

# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Rulemaking Notice published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 05-1 refers to the first Bulletin issued in calendar year 2005; Bulletin 06-1 refers to the first Bulletin issued in calendar year 2006. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 05-1 refers to January 2005; Volume No. 05-2 refers to February 2005; and so forth. Example: The Bulletin published in January of 2006 is cited as Volume 06-1. The December 2005 Bulletin is cited as Volume 05-12.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index of Idaho Administrative Rules**, printed in each Bulletin.*

## **TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

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

### **NEGOTIATED RULEMAKING**

*Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.*

### ***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 Proposed Rulemaking" in the Bulletin. This notice must include:*

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### ***TEMPORARY RULEMAKING***

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

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

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.*

*A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.*

*State law required that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.*

*An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.*

### **PENDING RULEMAKING**

*A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it become 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 Pending Rulemaking". This includes:*

- a) a statement giving the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective;*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

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

### **FINAL RULEMAKING**

*A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.*

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.*

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

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston and East Bonner County Library.*

## **SUBSCRIPTIONS AND DISTRIBUTION**

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-00306, telephone (208) 332-1820.

*The Idaho Administrative Bulletin* is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

*The Idaho Administrative Code*, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

*Individual Rule Chapters* and *Individual RuleMaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

**Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>

## **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 system. Each state agency has a two-digit identification code number known as the "**IDAPA**" number. (The "**IDAPA**" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "**TITLE**" number is assigned. There are "**CHAPTER**" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

### **IDAPA 38.07.01.200.02.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.

"**IDAPA 38**" refers to the Idaho Department of Administration

"**05.**" refers to Title 05, which is the Department of Administrations's Division of Purchasing

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

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

"**02.**" refers to Subsection 200.02.

"**c.**" refers to Subsection 200.02.c.

"**ii.**" refers to Subsection 200.02.c.ii.

## **DOCKET NUMBERING SYSTEM**

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0501). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

**"DOCKET NO. 38-0501-0501"**

"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**).

"0501" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2005.

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)**

**INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE  
RULES IN THE CODE AND BULLETIN**

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

**"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."**

The citation may also include the IDAPA, Title, or Chapter number, as follows"

**"...in accordance with IDAPA 38.05.01.201..."**

**"38"** denotes the IDAPA number of the agency.

**"05"** denotes the TITLE number of the rule.

**"01"** denotes the Chapter number of the rule.

**"201"** denotes the main Section number of the rule to which the citation refers.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

**"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, "Rules Governing Capitol Mall Parking."**



**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2006**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
06-1	January 2006	<b>*November 19, 2005</b>	January 4, 2006	January 25, 2006
06-2	February 2006	January 5, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 3, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 3, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	March 31, 2006	May 3, 2006	May 24, 2006
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06-9	September 2006	August 4, 2006	September 6, 2006	September 27, 2006
06-10	October 2006	<b>**August 23, 2006</b>	October 4, 2006	October 25, 2006
06-11	November 2006	October 6, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 3, 2006	December 6, 2006	December 27, 2006

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2007**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
07-1	January 2007	<b>*November 15, 2006</b>	January 3, 2007	January 24, 2007
07-2	February 2007	January 5, 2007	February 7, 2007	February 28, 2007
07-3	March 2007	February 2, 2007	March 7, 2007	March 28, 2007
07-4	April 2007	March 2, 2007	April 4, 2007	April 26, 2007
07-5	May 2007	April 6, 2007	May 2, 2007	May 24, 2007
07-6	June 2007	May 4, 2007	June 6, 2007	June 28, 2007
07-7	July 2007	June 1, 2007	July 4, 2007	July 26, 2007
07-8	August 2007	June 29, 2007	August 1, 2007	August 23, 2007
07-9	September 2007	August 3, 2007	September 5, 2007	September 27, 2007
07-10	October 2007	<b>**August 22, 2007</b>	October 3, 2007	October 25, 2007
07-11	November 2007	October 5, 2007	November 7, 2007	November 22, 2007
07-12	December 2007	November 2, 2007	December 5, 2007	December 27, 2006

