheld judgment; ( )
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ( )
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or ( )
- d. A sealed record. ( )

**231. -- 249. (RESERVED)**

**250. EXEMPTION REVIEWS.**

An individual cannot request an exemption review for an unconditional denial. An individual may request an exemption review within fourteen (14) days from the date of the issuance of a conditional denial by the Department, unless good cause is shown for a delay. Once the Department receives the request for an exemption review, the Department will initiate a review for crimes or actions not designated in Section 210 of these rules. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the Department determines is necessary. Exemption reviews are governed and conducted as provided in Subsections 250.01 through 250.05 of this rule. ( )

**01. Scheduling an Exemption Review.** Upon receipt of a request for an exemption review, the Department will determine the type of review and conduct the review within thirty (30) days from the date of the request. Where an in-person review is appropriate, the Department will provide the individual at least seven (7) day notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual will be notified by the Department that they may bring witnesses and present evidence during the review. ( )

**02. Factors Considered at the Exemption Review.** The Department will consider the following factors or evidence during the exemption review: ( )

- a. The severity or nature of the crime or other findings; ( )
- b. The period of time since the incident under review occurred; ( )
- c. The number and pattern of incidents; ( )
- d. Circumstances surrounding the incident that would help determine the risk of repetition; ( )
- e. Relationship of the incident to the care of children or vulnerable adults; ( )
- f. Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation; ( )
- g. Granting of a pardon by the Governor or the President; and ( )
- h. The falsification or omission of information on the application form and other supplemental forms submitted. ( )

**03. Exemption Review Determination.** The Department determines the individual's suitability based upon the information provided during the exemption review. The Department will issue a notice of decision within fifteen (15) business days of the close of the review. ( )

**04. Exemption Review Decision Effective Dates.** The Department's exemption review decision is effective for three (3) years from the date of the notice of decision. ( )

**05. Exemption Review Appeal.** Exemption reviews conducted under this section of rule may be appealed under IDAPA 16.05.03, "Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. ( )

**251. -- 259. (RESERVED)**

**260. PREVIOUS EXEMPTION REVIEW DENIALS.**

The individual's current request for a criminal history and background check for any Department program when there has been a denial from an exemption review within the last three (3) years will automatically be denied. ( )

261. -- 269. (RESERVED)

**270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.**

**01. Notice of Inability to Proceed.** When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify them from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. ( )

**02. Availability to Provide Services.** The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. ( )

**03. Reconsideration of Action Pending.** In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. ( )

271. -- 299. (RESERVED)

**300. CRIMINAL HISTORY AND BACKGROUND CHECK RECORDS.**

Criminal history and background checks done under this chapter become the property of the Department and are held confidential. ( )

**01. Release of Criminal History and Background Check Records.** A copy of the criminal history and background check as defined in Section 010 of these rules will be released: ( )

**a.** To the individual who has requested the criminal history and background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; ( )

**b.** In response to a subpoena issued by a court of competent jurisdiction; or ( )

**c.** As otherwise required by law. ( )

**02. Retention of Records.** ( )

**a.** If an exemption is granted, the criminal history and background record, supplemental documentation received, notes from the review, and the decision will be retained by the Department for a period of at least five (5) years after the criminal history and background check is completed. ( )

**b.** If an exemption is denied, the Department retains all records and electronic recordings pertaining to the review for five (5) years after the criminal history and background check is completed. ( )

**c.** The agency will retain all applicant criminal history and background check documentation for a period consistent with the agency's own personnel documentation retention schedule. ( )

**03. Use and Dissemination Restrictions for FBI Criminal Identification Records.** According to the provisions under 28 CFR 50.12, the Department will: ( )

**a.** Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; ( )

**b.** In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; ( )

**c.** Notify the individual that they have fifteen (15) days to correct or complete the FBI identification ( )

record or to decline to do so; and ( )

**d.** Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. ( )

**301. -- 999. (RESERVED)**

# **IDAPA 24.35 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES**

## **24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD**

### **DOCKET NO. 24-3501-2200**

#### **NOTICE OF OMNIBUS RULEMAKING – AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** A temporary rule was adopted under this docket number and published in the July 6, 2022, Idaho Administrative Bulletin, Vol. 22-7, pages 180 through 212. The effective date of the amendments to the temporary rule is August 01, 2022.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Section 36-2107, Idaho Code and Section 67-2604, Idaho Code.

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

Amendments are being made to the following temporary rule chapter:

#### **IDAPA 24.35**

- 24.35.01, *Rules of the Outfitters and Guides Licensing Board.*

The temporary rule regarding the designation of allocated tags addresses issues identified in the 2022 season designations resulting from unanticipated circumstances when allocated tag numbers changed after one year instead of two years and/or the total allocated tags decreased in certain hunts. In circumstances where there is only one year of allocated tag use, the temporary rule will prevent an artificial reduction in the outfitter's prior use of allocated tags. In addition, the tie-breaker section is updated to ensure that as many outfitters as possible receive their full past use of designated tags in the event of a decrease in the total number of allocated tags. The changes also deal with extra tags (or a deficit of tags) to better explain each step of the calculation. A temporary rule is necessary to ensure that the changes can be applied uniformly for all hunts for the 2023 season and confer the benefits intended by the statute and rule, as the Board anticipates being required this year to conduct some calculations for the 2023 season.

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

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of the rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the amended temporary rule, contact Tim Frost at (208) 577-2491.

DATED this 1st day of August, 2022.

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THE FOLLOWING IS THE AMENDED TEXT FOR TEMPORARY RULE CHAPTER 24.35.01  
(Only Those Sections With Amendments Are Shown.)

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

(BREAK IN CONTINUITY OF SECTIONS)

**057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS.**

For the purposes of this section, an outfitting operation is an outfitter licensee whose licensed activities include hunting for the species in the area of the allocated tag being designated. When IFGC sets big game seasons all allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. The designation applies until the next big game season setting by IFGC. (7-1-22)T

**01. Base Allocation.** The base allocation number is computed pursuant to Section 36-2120(b), Idaho Code. (7-1-22)T

**02. Outfitted Hunter Tag Use History.** ~~Until the IFGC is able to collect and verify outfitted tag use~~ Each outfitter's hunter tag use history will be determined from the use recorded by IFGC pursuant to Section 36-408(4), Idaho Code, ~~the use history will be based on each outfitter's use reports, or the best data available, and subject to verification by documentation or other reliable information acceptable to the Board showing that the outfitter provided outfitting services to the hunter using the tag~~ and as may be adjusted as a result of a tag transfer or hardship request that is approved by the board. (7-1-22)T(8-1-22)T

~~a. The use history for a capped hunt is the number of tags used by clients of each outfitter for the hunt with the most similar framework to the hunt for which the allocated tag is being designated. (7-1-22)T~~

~~b. The use history for a controlled hunt is the number of tags used by clients of each outfitter in the hunt or hunts that have the most similar framework to the hunt for which the allocated tag is being designated. Both the hunt with allocated tags and the matching hunt with non-allocated tags will be used. (7-1-22)T~~

**ea.** Transfers – The original outfitter may transfer a designated allocated tag(s) to another outfitting operation for use that year in the same hunt and still retain credit for the tag. (7-1-22)T

**#b.** Surrenders - An outfitter may surrender a designated allocated tag(s) to the undesignated tag pool at any time after notification of its tag designation. The surrendering outfitter does not retain credit for the surrendered tag unless it later uses the tag from the pool. The surrendered tag will be available to any outfitter in the same hunt pursuant to IDAPA 24.35.01.057.09. (7-1-22)T

**03. New Hunt Allocated Tag Designation.** When the IFGC initially allocates tags for a new capped or controlled hunt, allocated tags will be designated for that hunt proportionately as follows: (7-1-22)T

**a.** Divide each outfitting operation's base allocation by the total of all base allocations in the hunt, resulting in a percentage of total use. Truncate the decimal at the hundredths place. (7-1-22)T

**b.** Multiply the percentage of total use from IDAPA 24.35.01.057.03.a. by the total number of allocated tags for the hunt, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)T

**04. Use of Previously Designated Allocated Tags.** For established capped or controlled hunts, allocated tags will first be designated to each outfitting operation in an amount equal to the outfitting operation's use

of the allocated tags previously designated to it for the same hunt. (7-1-22)T

a. In a capped hunt, the use of previously designated allocated tags is the average use of allocated tags in the preceding two (2) years; in the event that IFGC adjusts the number of allocated tags in a hunt where there is only one (1) year of allocation, the board will not average the use. (7-1-22)T(8-1-22)T

b. In a controlled hunt, the use of previously designated allocated tags is the highest year of use of allocated tags in the preceding two (2) years. (7-1-22)T

**05. Remaining or Additional Allocated Tags.** Allocated tags ~~that were~~ not designated ~~pursuant to IDAPA 24.35.01.057.04~~ above will be designated proportionately as follows: (7-1-22)T(8-1-22)T

a. Subtract each outfitting operation's use of previously designated allocated tags from its base allocation number to determine the number of non-allocated tags it used for a capped hunt or the matching hunt with non-allocated tags for a controlled hunt, when necessary to determine non-allocated tag use; then (7-1-22)T(8-1-22)T

b. Divide the result by the total number of non-allocated tags used by all outfitting operations, resulting in a percentage of the total non-allocated tags used by all outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally (7-1-22)T

c. Multiply the percentage of total use from ~~IDAPA 24.35.01. Subsection~~ 057.05.b. by the number of allocated tags yet to be designated, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)T(8-1-22)T

**06. Rounding.** If allocated tag designation results in a partial tag, the calculation will be rounded up when a decimal equals or exceeds six tenths (.6) and rounded down when a decimal is less than six tenths (.6). When calculating ~~the after a~~ reduction ~~to the designation~~ of allocated tags pursuant to Section 36-2120(4), Idaho Code, the calculation will be rounded up when a decimal equals or exceeds five tenths (.5) and rounded down when a decimal is less than five tenths (.5). (7-1-22)T(8-1-22)T

**07. Tie-breaker.** If after applying IDAPA 24.35.01.057.03-06 there is a surplus or deficit of allocated tags to be designated, the unrounded proportion from Subsection 057.05, with as many decimal places as necessary, will be used, and then as follows: (7-1-22)T(8-1-22)T

a. After a reduction in allocated tags, surplus tags will first be designated in amounts to restore outfitter operations to the number of tags that would have otherwise been designated pursuant to Subsection 057.04 or as close thereto as practicable. (8-1-22)T

~~a~~b. A If a surplus, ~~allocated tag will be designated to~~ the outfitting operation whose unrounded proportion is the greatest will be designated one (1) tag, and if there are additional surplus tags, the outfitter with the next greatest unrounded proportion will be designated one (1) allocated tag, and repeated in descending unrounded proportions until all surplus tags are designated. In the event there is more than one (1) outfitting operation with the same unrounded proportion and there are insufficient undesignated tags to designate to each outfitter, the undesignated tag will be designated based on a random drawing between those outfitting operations. (7-1-22)T(8-1-22)T

~~b~~c. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (.6), and then next closest to six tenths (0.6) when there is a deficit of more than one (1) allocated tag. If there is more than one (1) outfitting operation with the same unrounded proportion, a random drawing will be held between those outfitters. (7-1-22)T(8-1-22)T

**08. Stipulation by Outfitters.** Outfitting operations in a hunt may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitting operation within that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt. If the Board approves the stipulation, the stipulation will be effective until the IFGC sets the next big game season. On or before November 1 preceding the hunt, any outfitting operation may petition the Board to vacate the stipulation for good cause that would make it unconscionable or unjust to enforce the stipulation. If the Board vacates the stipulation, the allocated tags in that hunt

will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. (7-1-22)T

**09. Undesignated Tag Pool.** Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before the tenth (10) business day prior to July 31 for a capped hunt, or on or before September 10 or the next business day for a controlled hunt, will be available in an undesignated pool for any outfitting operation, as follows: (7-1-22)T

**a.** Beginning April 10 preceding the hunt, an outfitting operation without any designated allocated tags or who has utilized all of its designated allocated tags may submit a request for an allocated tag from the pool. The request must be in such a form as designated by the Board. (7-1-22)T

**b.** Beginning April 20 preceding the hunt or next business day, an allocated tag will be designated from the pool on a first-come, first-served basis, using a waiting list when as necessary, with a maximum of two (2) allocated tags designated to each requesting outfitting operation until all other requesting outfitting operations have been served, then a requesting outfitting operation is eligible to receive a maximum of two (2) additional allocated tags from the pool, repeated until all requesting outfitting operations are served or until no tags remain. (7-1-22)T

**10. Objection to Calculation.** If an outfitting operation believes the calculation is incorrect it may object by filing a petition with the Board within fourteen (14) days from the date the notification was sent and in accordance with the Idaho administrative procedures act. The petition will include any supporting information or documentation. (7-1-22)T

**a.** All outfitting operations in the hunt in question will be notified of the petition. (7-1-22)T

**b.** The outfitting operation bears the burden of establishing that the calculation was incorrect. (7-1-22)T

**11. Hardship Request.** A written hardship request to maintain all or a portion of previous outfitted hunter tag use history may be submitted to the Board on or before the November 1 preceding the biennial IFGC big game season setting. If a hardship occurs after October 21 but prior to the hunt being completed the request may be submitted within ten (10) days of the occurrence. A hardship may include health, act of nature, state or federal restrictions on hunting or access, or other good cause that prevented or limited the outfitting operation's ability to seek and accommodate clients and impacted its use of designated allocated tags. The outfitting operation must provide any information requested by the Board to substantiate the request. (7-1-22)T

**12. Change in Operating Area or Owner of Business.** When an outfitting operation is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the associated designated allocated tags will transfer to the new owner. (7-1-22)T

**IDAPA 35 – IDAHO STATE TAX COMMISSION**

**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-2201 (ZBR CHAPTER REWRITE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, Idaho Code.

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

<b>Thursday, August 18, 2022 1:00 p.m. MT</b>
<i>In-person participation is available at:</i> <b>Idaho State Tax Commission Turquoise Conference Room 11321 W. Chinden Blvd., Bldg. 2 Boise, Idaho 83714</b>
<i>Join by phone:</i> <b>+1-720-279-0026 US Toll</b> <b>When prompted please enter Guest Code: 382472</b>

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:

Changes include deletions to sections that restated statute, unnecessary examples, and text that could be communicated on the Tax Commission’s website instead.

**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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 49](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending 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 Elena Gonzalez using the contact information below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this August 3rd, 2022.

Elena Gonzalez, Product Taxes Research Specialist  
Idaho State Tax Commission  
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36, Boise ID 83722-0036  
[elena.gonzalez@tax.idaho.gov](mailto:elena.gonzalez@tax.idaho.gov)  
(208) 334-7855

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (RULE 000).**

Sections 63-105, 23-1051, 23-1323, Idaho Code, authorize the State Tax Commission (Tax Commission) to adopt the provisions of the Idaho Beer Act and the Idaho County Option Kitchen and Table Wine Act (the Acts). ( )

**001. SCOPE (RULE 001).**

These rules are to be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on: ( )

a. All barrels or fractional amounts of beer sold or disposed of by a wholesaler and used or consumed in Idaho. ( )

b. All gallons of wine sold or disposed of by a distributor and used or consumed in Idaho. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Sections 23-1001, 23-1303, Idaho Code

Definitions provided by statute, including the definitions in Sections 23-1001 and 23-1303, Idaho Code, apply to these rules. The following definitions apply for the purpose of these rules. ( )

**01. Disposition.** A disposition is any decrease of beer or wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. ( )

**02. Taxpayer.** A taxpayer is a person liable to report and pay the beer tax or wine tax according to the Acts and these rules. ( )

**03. Wine Direct Shipper.** A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. ( )

**011. BEER AND WINE SALES SUBJECT TO TAX (RULE 011).**

Sections 23-1001, 23-1003, 23-1006, 23-1008, 23-1303, 23-1309A, 23-1314, 23-1319, Idaho Code

**01. In General.** Sections 23-1008 and 23-1319, Idaho Code, impose an excise tax on beer sales by beer wholesalers and wine sales by wine distributors for use or consumption in Idaho. ( )

**a.** Every disposition of beer by a wholesaler or wine by a distributor to a retailer or consumer constitutes a sale for resale or use. Beer wholesalers or wine distributors are liable for the payment of taxes on the sales. Any person making sales or dispositions of beer or wine, whether licensed or not, is liable for the taxes. ( )

**b.** Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code, as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code, on all shipments of wine to Idaho. ( )

**c.** Any brewer, brewery, producer, or manufacturer of beer within Idaho will be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(f), Idaho Code. However, to ensure payment of tax on beer, any entity holding a brewery license will be considered a wholesaler to the extent of any disposition from the brewery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the brewery's premises. ( )

**d.** Any vintner, winery, producer, or manufacturer of wine within Idaho will be considered a wine importer within the meaning of the definitions provided in Section 23-1303(1)(g), Idaho Code. However, to ensure payment of tax on wine, any entity holding a winery license will be considered a distributor to the extent of any disposition from the winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. ( )

**e.** Ales, beer, new beer, or any other alcoholic beverages containing more than five percent (5%) alcohol by volume are imposed an excise tax by Section 23-1008(1), Idaho Code. ( )

**f.** Premixed cocktails with an alcoholic content of fourteen percent (14%) or less by volume are taxed at the wine tax rate. ( )

**g.** Illegal Sales or Dispositions. In addition to the remedies of Sections 23-1055 and 23-1309, Idaho Code, the Tax Commission may assess taxes against persons making illegal sales of beer or wine who otherwise would be liable for payment of taxes. ( )

**02. Supplementing Inventory.** If a brewery or winery supplements inventory, adequate records are required to support any tax paid. The Tax Commission will presume no tax is paid on beer or wine in the inventory of a brewery or winery without evidence of the payment of tax. Wineries are not supplementing their inventory when purchasing wine or grape juice from other wineries to blend and produce wine. ( )

**03. All Sales Presumed Taxable.** Every sale or disposition from inventory is presumed to be a taxable sale unless the sale or disposition is exempt from tax by the Acts or these rules. ( )

**012. EXEMPTIONS (RULE 012).**  
Sections 23-1048, 23-1051, 23-1319, 23-1323, Idaho Code

**01. Burden of Proof.** The burden of proving any exemption, deduction, credit, or refund allowed by the Acts and these rules is upon the person claiming it. ( )

**02. Wholesale Exports.** Every resale of beer or wine by a beer wholesaler, brewery, wine distributor, or winery for the purpose of and resulting in an export of beer or wine from this state for resale outside this state is exempt from beer or wine tax. ( )

**03. Sales By Wine Direct Shippers Outside This State.** When an Idaho wine direct shipper is licensed as a wine direct shipper in another state, they are licensed to sell wine to residents of the other state. Sales of wine by the Idaho wine direct shipper, using another state's wine direct shipper license, to a resident of that state and delivered to a location in that state are exempt from Idaho wine tax. ( )

**04. Sales to Purchasers on Military Reservations.** Sales to authorized purchasers on military reservations for the purpose of and resulting in sales or consumption on the reservation are exempt from beer or wine

tax. ( )

**05. Sales to Idaho State Liquor Dispensary.** Sales of beer or wine to the Idaho State Liquor Dispensary are exempt from beer or wine tax. ( )

**06. Dispositions From One Distributor or Wholesaler to Another.** Any disposition of beer or wine by transfer or sale or any other means from one (1) distributor or wholesaler to another is exempt from beer or wine tax. ( )

**013. BREAKAGE OR SPOILAGE (RULE 013).**  
Sections 23-1051, 23-1319, Idaho Code

**01. Percentage Method.** When a beer or wine container is damaged, contents spoiled, or is otherwise unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. ( )

**a.** The Tax Commission may revoke the use of the percentage method for any taxpayer at any time. The Tax Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Tax Commission. ( )

**b.** Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Tax Commission. ( )

**02. Reporting Destruction or Spoilage.** Taxpayers will report the destruction or spoilage in the manner and form required by the Tax Commission when claiming breakage or spoilage exceeding the maximum percentages allowed or the Tax Commission revokes the percentage method. ( )

**03. Deduction for Breakage or Spoilage.** A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. ( )

**014. FINANCIAL SECURITY (RULE 014).**  
Sections 23-1049, 23-1320, Idaho Code

**01. Financial Security for Payment of Tax.** Any person required to pay tax under the Acts must have an acceptable amount of security on file and in acceptable form with the Tax Commission unless excused or waived by the Tax Commission. The security is conditioned upon payment of all taxes imposed on beer or wine by this state for which the person is liable, including any penalty and interest. ( )

**02. Types of Security.** A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. ( )

**03. Security for a New Taxpayer.** When a new taxpayer applies for a tax account the security required is one thousand dollars (\$1,000) unless one of the following conditions applies: ( )

**a.** If a beer or wine tax reporting history is available from a previous ownership, the security required may be based on the most recent twelve (12) month filing history of the prior ownership. ( )

**b.** If an out-of-state wine direct shipper is applying for an initial account, they may request a bond waiver. ( )

**c.** If the taxpayer can establish a lesser amount should apply based on the average monthly amount payable according to Section 23-1049, Idaho Code. ( )

**015. BEER OR WINE TAX ACCOUNTS (RULE 015).**

Sections 23-1051, 23-1323, Idaho Code

**01. Tax Accounts.** Before engaging in business, taxpayers need to have a beer tax or wine tax account from the Tax Commission to report and pay tax. As evidence of the tax account, a tax permit is issued. The terms tax account and tax permit are used interchangeably in this section. ( )

**02. Tax Accounts Are Non-transferable.** Where there is a change of ownership, it is the responsibility of the tax account holder to cancel the tax account by giving written notice to the Tax Commission. ( )

**a.** Notice requirements include the date of closure or last date of operation, date of sale or lease, and the name of the new owner or lessee. ( )

**b.** If the new owner or lessee uses the previous owner's tax account, the registered tax holder may be responsible for all tax, penalty, and interest incurred during that period. ( )

**03. Tax Account Cancellation.** The Tax Commission may cancel an inactive tax account. A tax account is considered inactive when returns are filed with no reportable beer or wine activity for twelve (12) consecutive months. The Tax Commission will provide notice of cancellation to the last known address of the tax account holder. ( )

**016. BEER OR WINE TAX RETURNS (RULE 016).**

Sections 23-1047, 23-1051, 23-1322, 23-1323, Idaho Code

**01. Reporting Periods.** Returns are due on or before the 15th day of the month following the end of the reporting period, or the next business day when the due date is a Saturday, Sunday, or legal holiday. All returns must be filed monthly unless the Tax Commission approves an alternate reporting period. ( )

**a.** Request to File Quarterly or Semiannually. Taxpayers owing six hundred dollars (\$600) or less per quarter with a timely filing and payment history may request a quarterly or semiannual reporting period. ( )

**b.** Request to File Annually. Wine direct shippers, taxpayers with seasonal activities, and other taxpayers with minimal activity may request an annual reporting period. ( )

**c.** Final Return. A taxpayer will mark cancel on the last return filed. Tax, penalty, and interest will apply if the taxpayer continues business activity after filing a final return and canceling the tax account. ( )

**02. Prescribed Forms.** All sales or other dispositions of beer or wine in Idaho must be reported on forms provided or approved by the Tax Commission. ( )

**03. Inventory Reporting.** Taxpayers, excluding out-of-state direct shippers, are to report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt. ( )

**04. Requirements of a Valid Return.** A valid return includes the fully completed and signed tax return. The return must meet the requirements of these rules and the information must be legible. ( )

**017. -- 018. (RESERVED)**

**019. RECORDS REQUIRED (RULE 019).**

Sections, 23-1006, 23-1051, 23-1314, 23-1323, Idaho Code

**01. In General.** Every person liable for the payment of taxes on beer or wine must keep and preserve the following records: ( )

**a.** A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. ( )

**b.** A record of the amount of all merchandise purchased, including all bills of lading, invoices, sales



receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. ( )

- c.** Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ( )
- d.** True and complete physical counts of the beer and wine inventory taken at the end of each reporting period. ( )
- e.** True and complete records of breakage and spoilage claimed as a deduction from inventory. ( )
- f.** Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order so they can be balanced with the corresponding return. ( )

**02. Record Retention.** These records are to be kept for a minimum of four (4) years. If a taxpayer appeals an assessment, all records are to be legible and kept on the business premises until final disposition of the appeal. ( )

**020. -- 999. (RESERVED)**

## IDAPA 35 – IDAHO STATE TAX COMMISSION

### 35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-2201

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

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

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

35.02.01.410: The deadline in rule is outdated and being deleted and reverted to statutory authority.