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

***\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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<b>IDAPA 42</b>	<b>Wheat Commission</b>	<b>VOLUME 8</b>

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2006-17**

**AUTHORIZING THE ESTABLISHMENT OF THE IDAHO ABRAHAM LINCOLN BICENTENNIAL  
COMMISSION REPEALING AND REPLACING EXECUTIVE ORDER 2006-16**

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*WHEREAS, the 200<sup>th</sup> anniversary of the birth of President Abraham Lincoln will be celebrated on February 12, 2009; and*

*WHEREAS, President Abraham Lincoln was personally and directly involved in the creation of the Idaho Territory in 1863 by helping select the name "Idaho", lobbying Congress for the passage of our territorial bill, signing the legislation into law in the U.S. Capitol, and appointing our first territorial officers; and*

*WHEREAS, political relations with the Idaho Territory remained important to Abraham Lincoln during his presidential administration since he mentioned the Idaho Territory in his 1863 and 1864 State of the Union Addresses, several times filled vacancies in our territorial offices by appointing successors and invited the delegation from the Idaho Territory to attend Ford's Theatre on the night of his assassination, intending to make additional Idaho appointments the next week; and*

*WHEREAS, the United States of America and the States of Illinois, Indiana, Kentucky, Rhode Island and New York have each established Bicentennial Commissions to create and conduct appropriate recognition celebrations; and*

*WHEREAS, Abraham Lincoln was among the greatest Presidents of the United States embodying equality, freedom and opportunity for all and leading the Nation through the Civil War to preserve the Union; and*

*WHEREAS, a recognition and celebration of the birth of Abraham Lincoln and his special relationship to Idaho will serve important ceremonial and educational functions for the citizens of our State and the Nation.*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho, do hereby order the following:*

- 1. There shall be established an Idaho Abraham Lincoln Bicentennial Commission.*
- 2. The purpose of the Commission shall be to:*
  - a. Plan for a statewide recognition and celebration of the 200<sup>th</sup> anniversary of Lincoln's birth;*
  - b. To educate the people of Idaho and the Nation about the unique relationship between the Idaho Territory and the sixteenth President of the United States;*
  - c. To encourage and coordinate the activities of local historical societies, civic groups, public schools, institutions of higher education, chambers of commerce and other entities to celebrate the Lincoln Bicentennial;*
  - d. To coordinate and establish a liaison with the Abraham Lincoln Bicentennial Commission of the United States and its Advisory Committee and those commissions established by other states;*
  - e. To seek volunteer assistance, monetary donations, public and private grants, and legislative appropriations in support of its mission;*
  - f. To support research, publications, historical analysis and exploration, the acquisition and preservation of artifacts and displays appropriate to the presentation and explanation of the career*

*and contributions of Abraham Lincoln to the United States and Idaho;*

- g. To issue such interim and final reports and periodicals as shall advance the Commission's work.*
3. *The membership of the Commission shall be twenty-three (23) individuals serving through calendar year 2009. The membership shall be as follows:*
- a. the Governor or a designee;*
  - b. the Lieutenant Governor or a designee;*
  - c. the Secretary of State or a designee;*
  - d. the Attorney General or a designee;*
  - e. the Superintendent of Public Instruction or a designee;*
  - f. the State Treasurer or a designee;*
  - g. the State Controller or a designee;*
  - h. a member of the Idaho State Senate, designated by the President Pro Tem;*
  - i. a member of the Idaho House of Representatives, designated by the Speaker;*
  - j. the Chief Justice of the Idaho Supreme Court or a designee;*
  - k. the Director of the Idaho State Historical Society;*
  - l. five individuals appointed by the Governor from the leaders or active members of local or regional historical societies from throughout the State, including one from Lewiston, the original territorial capitol;*
  - m. the Director of the Idaho Department of Commerce and Labor;*
  - n. the Director of the Idaho Human Rights Commission;*
  - o. five individuals appointed by the Governor who have demonstrated dedication to the study or education of historical matters and have substantial knowledge of Abraham Lincoln and Idaho history.*
4. *Vacancies on the Commission shall be filled by the Governor.*
5. *The Commission may recommend additional members to the Governor, as it deems appropriate and may establish sub-committees consistent with the needs of the Commission. The Governor will select the Chair of the Commission. The Commission shall meet at least twice during calendar year 2006 as determined by the Chair, and as frequently thereafter as the role and mission of the Commission shall require.*
6. *The Commission members shall serve without compensation or reimbursement for expenses, including related travel and per diem to attend Commission meetings.*
7. *The Commission shall receive administrative and technical staff support from the Idaho State Historical Society or such other agencies as shall be designated by the Governor.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 12th day of May in the year of our Lord two thousand and six, and of the independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.*