**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 this rulemaking is being done to make the rule in alignment with the statute.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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) 334-6691.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this August 3rd, 2022.

Cynthia Adrian, Income Tax Research Specialist  
Idaho State Tax Commission  
Governmental Affairs, Tax Research  
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36, Boise ID 83722-0036  
[cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov)  
(208) 334-6691

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-2201**  
**(Only Those Sections With Amendments Are Shown.)**

**410. NEGLIGENCE PENALTIES.**

Section 63-3046(a), Idaho Code

**01. Negligence Defined.** Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-15-22)

**02. Imposition of Penalty.** A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Situations that justify the penalty include but aren't limited to the following: (3-15-22)

**a.** Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. (3-15-22)

**b.** Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (3-15-22)

**c.** Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-15-22)

**d.** Taxpayer fails to offer any explanation for understating taxes. (3-15-22)

**e.** Unreported taxable income is a material amount as compared with the reported income. (3-15-22)

**f.** Taxpayer exhibits a careless disregard of his tax obligations. (3-15-22)

**g.** For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-15-22)

**h.** Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-15-22)

**i.** Taxpayer fails to provide the Tax Commission with a copy of a final federal determination ~~within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules according to Section 63-3069, Idaho Code.~~ *within sixty (60) days after filing a federal amended return according to Section 63-3069, Idaho Code.* (3-15-22)( )

**j.** Taxpayer fails to file an Idaho amended return ~~within sixty (60) days after filing a federal amended return according to Section 63-3069, Idaho Code.~~ *within sixty (60) days after filing a federal amended return according to Section 63-3069, Idaho Code.* (3-15-22)( )

**k.** Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-15-22)

**l.** Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. (3-15-22)

**03. Negligence Penalty for Sales and Use Tax Deficiencies.** For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.02.b. or material amount in Subsection 410.02.e., might include the following: (3-15-22)

**a.** The ratio of untaxed sales that should have been taxed to total taxable sales; (3-15-22)

- b. The ratio of untaxed sales that should have been taxed to total sales; (3-15-22)
  - c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; (3-15-22)
- or
- d. Other computations bearing on negligence. (3-15-22)
- 04. Waiver of Negligence Penalty.** The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One (1) factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. (3-15-22)
- 05. Circumstances Precluding Waiver of Penalty.** The following circumstances do not constitute sufficient cause to waive the penalty: (3-15-22)
- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-15-22)
  - b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-15-22)
  - c. Inability to pay the tax. (3-15-22)

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

**39.02.02 – RULES GOVERNING VEHICLE AND VESSEL DEALER  
LICENSE REQUIREMENTS – MOTOR VEHICLES**

**DOCKET NO. 39-0202-2201 (ZBR CHAPTER REWRITE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor’s Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department’s 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
Office of Governmental Affairs  
Idaho Transportation Department  
11331 W. Chinden Blvd., Boise, ID 83714  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
208.334.8810

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0202-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.02.02 – RULES GOVERNING VEHICLE AND VESSEL DEALER**  
**LICENSE REQUIREMENTS – MOTOR VEHICLES**

**000. LEGAL AUTHORITY.**

Sections 49-1602, and 49-1606(7), Idaho Code. ( )

**001. SCOPE.**

This rule clarifies the requirements for the issuance of dealer licenses and specifies other provisions for licenses and fees. ( )

**002. -- 099. (RESERVED)**

**100. DEALER LICENSE REQUIREMENTS.**

A dealer license is needed in the following situations: ( )

**01. Seller Not Titled Owner.** Selling or exchanging; or ( )

**02. Maximum Sales.** Selling, or exchanging, or soliciting the sale of five (5) or more vehicles or vessels in any one (1) calendar year even though titled in seller's name; or ( )

**03. Display for Sale.** Displaying for sale or exchange, five (5) or more vehicles or vessels at any one (1) time even though titled in the displayer's name; or ( )

**04. Displaying Vehicles or Vessels.** Displaying vehicles or vessels for sale, exchange or consign on property not legally controlled by the owner of the vehicle or vessel. ( )

**101. SALESPERSON LICENSE.**

Dealers will not allow a person to act as a salesperson in their behalf unless such person holds a valid salesperson license containing a current photograph of the salesperson, and the date of expiration of the salesperson's license. ( )

**01. Temporary Salesperson.** A new or transferring salesperson may act as a temporary salesperson for a sponsoring dealer for a period, not to exceed sixty (60) days, if the person submits an application with the appropriate fee. ( )

**02. Temporary Salesperson Sales Authorization.** A copy of the application must be carried by the temporary salesperson as authorization to act as a salesperson. ( )

**102. -- 299. (RESERVED)**

**300. REQUEST FOR REFUND OF DEALER OR SALESPERSON LICENSING FEES.**

The Department will only process requests for refunds of licensing fees if: ( )

**01. Application Denial.** The application is denied prior to the issuance of a temporary license. ( )

**02. Prior to License Issuance.** The applicant requests a refund prior to the issuance of a license. ( )

**03. Prior to Renewal Issuance.** The licensee pays a renewal license fee and then requests a refund prior to the issuance of the renewed license. ( )

**04. Over-Payment.** The applicant over-pays the fees needed. ( )

**301. REFUND OF DEALER THIRTY DAY TEMPORARY PERMITS, LICENSE PLATES, AND VALIDATION STICKER FEES.**

The Department will process requests for refunds if: ( )

**01. Unused Permits.** The thirty (30) day temporary permits are returned unused by a dealership that is going out of business. ( )

**02. Plates Not Ordered.** The dealer license plates have not been ordered through the plate manufacturer. ( )

**03. Validation Stickers Unused.** The dealer validation stickers have not been applied to the dealer's license plates. ( )

**302. -- 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.02.22 – RULES GOVERNING REGISTRATION AND PERMIT FEE ADMINISTRATION AND TEMPORARY VEHICLE CLEARANCE FOR CARRIERS

#### DOCKET NO. 39-0222-2201 (ZBR CHAPTER REWRITE, 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 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor's Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department's 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No fees or charges are being increased.

This rule provides for installment payment plans for commercial motor vehicle registrations. It covers administrative costs for services provided by the Department, which includes a \$50 fee for setting up each installment payment plan. To reinstate a payment plan that has been suspended, a \$40 fee is required. If there are insufficient funds, the rule allows the Department to collect a \$20 insufficient funds fee and provides the Department with the ability to collect a \$40 fee for reinstatement of a revoked or suspended commercial motor vehicle registration.

In Subchapter A, the rule allows the Department to authorize and issue temporary clearance for a carrier who needs to immediately operate a commercial motor vehicle and who is in the process of obtaining and submitting requirements for full issuance of vehicle registration and license plates. This temporary permit provides for a 45-day intermediate clearance at a cost of \$18. (See §49-434 and §49-501, 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(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.



DATED this 7th Day of July 2022.

Ramón S. Hobdey-Sánchez, J.D.  
Office of Governmental Affairs  
Idaho Transportation Department  
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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 39-0222-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.02.22 – RULES GOVERNING REGISTRATION AND PERMIT FEE ADMINISTRATION AND**  
**TEMPORARY VEHICLE CLEARANCE FOR CARRIERS**

**000. LEGAL AUTHORITY.**

Sections 49-201, 49-202, 49-434, 49-439 and 49-501, Idaho Code. ( )

**001. SCOPE.**

This rule clarifies the procedures for administering registration and permit fees and provides for temporary vehicle clearance (TVC) procedures in Idaho. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Combination of Vehicles.** A tractor or truck tractor and one (1) or more trailers and/or semitrailers. ( )

**02. Nonsufficient Funds (NSF).** NSF will be the abbreviation as it pertains to checks written on personal and/or business checking accounts without sufficient funds to cover the check, for payment to the department. ( )

**03. Non-Reducible Load.** Defined in IDAPA 39.03.01, Rules Governing Definitions Regarding Special Permits. ( )

**04. Quarterly Report.** The form for registrants to report the laden miles traveled on Idaho highways during the preceding three (3) months when transporting non-reducible vehicles/loads under annual overweight/oversize permits. ( )

**05. Revocation of Registration.** The termination of a registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the Department and Idaho Code. ( )

**06. Registrant.** A person, firm, or corporation in whose name a vehicle or vehicles are registered, with

an Idaho account number assigned by the department. ( )

**07. Road Use Fee.** The fee per mile paid for non-reducible vehicles or combinations of vehicles hauling non-reducible loads. The fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight, in addition to the registration fee. ( )

**08. Suspension of Registration.** The temporary withdrawal of a registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the Department and Idaho Code. ( )

**011. -- 099. (RESERVED)**

**100. QUARTERLY ROAD USE FEE REPORTS FOR ANNUAL OVERWEIGHT PERMITS.**  
To comply with Section 49-1001, Idaho Code, the customer will make quarterly reports of laden only mileage to the department for the movements of non-reducible vehicle/loads, at the appropriate permitted weight level of the annual special permits. These fees are in addition to the registration fees. Mileage and road use fees for single trip special permits are calculated and collected at the time of issuance and are not reported quarterly. ( )

**101. QUARTERLY ROAD USE FEE REPORTING.**

**01. Quarterly Reporting Forms Issued.** The department will generate an online quarterly report form for each valid annual special permit issued to them. ( )

**02. Use of Quarterly Reporting Form.** The customer will report each quarter's information on the Department's form with all requested information completed on or before the specified due date, even when reporting zero (0) miles traveled. ( )

**a.** If the customer does not receive a quarterly report form or report their information online, it is the customer's responsibility to notify the Department allowing adequate time to submit the report before the due date. ( )

**b.** Any report transmitted through the US Postal Service is considered filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or wrapper containing the report. A postage meter cancellation is not considered as a post office cancellation mark. ( )

**c.** If the quarterly report form due date falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next business day. ( )

**d.** Quarterly reports not submitted will result in the account being suspended. ( )

**102. -- 199. (RESERVED)**

**200. INSTALLMENT PAYMENTS FOR COMMERCIAL VEHICLE REGISTRATION.**  
The department offers a Payment Plan for registrants in compliance with Sections 49-434, Idaho Code. ( )

**01. Requirements to Participate in Installment Payments.** ( )

**a.** Participant must sign participation contract agreement. ( )

**b.** Only Full Fee and Idaho IRP registration fees are included in the payment plan. Other jurisdictions' IRP fees will not be included. ( )

**c.** Only full annual registration fees will be included in payment plan. Registrations for less than one full year will not be included. ( )

**d.** Vehicles not registered within thirty (30) days after the previous year registration has expired will not be eligible for the installment payment option. Submitted applications for registration that have been invoiced, but

not paid for, by the last day of the registration effective month will not be eligible for the installment payment option. ( )

**e.** Installment contract requirements do not provide opportunity for registrant to opt out of any remaining installment payments. The balance of the payment plan may continue to be paid even if the truck is not being operated. ( )

**f.** If registrant meets the criteria in Section 300 of this rule, the prorated portion of the Idaho fee will be credited toward the installment plan or refunded if the plan has been paid in full. ( )

**g.** Registrant may not participate in installment payment plan if the registrant's account has previously been suspended as stated in Subsection 200.06 of this rule. ( )

**h.** The contract will stipulate the payment periods and the installment payment vouchers will stipulate the due dates of each subsequent payment. ( )

**i.** An installment payment plan fee of fifty dollars (\$50) will be required and collected at the time of setup for each installment payment plan created. ( )

**02. Billings, Payments and Due Dates of Installment Plan.** ( )

**a.** The department will upon acceptance of the contract by the registrant, receive one-quarter of the annual registration fee along with the installment payment plan fee, and then will bill the registrant for three (3) equal installments based upon the previously set payment periods outlined in the contract, which are due by the end of the third, sixth, and ninth months after the effective date of the registration. ( )

**b.** Installment payment vouchers will be provided with the initial invoice. ( )

**c.** US Postal Service postmark may be used to determine if payment is received on time. If the envelope is postmarked on or before the last day of the month, the payment will be considered "on time." ( )

**d.** If the last day of the month falls on a Saturday, Sunday or legal holiday, the next business day will be considered the due date. ( )

**e.** Failure to retain provided payment vouchers does not relieve the burden of the registrant to pay the installment amount by the due date. ( )

**03. Failure to Pay Installment Payment by Due Date.** ( )

**a.** The department may send out courtesy pre-suspension notices approximately five (5) days after the due date to registrants who have failed to remit payment by the due date printed on the quarterly billing. ( )

**b.** The pre-suspension letter will contain a late penalty fee of ten percent (10%) of the amount due and an additional one percent (1%) for each month or portion of a month that the payment is past due. ( )

**c.** Registrant will pay installment amount portion that is due, plus assessed penalties and interest. ( )

**04. Suspension of Registrant's Account Due to Non-Payment of Payment Plan.** Approximately two (2) weeks after pre-suspension notices are mailed to the registrant, the department may suspend accounts of registrant's that have failed to remit installment payment and/or interest and penalty. ( )

**05. Reinstatement Fee for Payment Plan Registration.** ( )

**a.** A forty dollar (\$40) reinstatement fee will be applied to all payment plan accounts that have been suspended. ( )

**b.** Registrant must pay quarterly payment portion, penalty and interest, if applicable, and reinstatement fee before suspension will be cleared from account. ( )

**06. Repetitive Suspensions Result.** ( )

**a.** After the registrant's account has been suspended for delinquent installment payments two (2) or more times, the registrant will not be allowed to participate in future payment plan programs unless; ( )

**i.** Customer has twelve (12) consecutive months of no suspensions related to the account starting from the month the account is cleared; and ( )

**ii.** Customer requests in writing to the department to participate in future installment payment plans and will be allowed to do so. ( )

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

**300. REFUNDS.**

**01. Fees Eligible for Refund.** Registrants may make a request for refunds if appropriate information is submitted to the Department in the following instances: ( )

**a.** Commercial vehicle registration is eligible for refund when the criteria in Section 49-434, Idaho Code, are met. ( )

**b.** If account has been overpaid, and no other fees are owed to the department. ( )

**c.** Unexpired portion of Idaho based fees are refundable for: ( )

**i.** A vehicle that has been sold or repossessed; ( )

**ii.** A vehicle that has been damaged beyond repair; or ( )

**iii.** A vehicle on which the lease has been terminated. ( )

**iv.** Other refund requests will be reviewed and approved or denied on a case by case basis. ( )

**02. Fees Not Eligible for Refunds.** Other jurisdiction's fees are not refundable by Idaho. ( )

**301. -- 399. (RESERVED)**

**400. NONSUFFICIENT FUNDS.**

**01. Payment With Insufficient Fund Check.** If a customer pays a fee by check and the check is returned to the department as NSF, the transaction will be cancelled. The department reserves the right to not accept checks from a customer who has written two (2) or more NSF checks within four (4) years to the department. That customer will have to pay with cash, or verifiable check, or credit card. ( )

**02. Suspension of Account.** The department will suspend the customer's account until the customer has paid the amount of the NSF check, along with the twenty dollar (\$20) NSF fee. ( )

**03. No Further Transactions.** The department will not complete further transactions with the customer until the customer has paid the amount of the NSF check along with the twenty dollar (\$20) NSF fee. ( )

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

**500. SUSPENSION OF REGISTRATION.**

The department will suspend the vehicle registration(s) by notifying the registrant in writing sent via first class pre-paid mail to the registrant's last known address if: ( )

**01. Failure to Comply.** The registrant fails to comply with a billing letter requesting payment of fees and penalties. ( )

**02. Non-Filing by the Registrant.** The registrant does not file quarterly reports or make installment payments to the department. ( )

**501. REVOCATION OF REGISTRATION.**

The department may revoke the vehicle registration(s) if the registrant fails to comply with a suspension notice within fifteen (15) days of receipt of the notice. ( )

**502. REQUIREMENTS FOR REINSTATEMENT OF REVOKED OR SUSPENDED VEHICLE REGISTRATION.**

**01. Revocation.** In the case of a revocation, a registrant must pay all fees due and a forty dollar (\$40) reinstatement fee to be reinstated and must also re-register to resume operating. ( )

**02. Suspension.** In the case of a suspension all fees, reports, and records required prior to the suspension must be provided to the department, including a forty dollar (\$40) reinstatement fee. ( )

**503. REQUIREMENTS FOR COLLECTIONS.**

All unpaid amounts owed to the department may be sent to an external collection agency. Collection agencies may charge a fee for their efforts in collection of a debt as per Section 67-2358, Idaho Code. Accounts that have been assigned to a collection agency must pay the collection agency all fees due. The department will not accept the payment once assigned to the collection agency. ( )

**504. -- 599. (RESERVED)**

**600. ENFORCEMENT.**

**01. Delayed Movement.** If the registration of a vehicle is suspended the Ports of Entry may delay movement of the vehicle until such time as the registrant complies with the condition(s) that caused the suspension. ( )

**02. Revoked Registrations.** If a registrant's registrations are revoked for failure to respond to a suspension notice, the motor vehicle cannot be operated on Idaho highways until the registrant complies with Section 702 of this rule. Registrants with outstanding balances owed to the department or revoked registrations are not eligible to purchase trip permits. ( )

**601. -- 699. (RESERVED)**

**700. APPEAL PROCEDURE.**

**01. Filing of Appeal.** A registrant wishing to contest a penalty or suspension of a registration or an account may file an appeal within ten (10) days of receipt of the notice. ( )

**701. -- 799. (RESERVED)**

**SUBCHAPTER A – RULES GOVERNING TEMPORARY VEHICLE CLEARANCE FOR CARRIERS**

**800. ADMINISTRATION.**

Temporary Vehicle Clearances are valid for a maximum of forty-five (45) days or to the registration year expiration date and may be issued to a carrier whose account is in good standing upon payment of the fee. If self-issued by the carrier online, the temporary vehicle clearance fee is waived. ( )

**801. -- 899. (RESERVED)**

**900. ISSUANCE OF VEHICLE REGISTRATION (CAB CARD) AND LICENSE PLATE(S).**

**01. Issuance of Vehicle Registration & License Plate(s).** The vehicle registration and license plate(s) may be issued when: ( )

**a.** The online application is received by the Department, all applicable fees are paid and all licensing requirements are met. ( )

**02. Permanent Identification.** When all criteria are met, a registration, license plate and sticker (if applicable) will be issued. ( )

**901. -- 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.02.26 – RULES GOVERNING TEMPORARY VEHICLE CLEARANCE FOR CARRIERS

#### DOCKET NO. 39-0226-2201 (ZBR CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor's Red Tape Reduction Initiative, the Department has continued to work on making changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the Department's respective chapters. During this year's rules review, the Department has combined two chapters into one. Therefore, this administrative rule is being repealed and consolidated into IDAPA 39.02.22. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**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 under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July 2022.

Ramón S. Hobdey-Sánchez, J.D.  
Office of Governmental Affairs  
Idaho Transportation Department  
11331 W. Chinden Blvd.  
Boise, ID 83714  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
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**IDAPA 39.02.26 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.70 – RULES GOVERNING RESTRICTED DRIVING PERMITS**  
**DOCKET NO. 39-0270-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor’s Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department’s 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0270-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.02.70 – RULES GOVERNING RESTRICTED DRIVING PERMITS**

**000. LEGAL AUTHORITY.**

Under authority of Sections 18-8002A, 49-325, and 49-326, Idaho Code, the Idaho Transportation Board adopts the following Rule for the issuance of Restricted Driving Permits for licensed drivers who face certain suspension or revocation of driving privileges in the state of Idaho. ( )

**001. SCOPE.**

This rule contains guidelines for issuance of non-commercial restricted driving privileges for those individuals whose driving privileges have been suspended or revoked under authority of Idaho law; and establishes minimum standards for the issuance, denial and cancellation of non-commercial Restricted Driving Permits. ( )

**002. -- 099. (RESERVED)**

**100. ELIGIBILITY.**

Individuals eligible for restricted driving privileges in the state of Idaho will meet two (2) general criteria: ( )

**01. Need.** Show that driving privileges are essential to maintain a livelihood and/or to provide necessities of life; ( )

**02. Safety.** Show that restricted driving privileges will not jeopardize the safety of the traveling public; and ( )

**101. -- 199. (RESERVED)**

**200. DURATION AND EXPIRATION OF RESTRICTED DRIVING PERMIT.**

**01. Duration and Expiration.** The Restricted Driving Permit will remain in effect for the period of time the driver's privileges have been suspended or revoked unless canceled by the department or otherwise provided by law. ( )

**02. Reinstatement Action.** Satisfactory completion of the terms and conditions of the Restricted Driving Permit will be noted in the driving records of the participant as maintained by the Department, and the Department will reinstate the applicant's regular driving privileges at the expiration of the Restricted Driving Permit if he has complied with all conditions of the Restricted Driving Permit and reinstatement requirements. Any convictions or notices of suspension or revocation will remain a part of the driver's file. ( )

**201. -- 399. (RESERVED)**

**400. RESTRICTED DRIVING PERMITS WILL NOT BE ISSUED.**

Restricted Driving Permits will not be issued by the Department to: ( )

**01. Privileges Suspended.** Individuals who have had their driving privileges suspended or revoked by the Court and/or Department three (3) or more times during the three (3) year period prior to the effective date of the current suspension. ( )

**02. Like Offense.** Individuals who have been issued a Restricted Driving Permit by the Department or by an Idaho Court for a like offense within a previous two (2) year period prior to the effective date of the current

suspension or revocation. ( )

**03. Violation of Restrictions.** An individual found to be in violation of restrictions on any court or Department-issued restricted driving permit. ( )

**04. Revoked Out-of-State Drivers.** An individual who was an out-of-state resident at the time driving privileges were revoked or suspended in that state or any other state other than Idaho. ( )

**05. Under Seventeen.** An individual who is not at least seventeen (17) years of age at the time of issuance of the permit. ( )

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

**500. GENERAL APPLICATION PROCEDURE FOR A NON-COMMERCIAL RESTRICTED DRIVING PERMIT.**

**01. Applicant Submissions.** Applicant will submit the following before their suspension or revocation is stayed: ( )

**a.** Completed Form No. ITD-3227, Application for Restricted Driving Permit; ( )

**b.** Completed Form No. ITD-3208, Work Verification; ( )

**c.** Proof of motor vehicle liability insurance coverage in the amount directed by Idaho law to cover any and all vehicles to be used by the applicant; ( )

**d.** All applicable reinstatement requirements will be satisfied; ( )

**e.** A non-refundable application fee pursuant to Section 49-306, Idaho Code; ( )

**02. Written Agreement.** If the Department determines that an applicant is eligible for a non-commercial Restricted Driving Permit, the applicant must then sign written agreements, prepared by the Department, affirming all the information requested by the Department. ( )