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*DIRK KEMPTHORNE*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2006-18**

**DIRECTING THE REORGANIZATION OF THE DEPARTMENT OF HEALTH AND WELFARE**

*WHEREAS, the supreme executive power of the State is vested in the Governor; and*

*WHEREAS, civil administrative departments have been created for the Governor to exercise a portion of this authority so vested and ensure that the laws of the State are faithfully executed; and*

*WHEREAS, the Department of Health and Welfare was created and established, for the purposes of section 20, article IV of the Idaho Constitution, as an executive department of state government; and*

*WHEREAS, the purpose of the Department of Health and Welfare is to promote and protect the life, health and mental health of the people of this State; and*

*WHEREAS, state law requires the Department of Health and Welfare to be organized into such administrative and general service divisions as may be necessary in order to efficiently administer the Department; and*

*WHEREAS, an opportunity exists to improve the organization of the Department, and in turn, access to state health and social services through the Department for the people of Idaho;*

*NOW, THEREFORE, I, JAMES E. RISCH, Governor of the State of Idaho by the authority vested in me under the Constitution and laws of the State of Idaho, do hereby order the following reorganization of the Department of Health and Welfare:*

**Chapter 1**

- A. *Consistent with Idaho law the Department of Health and Welfare shall have an officer as its executive and administrative head. This officer shall be known as the Director of Health and Welfare. The Director shall have all the powers and duties enumerated under Idaho law. The Director shall be appointed by and serve at the pleasure of the Governor, with the advice and consent of the Idaho Senate pursuant to title 67, section 2404 of the Idaho Code.*
- B. *The Director shall appoint a Public Information Officer, who is responsible for, among other things, managing internal and external public information operations and directing news media relations through press releases, press conferences, briefings, and interviews as directed by the Director for the entire Department. The Public Information Officer shall answer to the Director.*

**Chapter 2**

- A. *The following deputy director positions shall exist within the Department:*
  - 1. *Deputy Director of Regional and Legislative Operations*
  - 2. *Deputy Director of Support Services*
  - 3. *Deputy Director of Family and Welfare Services*
  - 4. *Deputy Director of Health Services*
- B. *The Director shall appoint deputy directors and set forth their responsibilities, which will include, among other things, overseeing the administration of divisions within the Department.*
- C. *Deputy directors shall be non-classified employees under Idaho Code and answer directly to the Director of Health and Welfare.*



**Chapter 3**

A. *The Department shall be organized into the following divisions:*

1. *Division of Regional and Legislative Operations*
2. *Division of Human Resources*
3. *Division of Information Technology*
4. *Division of Management Services*
5. *Division of Family and Community Services*
6. *Division of Welfare*
7. *Division of Medicaid*
8. *Division of Public Health*
9. *Division of Behavioral Health*

B. *The Director shall appoint administrators for each of the aforementioned divisions. The administrator of each division shall be a non-classified employee under Idaho Code and answer to the deputy director responsible for the division as enumerated above and the Director.*

**Chapter 4**

*The Director shall designate and establish subdivisions within the Department, consistent with state law, as necessary, to maximize the overall efficiency of the Department.*

**Chapter 5**

*Nothing in this Executive Order shall impact any of the independent councils currently housed within the Department.*