**03. Restricted Driving Permit Approval.** Approval will be given and a Restricted Driving Permit will be issued if the following conditions are met: ( )

**a.** Submission and approval of all requirements; and ( )

**b.** No other suspensions or revocations are in effect which preclude issuance of a Restricted Driving Permit. ( )

**501. -- 599. (RESERVED)**

**600. DRIVING RESTRICTIONS SPECIFIED.**

The Department may impose the following restrictions upon an applicant's driving privileges and such restrictions will be specified on the Restricted Driving Permit: ( )

**01. Operation of Vehicle.** Time of operation of a motor vehicle, i.e. restricted to certain days, or hours of a day. ( )

**02. Geographic Area.** Geographic limitations within limits of states, counties, cities. ( )

**03. Permitted Travel.** To and from work, school, medical appointments, treatment programs, and to provide for basic life necessities of the applicant and/or their dependents. ( )

**601. -- 699. (RESERVED)**

**700. CANCELLATION OF RESTRICTED DRIVING PERMIT.**

The Department may cancel a Restricted Driving Permit and will re-activate the suspension or revocation order which will expire according to the original order if: ( )

**01. Violation of Terms.** There is a violation of terms of the written driver's agreement. ( )

**02. Violation of Restrictions.** There is a violation of any of the restrictions set forth in the applicant's Restricted Driving Permit. ( )

**701. -- 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.02.71 – RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM AND ACCIDENT PREVENTION COURSES

#### DOCKET NO. 39-0271-2201 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor's Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department's 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
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208.334.8810

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0271-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.02.71 – RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM AND  
ACCIDENT PREVENTION COURSES**

**000. LEGAL AUTHORITY.**

Sections 41-2515, 49-201 and 49-326, Idaho Code. ( )

**001. SCOPE.**

These rules establish a driver's license violation point system for drivers convicted of moving traffic violations and convictions. Subchapter A establishes minimum standards for approval of a motor vehicle accident prevention course. ( )

**002. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter will be governed by the rules of administrative procedure of the Attorney General, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**003. -- 099. (RESERVED)**

**100. VIOLATION POINT COUNT SYSTEM.**

**01. Points for Traffic Violations.** Idaho Code authorizes and directs the Department to establish a violation point count system for drivers convicted of various moving traffic violations and infractions occurring either within the state of Idaho, or outside the state of Idaho. ( )

**02. Violation Point Count List.** The following violation point count list includes traffic violations in Idaho Code, and the appropriate code section reference. Convictions of traffic violations not herein listed which are violations of a state law or municipal ordinance will receive three (3) violation points, except those for which mandatory withdrawal of driving privileges is required by Idaho Code or the Idaho Code provides a point exemption. ( )

**03. Points Assessed.** Each traffic violation conviction will be assessed from one (1) point for less serious violations to a maximum of four (4) points for more serious violations. The degree of seriousness of traffic violations has been determined by considering the possibility of bodily injury or property damage resulting from such violation. ( )

**04. Dual Violation.** In cases where the driver is convicted of more than one (1) violation arising from one (1) occasion of arrest or citation, only one (1) conviction will be counted and assessed points against the driver's record. The conviction counted will be the one with the greater amount of points. ( )

**05. Speeding Violation.** Drivers convicted of traveling sixteen (16) miles per hour or more over the posted maximum speed limit or exceeding the speed limit in a work zone will receive four (4) points. Driving convictions of other speeding violations will receive three (3) points. ( )

**06. Distracted Driving.** A first offense of Section 49-1401A, Idaho Code, will not be assessed points pursuant to code. Subsequent offenses will be assessed points as shown in Section 200. Third and subsequent offenses in a three-year period may also be subject to a court suspension. ( )

**101. -- 199. (RESERVED)**

**200. LIST OF TRAFFIC CONVICTIONS AND VIOLATION POINT COUNT.**

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-603	Starting Parked Vehicle	Two (2)
49-604	Limitations on Backing	One (1)
49-605	Driving Upon Sidewalk	Three (3)
49-606	Coasting Prohibited	Two (2)
49-612	Obstruction to Driver's View or Driving Mechanism	Three (3)
49-614	Stopping When Traffic Obstructed	One (1)
49-615	Drivers to Exercise Due Care	Three (3)
49-616	Driving through Safety Zone Prohibited	Two (2)
49-619	Slow Moving Vehicles	Two (2)
49-623(4)	Authorized Emergency or Police Vehicles	Three (3)
49-624	Duty Upon Approaching a Stationary Police Vehicle or an Emergency Vehicle Displaying Flashing Lights	Three (3)
49-625	Operation of Vehicles on Approach of Authorized Emergency or Police Vehicles	Three (3)
49-626	Following Fire Apparatus Prohibited	Three (3)
49-627	Crossing Fire Hose	One(1)
49-630	Drive on Right Side of Roadway - Exceptions	Three (3)
49-631	Passing Vehicles Proceeding in Opposite Directions	Two (2)
49-632	Overtaking a Vehicle on Left	Three (3)
49-633	When Passing on the Right Is Permitted	Two (2)
49-634	Limitations on Overtaking on the Left	Three (3)
49-635	Further Limitations on Driving on Left of Center of Highway	Three (3)
49-636	One-Way Highways	One (1)
49-637	Driving on Highways Laned for Traffic	One (1)
49-638	Following Too Closely	Three (3)
49-639	Turning Out of Slow Moving Vehicles	Two (2)
49-640	Vehicles Approaching or Entering Unmarked or Uncontrolled Intersection	Three (3)
49-641	Vehicle Turning Left	Three (3)
49-642	Vehicle Entering Highway	Three (3)
49-643	Highway Construction and Maintenance	Three (3)
49-644	Required Position and Method of Turning	Three (3)
49-645	Limitations on Turning Around	Three (3)
49-648	Obedience to Signal Indicating Approach of Train	Four (4)
49-649	Compliance with Stopping Requirement at All Railroad Grade Crossings	Four (4)

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-650	Moving Heavy Equipment at Railroad Grade Crossings	Three (3)
49-651	Emerging from Alley, Driveway or Building	Three (3)
49-652	School Safety Patrols – Failure to Obey Unlawful	Three (3)
49-654	Basic Rule and Maximum Speed Limits	Three (3) Four (4)
49-655	Minimum Speed Regulation	Three (3)
49-656	Special Speed Limitations	Three (3) Four (4)
49-657	Work Zone Speed Limits	Four (4)
49-658	School Zone Speed Limit	Three (3)
49-663	Restricted Use of Neighborhood Electric Vehicles on Highways	Two (2)
49-702	Pedestrians' Right of Way in Crosswalks	Three (3)
49-706	Blind and/or Hearing Impaired Pedestrian Has Right-of-Way	Three (3)
49-707	Pedestrians' Right-of-Way on Sidewalks	Three (3)
49-801	Obedience to and Required Traffic Control Devices	Three (3)
49-802	Traffic Control Signal Legend	Three (3)
49-804	Flashing Signals	Three (3)
49-806	Lane Use Control Signals	Three (3)
49-807(2)	Stop Signs	Three (3)
49-807(3)	Failure to Yield – Signed Intersection	Three (3)
49-808	Turning Movements and Required Signals	Three (3)
49-1302	Duty to Give Information in Accident Involving Damage to a Vehicle	Four (4)
49-1303	Duty Upon Striking Unattended Vehicle	Four (4)
49-1304	Duty Upon Striking Fixtures Upon or Adjacent to a Highway	Four (4)
49-1401(3)	Inattentive Driving	Three (3)
49-1401A	Distracted Driving (second and subsequent offenses)	Three (3)
49-1419	Obedience to Traffic Direction	Two (2)
49-1421(1)	Driving on Divided Highways	One (1)
49-1421(2)	Restricted Access	One (1)
49-1422	Overtaking and Passing School Bus	Four (4)
49-1424	Racing on Public Highways	Four (4)

( )

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

**300. SUSPENSION OF DRIVER LICENSE.**

**01. Twelve Points.** When a driver accumulates twelve (12) or more points in any twelve (12) month period of time, the suspension period will be for thirty (30) days. ( )

**02. Eighteen Points.** When a driver accumulates eighteen (18) or more points within any twenty-four (24) month period of time, the suspension period will be for ninety (90) days. ( )

**03. Twenty-Four Points.** When a driver accumulates twenty-four (24) or more points within any thirty-six (36) month period of time, the suspension period will be for six (6) months. ( )

**301. -- 399. (RESERVED)**

**400. COMPLETION OF A DEFENSIVE DRIVING CLASS OR TRAFFIC SAFETY EDUCATION PROGRAM.**

**01. Removal of Points Upon Completion of Defensive Driving Class or Traffic Safety Education Program.** Three (3) points may be removed from an Idaho driving record upon the driver's completion of an approved defensive driving class or points may be removed from a traffic violation upon the driver's completion of an approved traffic safety education program. Points may only be removed from a driver's record once every three (3) years. The three-year period begins on the completion date of either a defensive driving class or traffic safety education program. ( )

**a.** For completion of a defensive driving class, points are only removed from the violation point count total on the driving record. ( )

**b.** For completion of a traffic safety education program as provided in Section 50-336, Idaho Code, points are removed from the conviction for which the traffic safety education program was offered and taken. ( )

**02. Driving Conviction Cannot Be Removed.** A driver may not remove a traffic conviction from their record by attending a defensive driving class or a traffic safety education program. ( )

**03. Suspension for Excessive Points.** Once the department has suspended a driver for excessive points, that driver may not have the suspension action rescinded by attending a defensive driving class or traffic safety education program. ( )

**04. Driver May Not Reserve Point Reduction.** When a driver completes a defensive driving class or traffic safety education program but has no violation points on their driver record, the driver may not reserve a point reduction for use on a future traffic violation that points are assessed. ( )

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

**SUBCHAPTER A – RULES GOVERNING ACCIDENT PREVENTION COURSE**

**500. ACCIDENT PREVENTION COURSE.**

A structured course of study, either in a traditional classroom setting, field driving or internet based format, with curriculum focusing on becoming a safer driver and avoiding accidents, by being cautious, aware, responsible, and respectful of other drivers while abiding by Idaho's rules of the road. The terms "accident prevention course" and "defensive driving class" are interchangeable, and the course standards established for the accident prevention course in this rule are the same standards for the defensive driving class for violation point count reduction as established above. ( )

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

**550. CRITERIA.**

**01. Instructor Certification.** For classroom and field driving instruction, instructors will be certified by the Idaho Department of Education as a Driver and Traffic Safety Education instructor, or the National Safety



Council, American Automobile Association's program (AAA), American Association of Retired Persons (AARP), or an equivalent program, as determined by the Department. ( )

**02. Contents of Course.** Other than courses provided by the National Safety Council, AAA, or AARP, all accident prevention course outlines will be approved by the Department. ( )

**03. Length of Class.** The course will be a minimum of six (6) hours, which may include any combination of classroom instruction, field driving instruction, or on-line instruction time. ( )

**04. Proof of Insurance.** For any field driving instruction, the course provider will confirm adequate proof of insurance. ( )

**05. Provider Location.** The course provider will confirm location(s) of established place of business, and a telephone number or e-mail address of a contact person who can be reached during regular working hours 8 a.m. to 5 p.m. ( )

**06. Participant Certification.** Each participant will be issued a certificate of completion by the instructor or course provider. ( )

**651. -- 599. (RESERVED)**

**600. COURSE REVIEW.**  
Accident Prevention Courses are subject to periodic review by the Department. As a part of the review process, the provider may be asked to confirm course and instructor information and resubmit instruction materials. ( )

**601. WITHDRAWAL OF COURSE APPROVAL.**  
The Department may withdraw course approval if minimum standards are no longer met or if course providers have failed to respond to a course review. ( )