**Chapter 6**

*Nothing in this Executive Order shall impact the current representation of the Department by the Office of the Attorney General or counsel retained on behalf of the Department.*

**Chapter 7**

*The Director shall allocate funds throughout the Department consistent with and pursuant to the intent expressed in appropriation legislation promulgated by the 2006 Idaho Legislature.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 6th day of June in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.*

\_\_\_\_\_  
JAMES E. RISCH  
GOVERNOR

\_\_\_\_\_  
BEN YSURSA  
SECRETARY OF STATE

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW**

**DOCKET NO. 02-0602-0601**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2724, 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 July 19, 2006.

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

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

This change will update the incorporation by reference section to reflect the incorporation of the 2007 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO), published in January or February each year. This is a standard reference manual for feed control officials for the registration of animal feeds.

**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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 30th day of May, 2006.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0602-0601**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (4-6-05)

**01. The Association of American Feed Control Officials (AAFCO) Official Publication.** The Terms, Ingredient Definitions and Policies as published in the “2006~~7~~ Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder.

~~(4-11-06)~~(\_\_\_\_)

**02. The Merck Index.** The “2001 Merck Index,” 13th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated.

(4-6-05)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.12 - RULES PERTAINING TO THE IDAHO COMMERCIAL FERTILIZER LAW

DOCKET NO. 02-0612-0601

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, 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 July 19, 2006.

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

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

This change will update the incorporation by reference section to reflect the incorporation of the 2007 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO), published in January or February each year. This is a standard reference manual for fertilizer control officials for the registration of fertilizers.

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

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

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 30th day of May, 2006.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0612-0601

##### 004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary

Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (3-30-01)

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.** The Terms, Ingredient Definitions, and Policies, as published in the “2006~~7~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder; or  
(~~4-11-06~~)(\_\_\_\_\_)

**02. The Merck Index.** The “2001 Merck Index,” 13th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-6-05)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001**

**DOCKET NO. 02-0641-0601**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, 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 July 19, 2006.

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

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

This change will update the incorporation by reference section to reflect the incorporation of the 2007 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO), published in January or February each year. This is a standard reference manual for fertilizer control officials for the registration of soil and plant amendments.

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

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

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 30th day of May, 2006.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0641-0601**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-6-05)

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.** The Terms, Ingredient Definitions and Policies as published in the “2006~~7~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. (~~4-11-06~~)(\_\_\_\_)

**02. The Merck Index.** The “2001 Merck Index,” 13th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-6-05)

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

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

**DOCKET NO. 07-0501-0601**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1907, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the May 3, 2006 Idaho Administrative Bulletin, Vol. 06-5, pages 45 through 56.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen Keys, Bureau Chief, 208-332-8986.

DATED this 25th day of May, 2006.

Stephen Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, Idaho 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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#### **DOCKET NO. 07-0501-0601 - PENDING RULE**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 06-5, May 3, 2006, pages 45 through 56.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**



**IDAPA 07 - DIVISION OF BUILDING SAFETY**

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

**DOCKET NO. 07-0701-0601**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-5005(3), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the May 3, 2006 Idaho Administrative Bulletin, Vol. 06-5, pages 57 and 58.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: The proposed civil penalties will have no impact on the general fund. It is anticipated that the impact on dedicated agency funds will be less than \$10,000 per year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen Keys, Bureau Chief, 208-332-8986.

DATED this 25th day of May, 2006.

Stephen Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, Idaho 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**DOCKET NO. 07-0701-0601 - PENDING RULE**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 06-5, May 3, 2006, pages 57 and 58.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

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

**10.01.01 - RULES OF PROCEDURE**

**DOCKET NO. 10-0101-0601**

**NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is negotiated rulemaking authorized pursuant to Section 54-1208, Idaho Code.