**602. -- 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.72 – RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS**  
**DOCKET NO. 39-0272-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor’s Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department’s 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
Office of Governmental Affairs  
Idaho Transportation Department  
11331 W. Chinden Blvd.  
Boise, ID 83714  
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208.334.8810

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0272-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.02.72 – RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS**

**000. LEGAL AUTHORITY.**

Section 18-8002A, Idaho Code. ( )

**001. SCOPE.**

This rule establishes driver's license suspension procedures for persons driving under the influence of alcohol or other intoxicating substances as indicated by an evidentiary test of blood, breath, or urine. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Petitioner.** A person who has been served with a Notice of Suspension pursuant to Section 18-8002A, Idaho Code. ( )

**02. Certified Copy.** A reproduction of an original record that has been certified by a custodian of such record to be a true and accurate copy. ( )

**03. Duplicate Original.** A counterpart produced by the same impression as the original, or from the same matrix. ( )

**04. Evidentiary Test.** An analysis of blood, breath, or urine to determine the presence of alcohol, drugs, or other intoxicating substances. ( )

**011. -- 099. (RESERVED)**

**100. HEARING REQUESTS.**

**01. Written Requests.** Hearing requests will be made in writing and contain the following information: ( )

**a.** The petitioner's full name, complete mailing address, and telephone number where hearing will be conducted; ( )

**b.** The driver's license number; ( )

**c.** The petitioner's date of birth; ( )

**d.** The date of arrest; ( )

**e.** A brief statement of the issues the petitioner proposes to raise at the hearing; and ( )

**f.** Any dates or times that the petitioner or attorney cannot be available for the hearing. ( )

**02. Timely Requests.** Hearing requests will be received by the Department no later than 5 p.m. of the seventh business day following the service of the Notice of Suspension. Hearing requests received after that time will be considered untimely. The Department will deny an untimely hearing request unless the petitioner can demonstrate

that a request should be granted. ( )

**03. Request Withdrawal.** Petitioners may withdraw their hearing requests at any time. ( )

**101. HEARING NOTICES.**

**01. Notification.** Upon timely receipt of hearing requests, the Department will notify petitioners of the time and date of the hearing as soon as practicable, but no later than seven (7) days prior to the hearing. Hearing notices will be mailed or e-mailed to the address provided in the hearing requests, or if no address was provided, notices will be mailed to the most current address contained in the petitioner's driver's license records. ( )

**02. Hearings Conducted by Telephone.** Hearings will be conducted by telephone unless the hearing officer will determine that the petitioner or other participant would be denied the opportunity to participate in the entire hearing if held by telephone. Face to face hearings will be held in Ada County (or other locations within the state as may be determined by the Department). ( )

**102. -- 199. (RESERVED)**

**200. DOCUMENT SUBMISSION.**

**01. Compliance.** The documents will be considered forwarded in a timely manner if they are postmarked within five (5) business days of the date of service of the Notice of Suspension or are accompanied by a certificate, certifying the documents were deposited with: ( )

**a.** The United States mail or overnight delivery service; or ( )

**b.** Hand delivered, within five (5) business days of the date of service of the suspension notice. ( )

**02. Blood and Urine Tests.** If an evidentiary test of blood or urine was administered rather than a breath test, the Notice of Suspension will not be served until the results of the test are obtained. In such cases, the peace officer may forward the sworn statement and accompanying reports to the Department and the Department will have the responsibility of serving the Notice of Suspension, if necessary. ( )

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

**300. SUBPOENAS.**

**01. Request.** The Hearing Officer assigned to the matter may, upon written request, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing. ( )

**02. Serving Subpoenas.** Parties requesting subpoenas will be responsible for having the subpoenas served. Witnesses will not be compelled to attend and testify at hearings unless served with subpoenas at least one hundred and twenty (120) hours prior to the time of hearing. ( )

**03. Proof of Service.** Parties responsible for service of the subpoena will provide proof of service of the subpoena prior to the scheduled hearing. ( )

**301. -- 399. (RESERVED)**

**400. DOCUMENT DISCOVERY.**

**01. Obtaining Photocopies.** To obtain a photocopy of a document which is public record, relates to the petitioner hearing, and is in the possession of the Department, petitioners will make a written request to the Department. The Department will attempt to provide the requested copies prior to the hearing date, but failure to do so will not be grounds for staying or rescinding a suspension. ( )

**02. Document Discovery.** Further discovery will be conducted in accordance with IDAPA 04.11.01.521, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

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

**500. RECORDS OF PROCEEDINGS.**

**01. Records.** The Hearing Officer will make a record of hearing proceedings consisting of: ( )

**a.** An audio recording of the hearing, except in instances where the Hearing Officer authorizes a different method of reporting the hearing. ( )

**b.** Exhibits and other items of evidentiary nature. ( )

**02. Requesting Copies.** Any party may make a written request for a copy of the audio recording of the hearing from the Department. The requesting party will reimburse the Department for the actual cost of providing the copy. ( )

**501. -- 599. (RESERVED)**

**600. FINAL ORDER REQUEST FOR RECONSIDERATION.**

The Hearing Officer will make Findings of Fact, Conclusions of Law and Order either sustaining or vacating the license suspension in question following the hearing. A request for reconsideration will be made within fourteen (14) days of the issuance of the Findings of Fact, Conclusions of Law and Order. The request for reconsideration will contain a request to submit new evidence if the party wishes the hearing officer to consider any new evidence. ( )

**01. Mailing Final Order.** The Findings of Fact, Conclusions of Law and Order is issued when a copy is deposited in the United States Mail addressed to the petitioner or the petitioner's attorney or e-mailed to the petitioner or the petitioner's attorney. ( )

**601. -- 699. (RESERVED)**

**700. FAILURE TO APPEAR.**

**01. Proposed Order of Default.** Should the petitioner fail to appear at the scheduled hearing, either in person or through an attorney, the Hearing Officer will promptly issue a notice of proposed order of default. This notice is deemed served when mailed or e-mailed to the petitioner or petitioner's attorney at the address shown in the request for hearing, or if no address was provided, the notice will be mailed to the most current address contained in the petitioner's driver's license records. ( )

**02. Filing Petition.** The petitioner may, within seven (7) days of service of the notice of proposed order of default, file a petition requesting that the order of default not be entered and stating the grounds for such a request. If the Hearing Officer grants the petitioner's request, the hearing will be rescheduled. Granting the petitioner's request will not stay or vacate the suspension. ( )

**03. Denied Petitions.** If the Hearing Officer denies the petitioner's request that the default order not be entered, the Hearing Officer will make a determination to sustain or vacate the suspension based upon the documentary record submitted by the Department. ( )

**04. Attending a Hearing.** A petitioner or witness will be deemed to have appeared if present within fifteen (15) minutes after the time the Hearing Officer is ready to begin the hearing. In the case of a telephone hearing, the petitioner or witness will be deemed to have appeared if contacted by telephone on the second attempt to do so within a fifteen (15) minute period from the commencement of the hearing. ( )

**701. -- 799. (RESERVED)**

**800. FORMS.**

Each law enforcement agency will use the forms supplied by the Department in carrying out the requirements of Section 18-8002A, Idaho Code, and this Rule. However, the sworn statement may be in the form of a law enforcement agency's affidavit of probable cause or equivalent document, so long as it contains the elements directed by Section 18-8002A, Idaho Code. ( )

**801. -- 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.73 – RULES GOVERNING ACCIDENT PREVENTION COURSE**  
**DOCKET NO. 39-0273-2201 (ZBR CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor's Red Tape Reduction Initiative, the Department has continued to work on making changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the Department's respective chapters. During this year's rules review, the Department has combined two chapters into one. Therefore, this administrative rule is being repealed and consolidated into IDAPA 39.02.71. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**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 under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(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 Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July 2022.

Ramón S. Hobdey-Sánchez, J.D.  
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11331 W. Chinden Blvd.  
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**IDAPA 39.02.73 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.44 – RULES GOVERNING HIGHWAY RELOCATION ASSISTANCE FOR**  
**PERSONS DISPLACED BY PUBLIC PROGRAMS**  
**DOCKET NO. 39-0344-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 support of the Governor's Red Tape Reduction Initiative, eight chapters under IDAPA Title 39 were up for review this year per the [Zero-Based Regulation E. O. 2020-01](#) and the [Department's 5-year review schedule](#). The goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, provide clarity and update the respective chapters.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 39-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 88-89](#).

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

These Federal citations ensure compliance with the regulations associated with relocation assistance and the acquisition of real property that may be related to a project.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, please contact Ramón S. Hobdey-Sánchez at (208) 334-8810.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 7th Day of July, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0344-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**39.03.44 – RULES GOVERNING HIGHWAY RELOCATION ASSISTANCE FOR**  
**PERSONS DISPLACED BY PUBLIC PROGRAMS**

**000. LEGAL AUTHORITY.**

Chapters 1 and 20, Title 40, and Chapter 11, Title 58, Idaho Code.

( )

**001. SCOPE.**

The purpose of this rule is to ensure that persons displaced as a result of all state, federal or federally assisted projects are treated fairly, consistently and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole and further that displaced persons are dealt with in a manner that is efficient and cost effective.

( )

**002. INCORPORATION BY REFERENCE.**

**01. Regulations Incorporated.** 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Regulations dated March 2, 1989 and amendments thereto.

( )

**02. Availability of Records.** Copies of the 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Regulations can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

( )

**003. -- 999. (RESERVED)**

**IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD**  
**57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**  
**DOCKET NO. 57-0101-2201**

**NOTICE OF INTENT TO PROMULGATE RULES –**  
**ZERO-BASED REGULATION NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 18-8314, Idaho Code.

**MEETING SCHEDULE:** A public meeting on the negotiated rulemaking will be held as follows:

<b>Friday, August 12, 2022 @ 9:30 a.m. (MT)</b>
<b>In Person:</b>  <b>Sexual Offender Management Board</b> <b>Idaho Department of Correction</b> <b>1299 N. Orchard, Suite 110</b> <b>Boise, Idaho 83706</b>
<b>To attend by Zoom:</b>  <a href="https://us02web.zoom.us/j/83016861266?pwd=Rb8a5GD0LGniKR14f7pY6OytLSJGPT.1">https://us02web.zoom.us/j/83016861266?pwd=Rb8a5GD0LGniKR14f7pY6OytLSJGPT.1</a>

If additional meetings are scheduled, the dates, times, and locations will be posted on the Sexual Offender Management Board (SOMB) website at <https://somb.idaho.gov/news-proposals/>.

The meeting site 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. All attendees must comply with current COVID-19 safety protocols for public gatherings.

**METHOD OF PARTICIPATION:** SOMB encourages your participation by either attending the scheduled public meeting in person or via Zoom or providing your written comments to SOMB during the comment period. Written comments must be received by August 12, 2022.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled to be rewritten in 2022 for review during the 2023 legislative session. The Board anticipates reducing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Board will review the rule with stakeholders to ensure that it is right-sized. This rulemaking eliminates unnecessary or duplicative information and moves all fee information under the same rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text and/or draft modifications to standards documents contact Nancy Volle at (208) 605-4782. Materials pertaining to the negotiated rulemaking can be found on the Board's web site at the following web address: <https://somb.idaho.gov/news-proposals/>.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 12, 2022.

DATED this 29 day of July, 2022.

Nancy Volle  
Program Manager  
Sexual Offender Management Board  
1299 N. Orchard St., Ste 110  
Boise, ID 83706  
Phone: (208) 605-4782  
Email: [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov)

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**SPOKANE RIVER TOTAL MAXIMUM DAILY LOAD (TMDL) – LEAD AND ZINC (HUC 17010305)**  
**DOCKET NO. 58-0000-2201**  
**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Spokane River TMDL – Lead and Zinc.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Spokane River TMDL – Lead and Zinc. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.” The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by Spokane River TMDL – Lead and Zinc (Hydrologic Unit Code 17010305) establishes two (2) lead and two (2) zinc TMDLs on a water quality impaired stream reach (assessment units). DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/16540> or by contacting Thea Wickersham, Water Quality Coordinator, 208-373-0153, [thea.wickersham@deq.idaho.gov](mailto:thea.wickersham@deq.idaho.gov).

Dated this 3rd day of August, 2022.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 3706  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**LOWER CLARK FORK RIVER SUBBASIN 2022 TOTAL MAXIMUM DAILY LOADS (TMDLS)**  
**(HUC 17010213)**  
**DOCKET NO. 58-0000-2202**  
**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Lower Clark Fork River Subbasin 2022 Temperature TMDLs.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Lower Clark Fork River Subbasin 2022 Temperature TMDLs. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.” The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by Lower Clark Fork River Subbasin 2022 Temperature TMDLs (Hydrologic Unit Code 17010213) addresses the temperature impairments for twenty-two (22) water quality impaired stream reaches (assessment units). DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at [Lower Clark Fork River Subbasin 2022 Temperature TMDL](#). Or by contacting Thea Wickersham, Water Quality Coordinator, 208-373-0153, [thea.wickersham@deq.idaho.gov](mailto:thea.wickersham@deq.idaho.gov).

Dated this 3rd day of August, 2022.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

*The proposed rule public hearing request deadline is August 17, 2022, unless otherwise posted.  
The proposed rule written comment submission deadline is August 24, 2022, unless otherwise posted.  
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

*\*16-0414-2201, Low-Income Home Energy Assistance Program (LIHEAP).* (\*PH) Zero Based Regulation (ZBR) Chapter Rewrite provides assistance for home energy needs to eligible low income households through a federally funded program.

*\*16-0504-2101, Domestic Violence Council Grants.* (\*PH) ZBR Chapter Rewrite defines application process, eligibility determination, and other requirements for grants administered by the Idaho Council on Domestic Violence and Victim Assistance.

*16-0506-2201, Criminal History and Background Checks.* ZBR Chapter Rewrite outlines requirements for the Department to conduct criminal history and background checks on those who provide care or services to children or vulnerable adults.

#### IDAPA 35 – IDAHO STATE TAX COMMISSION PO Box 36, Boise ID 83722-0036

*\*35-0109-2201, Idaho Beer and Wine Taxes Administrative Rules.* (\*PH) ZBR Chapter Rewrite provides the Tax Commission the authority to impose a tax on beer and wine sold or disposed of, and used or consumed, in Idaho.

*35-0201-2201, Tax Commission Administration and Enforcement Rules.* Removes an outdated deadline and replaces it with the statutory provision regarding a negligence penalty levied against a taxpayer.

#### IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT 11331 W Chinden Blvd, Boise, ID 83714

*39-0202-2201, Rules Governing Vehicle and Vessel Dealer License Requirements – Motor Vehicles.* ZBR Chapter Rewrite clarifies requirements for the issuance of dealer licenses and specifies other provisions for licenses and refund of fees.

*39-0222-2201, Rules Governing Registration and Permit Fee Administration and Temporary Vehicle Clearance for Carriers.* ZBR Chapter Rewrite clarifies procedures for administering registration and permit fees; and consolidates temporary vehicle clearance procedures in Idaho.

*39-0226-2201, Rules Governing Temporary Vehicle Clearance for Carriers.* ZBR Chapter Repeal – provisions moved to IDAPA 39.02.22.

*39-0270-2201, Rules Governing Restricted Driving Permits.* ZBR Chapter Rewrite establishes minimum standards for non-commercial Restricted Driving Permits for individuals whose driving privileges have been suspended or revoked under Idaho law.

*39-0271-2201, Rules Governing Driver's License Violation Point System and Accident Prevention Courses.* ZBR Chapter Rewrite establishes a point system for convictions of moving traffic violations; and consolidates approval criteria of a motor vehicle accident prevention course.

*39-0272-2201, Rules Governing Administrative License Suspensions.* ZBR Chapter Rewrite establishes license suspension hearing process for persons driving under the influence of intoxicating substances as indicated by evidentiary testing.

**39-0273-2201, Rules Governing Accident Prevention Course.** ZBR Chapter Repeal – necessary provisions moved to IDAPA 39.02.71.

**39-0344-2201, Rules Governing Highway Relocation Assistance for Persons Displaced by Public Programs.** ZBR Chapter Rewrite ensures an efficient and cost effective way persons displaced by projects for the benefit of the public are treated fairly and equitably.

**NOTICES OF ADOPTION OF TEMPORARY RULE ONLY**

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08-0203-2202, Rules Governing Thoroughness**

**IDAPA 24.35 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES**

**24-3501-2200, Rules of the Outfitters and Guides Licensing Board (amendment to omnibus temporary rule)**

**NOTICES OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING**

(Please see the Administrative Bulletin for dates and times of meetings and other participant information)

**IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD**

**57-0101-2201, Rules of the Sexual Offender Management Board**

Please refer to the Idaho Administrative Bulletin **August 3, 2022, Volume 22-8**, for the notices and text of all rulemakings, proclamations, negotiated rulemaking and public hearing information and schedules, executive orders of the Governor, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [www.adminrules.idaho.gov/](http://www.adminrules.idaho.gov/)*

Office of the Administrative Rules Coordinator, Division of Financial Management

P.O. Box 83720, Boise, ID 83720-0032

Phone: 208-334-3900; Email: [adminrules@dfm.idaho.gov](mailto:adminrules@dfm.idaho.gov)

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

*Office of the Administrative Rules Coordinator  
Division of Financial Management  
Office of the Governor  
July 1, 1993 – Present*

## [CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES](#)

This index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

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## **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**(Index of Current and Active Rulemakings)**

*Office of the Administrative Rules Coordinator  
Division of Financial Management*

*March 31, 2022 – August 3, 2022*

*(PLR 2023) – Final Effective Date Is Pending Legislative Review in 2023*

*(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 all active rulemakings.)*

***IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE***

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 01, Chapter 04; Title 02, Chapter 02; Title 04, Chapters 04, 15, 17, 29; and Title 06, Chapters 02, 05 – Bulletin Vol. 22-1

***02.01.04, Rules Governing the Voluntary Idaho Preferred® Promotion Program***

**02-0104-2201** Notice of Temporary and Proposed Rule (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 22-7 (eff. 7-6-22)T

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 01, Chapter 04 – Bulletin Vol. 22-1

***02.02.02, Rules Governing Grading and Controlled Atmosphere Storage of Apples***

**02-0202-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 02 – Bulletin Vol. 22-1

***02.04.04, Rules for Artificial Dairy Products***

**02-0404-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 04 – Bulletin Vol. 22-1

***02.04.15, Rules Governing Beef Cattle Animal Feeding Operations***

**02-0415-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 15 – Bulletin Vol. 22-1

***02.04.17, Rules Governing Dead Animal Movement and Disposal***

**02-0417-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 17 – Bulletin Vol. 22-1

***02.04.19, Rules Governing Domestic Cervidae***

**02-0419-2201** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 22-5

***02.04.29, Rules Governing Trichomoniasis***

**02-0429-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 29 – Bulletin Vol. 22-1

***02.06.02, Rules Governing Registrations and Licenses***

**02-0602-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 06, Chapter 02 – Bulletin Vol. 22-1

***02.06.05, Rules Governing Plant Disease and Quarantines***

**02-0605-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**02-ZBRR-2201** *Rules of the Idaho Department of Agriculture* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 06, Chapter 05 – Bulletin Vol. 22-1

***02.06.33, Organic Food Products Rules***

**02-0633-2201** Notice of Temporary and Proposed (Fee) Rule, Bulletin Vol. 22-7 (eff. 5-4-22)T

***02.08.01, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board***

**02-0801-2201** Notice of Temporary and Proposed Rule (New Chapter, Fee Rule), Bulletin Vol. 22-7 (eff. 4-27-22)T

***IDAPA 05 – DEPARTMENT OF JUVENILE CORRECTIONS***

***05.01.03, Rules of the Custody Review Board***

**05-0103-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**05-0103-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

***IDAPA 08 – IDAHO STATE BOARD OF EDUCATION  
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***08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools***

**08-0111-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***08.01.13, Rules Governing the Opportunity Scholarship Program***

**08-0113-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***08.02.01, Rules Governing Administration***

**08-0201-2201** Adoption of Temporary Rule, Bulletin Vol. 22-6 (eff. 4-20-22)T

***08.02.02, Rules Governing Uniformity***

**08-0202-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***08.02.03, Rules Governing Thoroughness***

**08-0203-2202** Adoption of Temporary Rule, Bulletin Vol. 22-8 (eff. 6-15-22)T

**08-0203-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***08.02.04, Rules Governing Public Charter Schools***

**08-0204-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***08.03.01, Rules of the Public Charter School Commission***

**08-0301-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-7

***IDAPA 11 – IDAHO STATE POLICE***

***Idaho State Racing Commission***

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapters 02-11, 13-15 – Bulletin Vol. 22-7

***11.04.02, Rules Governing Simulcasting***

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 02 – Bulletin Vol. 22-7

***11.04.03, Rules Governing Licensing and Fees***

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 03 – Bulletin Vol. 22-7

***11.04.04, Rules Governing Disciplinary Hearings and Appeals***

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 04, Chapter 04 – Bulletin Vol. 22-7

***11.04.05, Rules Governing Advanced Deposit Wagering***

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 05 – Bulletin Vol. 22-7

**11.04.06, Rules Governing Racing Officials**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 06 – Bulletin Vol. 22-7

**11.04.07, Rules Governing Racing Associations**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 07 – Bulletin Vol. 22-7

**11.04.08, Rules Governing Pari-Mutuel Wagering**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 08 – Bulletin Vol. 22-7

**11.04.09, Rules Governing Claiming Races**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 09 – Bulletin Vol. 22-7

**11.04.10, Rules Governing Live Horse Races**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 10 – Bulletin Vol. 22-7

**11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances  
and Drug Testing of Horses**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 11 – Bulletin Vol. 22-7

**11.04.13, Rules Governing the Idaho State Racing Commission**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 13 – Bulletin Vol. 22-7

**11.04.14, Rules Governing Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 14 – Bulletin Vol. 22-7

**11.04.15, Rules Governing Controlled Substance and Alcohol Testing of Licensees, Employees, and Applicants**

**11-ZBRR-2201** *Rules of the Idaho State Racing Commission* – Notice of Intent to Promulgate Rules – Zero-Based Regulation  
Negotiated Rulemaking – Negotiates Title 04, Chapter 15 – Bulletin Vol. 22-7

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**Establishing Seasons and Limits for Hunting, Fishing, and Trapping in Idaho**

**13-0000-2200P4** Notice of Adopted / Amended Proclamation for Calendar Year 2022, Bulletin Vol. 22-7

**13-0000-2200P3** Notice of Adopted / Amended Proclamation for Calendar Year 2022, Bulletin Vol. 22-5

**13-0000-2200P2** Notice of Adopted / Amended Proclamation for Calendar Year 2022, Bulletin Vol. 22-3

**13-0000-2200P1** Notice of Adoption of Proclamation for Calendar Year 2022, Bulletin Vol. 22-1

**13.01.02, Rules Governing Mandatory Education and Mentored Hunting**

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**13.01.04, Rules Governing Licensing**

**13-0104-2202** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 22-4

**13-0104-2201** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 22-4



**13.01.10, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife**

**13-0110-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

**13.01.14, Rules Governing Falconry**

**13-0114-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

**13.01.18, Rules Governing Feeding of Pronghorn Antelope, Elk, and Deer**

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**IDAPA 15 – OFFICE OF THE GOVERNOR**

**Executive Orders of the Governor**

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**Idaho Military Division / Idaho Public Safety Communications Commission**

**15.06.01, Rules Governing the Idaho Public Safety Communications Commission**

**15-0601-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

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**15.10.01, Rules of the Idaho State Liquor Division**

**15-1001-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 22-7

**15-1001-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

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

**16.01.03, Emergency Medical Services (EMS) -- Agency Licensing Requirements**

**16-0103-2201** Notice of Proposed Rulemaking, Bulletin Vol. 22-7

**16.01.06, Emergency Medical Services (EMS) -- Date Collection and Submission Requirements**

**16-0106-2201** Notice of Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 22-7

**16.02.01, Idaho Time Sensitive Emergency System Council**

**16-0201-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-2

**16.02.08, Vital Statistics Rules**

**16-0208-2201** Notice of Temporary and Proposed Rule, Bulletin Vol. 22-7 (eff. 7-1-22)T

**16.02.19, Idaho Food Code**

**16-0219-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-5

**16.03.09, Medicaid Basic Plan Benefits**

**16-0309-2201** Notice of Proposed Rulemaking, Bulletin Vol. 22-7

**16-0309-2201** Adoption of Temporary Rule, Bulletin Vol. 22-5 (eff. 3-17-22)T

**16.03.10, Medicaid Enhanced Plan Benefits**

**16-0310-2101** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 21-11

**16.03.13, Consumer-Directed Services**

**16-0313-2101** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 21-11

**16.03.17, Medicare/Medicaid Coordinated Plan Benefits**

**16-0317-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-3

**16.03.19, Certified Family Homes**

**16-0319-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-5

**16.03.24, The Medically Indigent Program**

**16-0324-2201** Notice of Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 22-7

**16-0324-2201** Adoption of Temporary Rule (Chapter Repeal), Bulletin Vol. 22-6 (eff. 3-29-22)T

**16.03.25, Idaho Medicaid Promoting Interoperability (PI) Program**

**16-0325-2201** Notice of Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 22-7

**16.04.14, Rules Governing the Low Income Home Energy Assistance Program**

**16-0414-2201\*** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-8

\*Renames chapter from: “*Rules Governing the Low Income Home Energy Assistance Program*”  
to: “*Low-Income Home Energy Assistance Program (LIHEAP)*”

**16.05.04, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding**

**16-0504-2101\*** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-8

\*Renames chapter from: “*Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding*,”  
to: “*Domestic Violence Council Grants*”

**16-0504-2101** (Fourth) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

**16-0504-2101** (Third) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-2

**16-0504-2101** (Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 21-12

**16-0504-2101** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 21-11

**16.05.06, Criminal History and Background Checks**

**16-0506-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-8

**16-0506-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

**16.06.02, Child Care Licensing**

**16-0602-2201** (Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

**16-0602-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-3

**16.07.33, Adult Mental Health Services**

**16-0733-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-2

***IDAPA 17 – INDUSTRIAL COMMISSION***

**17.01.01, Administrative Rules Under the Worker's Compensation Law**

**17-0101-2201** Notice of Temporary and Proposed Rule, Bulletin Vol. 22-7 (eff. 7-1-22)T

**17.11.01, Administrative Rules of Peace Officer and Detention Officer Temporary Disability Act**

**17-1101-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

***IDAPA 18 – DEPARTMENT OF INSURANCE***

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapters 02, 03; Title 07, Chapters 01-03, 08, 09; and Title 08, Chapters 01, 02 – Bulletin Vol. 22-4

***18.02.02, Automobile Insurance Policies***

**18-0202-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 02 – Bulletin Vol. 22-4

***18.02.03, Certificate of Liability Insurance for Motor Vehicles***

**18-0203-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 03 – Bulletin Vol. 22-4

***18.07.01, Rules for Acquiring Control, Insurance Holding Company Systems and Mutual Insurance Holding Companies***

**18-0701-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 07, Chapter 01 – Bulletin Vol. 22-4

***18.07.02, Reserve Liabilities and Minimum Valuations for Annuities and Pure Endowment Contracts***

**18-0702-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 07, Chapter 02 – Bulletin Vol. 22-4

***18.07.03, Valuation of Life Insurance Policies Including the Use of Select Mortality Factors***

**18-0703-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 07, Chapter 03 – Bulletin Vol. 22-4

***18.07.08, Property and Casualty Actuarial Opinion Rule***

**18-0708-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 07, Chapter 08 – Bulletin Vol. 22-4

***18.07.09, Life and Health Actuarial Opinion and Memorandum Rule***

**18-0709-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 07, Chapter 09 – Bulletin Vol. 22-4

***18.08.02, Fire Protection Sprinkler Contractors***

**18-0802-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7

**18-ZBRR-2201** *Rules of the Idaho Department of Insurance* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 08, Chapter 02 – Bulletin Vol. 22-4

***IDAPA 20 – DEPARTMENT OF LANDS***

***20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands***

**20-0214-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-3

***20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands***

**20-0317-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

***IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES***

**24-0000-2201F** *Rules of the Division of Occupational and Professional Licenses (health care related)* – Notice of Omnibus Rulemaking – Adoption of Temporary (Fee) Rule – Reauthorizes Title 03, Chapter 01; Title 06, Chapter 01; Title 09, Chapter 01; Title 10, Chapter 01; Title 11, Chapter 01; Title 12, Chapter 01; Title 13, Chapter 01; Title 14, Chapter 01; Title 15, Chapter 01; Title 16, Chapter 01; Title 17, Chapter 01; Title 19, Chapter 01; Title 23, Chapter 01; Title 24, Chapter 01; Title 26, Chapter 01; Title 27, Chapter 01; Title 31, Chapter 01; Title 33, Chapters 01, 02, 04-07; Title 34, Chapter 01; and Title 36, Chapter 01 – Bulletin Vol. 22-6 (eff. 3-31-22)T

**24-0000-2202F** *Rules of the Division of Occupational and Professional Licenses (occupations, building, construction, and real estate related)* – Notice of Omnibus Rulemaking – Adoption of Temporary (Fee) Rule – Reauthorizes Title 01, Chapter 01; Title 04, Chapter 01; Title 07, Chapter 01; Title 08, Chapter 01; Title 18, Chapter 01; Title 21, Chapter 01; Title 22, Chapter 01; Title 25, Chapter 01; Title 28, Chapter 01; Title 29, Chapter 01; Title 30, Chapter 01; Title 32, Chapter 01; Title 37, Chapter 01; and Title 39, Chapters 10, 20, 30, 31, 40, 50, 70, 90 – Bulletin Vol. 22-6 (eff. 3-31-22)T

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 10, Chapter 01; Title 12, Chapter 01; Title 23, Chapter 01; Title 30, Chapter 01; Title 34, Chapter 01; Title 35, Chapter 01; and Title 39, Chapters 10, 30 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 10, Chapter 01; Title 12, Chapter 01; Title 17, Chapter 01; Title 23, Chapter 01; Title 25, Chapter 01; Title 26, Chapter 01; Title 30, Chapter 01; Title 34, Chapter 01; Title 35, Chapter 01; and Title 39, Chapters 10, 20, 30, 70 – Bulletin Vol. 22-5

***24.02.01, Rules of the State Athletic Commission***

**24-0201-2200F** *Rules of the State Athletic Commission* – Notice of Omnibus Rulemaking – Adoption of Temporary (Fee) Rule – Reauthorizes Title 02, Chapter 01 – Bulletin Vol. 22-6 (eff. 3-31-22)T

***24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals***

**24-0501-2200F** *Rules of the Board of Drinking Water and Wastewater Professionals* – Notice of Omnibus Rulemaking – Adoption of Temporary (Fee) Rule – Reauthorizes Title 05, Chapter 01 – Bulletin Vol. 22-6 (eff. 3-31-22)T

***24.10.01, Rules of the State Board of Optometry***

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 10, Chapter 01 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 10, Chapter 01 – Bulletin Vol. 22-5

***24.12.01, Rules of the Idaho State Board of Psychologist Examiners***

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 12, Chapter 01 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 12, Chapter 01 – Bulletin Vol. 22-5

***24.17.01, Rules of the State Board of Acupuncture***

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 17, Chapter 01 – Bulletin Vol. 22-5

***24.23.01, Rules of the Speech, Hearing and Communication Services Licensure Board***

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 23, Chapter 01 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 23, Chapter 01 – Bulletin Vol. 22-5

***24.25.01, Rules of the Idaho Driving Businesses Licensure Board***

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 25, Chapter 01 – Bulletin Vol. 22-5

**24.26.01, Rules of the Idaho Board of Midwifery**

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 26, Chapter 01 – Bulletin Vol. 22-5

**24.30.01, Idaho Accountancy Rules**

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 10, Chapter 30 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 30, Chapter 01 – Bulletin Vol. 22-5

**24.34.01, Rules of the Idaho Board of Nursing**

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 34, Chapter 01 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 34, Chapter 01 – Bulletin Vol. 22-5

**24.35.01, Rules of the Outfitters and Guides Licensing Board**

**24-3501-2200** *Rules of the Outfitters and Guides Licensing Board* – Notice of Omnibus Rulemaking – Amendment to Temporary Rule – Amends Title 35, Chapter 01 – Bulletin Vol. 22-8 (eff. 8-1-22)T

**24-3501-2200** *Rules of the Outfitters and Guides Licensing Board* – Notice of Omnibus Rulemaking – Adoption of Temporary Rule – Reauthorizes Title 35, Chapter 01 – Bulletin Vol. 22-7 (eff. 7-1-22)T

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 35, Chapter 01 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 35, Chapter 01 – Bulletin Vol. 22-5

**24.38.01, Rules of the State of Idaho Board of Veterinary Medicine**

**24-3801-2200F** *Rules of the Idaho Board of Veterinary Medicine* – Notice of Omnibus Rulemaking – Adoption of Temporary (Fee) Rule – Reauthorizes Title 38, Chapter 01 – Bulletin Vol. 22-6 (eff. 3-31-22)T

**24.39.10, Rules of the Idaho Electrical Board**

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 10 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 10 – Bulletin Vol. 22-5

**24.39.20, Rules Governing Plumbing**

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 20 – Bulletin Vol. 22-5

**24.39.30, Rules of Building Safety (Building Code Rules)**

**24-ZBRR-2201\*** *Rules of the Division of Occupational and Professional Licenses* – (\*Second) Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 30 – Bulletin Vol. 22-7

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 30 – Bulletin Vol. 22-5

**24.39.70, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems**

**24-ZBRR-2201** *Rules of the Division of Occupational and Professional Licenses* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 39, Chapter 70 – Bulletin Vol. 22-5

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**

**26.01.34, Idaho Protection Against Invasive Species Sticker Rules**

**26-0134-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

### ***IDAPA 31 – PUBLIC UTILITIES COMMISSION***

#### ***31.61.01, Rules for the Measurement of Stray Current or Voltage (The Stray Voltage Rules)***

- 31-6101-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7
- 31-6101-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

#### ***31.81.01, Energy Consumption Reporting Rules***

- 31-8101-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-7
- 31-8101-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

### ***IDAPA 35 – STATE TAX COMMISSION***

#### ***35.01.01, Income Tax Administrative Rules***

- 35-0101-2201** Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking, Bulletin Vol. 22-4

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**39-0222-2201\*** Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 22-8

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**39-ZBRR-2201** *Rules of the Idaho Transportation Department* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 22 – Bulletin Vol. 22-5

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**39-0226-2201** Notice of Proposed Rulemaking (ZBR Chapter Repeal), Bulletin Vol. 22-8

**39-ZBRR-2201** *Rules of the Idaho Transportation Department* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 26 – Bulletin Vol. 22-5

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**39-0270-2201** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-8

**39-ZBRR-2201** *Rules of the Idaho Transportation Department* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 70 – Bulletin Vol. 22-5

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**39-0271-2201\*** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 22-8

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**39-ZBRR-2201** *Rules of the Idaho Transportation Department* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 71 – Bulletin Vol. 22-5

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**39-ZBRR-2201** *Rules of the Idaho Transportation Department* – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking – Negotiates Title 02, Chapter 72 – Bulletin Vol. 22-5

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