**MEETING SCHEDULE:** A public meeting will be held to discuss the preliminary suggested wording of amendments to existing rules at:

**10:00 a.m. on July 26, 2006  
Statehouse Inn  
981 Grove Street  
Boise, Idaho**

The Board solicits comments on preliminary suggested wording of amendments to existing rules. A copy of the preliminary suggested wording of the amendments to existing rules is available by contacting the Board office at the address listed below or by e-mail to [dave.curtis@ipels.idaho.gov](mailto:dave.curtis@ipels.idaho.gov)

**METHOD OF PARTICIPATION:** Persons wishing to participate in the informal negotiated rulemaking must do the following:

Attend the meeting noted above or submit written comments on the preliminary suggested wording of amendments to existing rules as described below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The purpose of the negotiated rulemaking is to list the courses that make up the technical core content of an approved four (4) year surveying curriculum. Completion of these courses will satisfy the Board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum which will be required by Section 54-1212(2)(b), Idaho Code, beginning July 1, 2010.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed amendments to existing rules, contact David L. Curtis, P.E., Executive Director, at (208) 373-7210.

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 July 26, 2006.

DATED this 22nd day of May, 2006.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyors  
5535 W. Overland Road  
Boise, Idaho 83705-2728  
Phone (208) 373-7210  
Fax (208) 373-7213

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.04.01 - RULES GOVERNING HORSE RACING**

**DOCKET NO. 11-0401-0601**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 13, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

Implement controlled substance and alcohol testing to protect the integrity of horseracing in the state.

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

Necessary to protect the public health, safety and welfare and confers a benefit. Implementation of controlled substance and alcohol testing would protect the integrity of horseracing in the state, protect the health and welfare of all licensees, employees, and applicants involved in the horse racing industry; foster fairness of competition; and enhance the integrity of the industry as viewed by the racing public.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

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 July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0401-0601**

**041. CONTROLLED SUBSTANCE TESTING OF LICENSEES, EMPLOYEES, AND APPLICANTS: PRIMARY PURPOSE.**

In order to protect the integrity of horse racing in the state of Idaho, to protect the health and welfare of licensees, employees, and applicants engaged in horse racing within the state of Idaho, to prevent exploitation of the public, licensees, employees, and applicants engaged in horse racing in the state of Idaho, to foster fairness of competition within the racing industry and in order to protect public safety within the state of Idaho, the commission intends to regulate at all race meets licensed by it and the use of any controlled substance and alcohol. (9-13-05)T

**042. DEFINITIONS.**

**01. Licensee, Employee, or Applicant.** For the purposes of this Section (042), “licensee,” “employee,” or “applicant” is any person who is licensed by or employed by the commission within the state of Idaho, or an applicant for a license by the commission within the state of Idaho. (9-13-05)T

**02. Suspension.** Means prevention from conducting the activities permitted or authorized by a license or prevention of an applicant from obtaining a license. “Suspension” is to be interpreted as a temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein and is not to be considered punitive. (9-13-05)T

**03. Sample.** Means a urine sample collected for the purpose of drug testing, or a blood, breath, or saliva sample collected for the purpose of alcohol testing. (9-13-05)T

**04. Reasonable Suspicion.** Means that a licensee’s, employee’s, or applicant’s (as the terms are defined in Subsection 042.01) behavior or pattern of behavior indicates that the licensee, employee, or applicant is under the influence of a controlled substance or alcohol. The basis of the suspicion may be a specific, contemporaneous event or conduct that has been observed over a period of time. (9-13-05)T

**05. Alcohol.** Means the intoxicating agent in beer, wine, or liquor, as the terms are defined in Title 23, Idaho Code, and includes ethyl, methyl, and isopropyl alcohols. (9-13-05)T

**06. Medical Review Officer (MRO).** Means a licensed physician who is responsible for reviewing laboratory results and who has been certified by a nationally recognized MRO association as having knowledge of substance abuse disorders and medical training to interpret and evaluate a positive test result as it relates to the medical history of the person in question. (9-13-05)T

**07. A Controlled Substance.** Means a drug, substance, or immediate precursor in schedules I through V of Article II of Title 37, Chapter 27, Idaho Code. (9-13-05)T

**043. USE OF CONTROLLED SUBSTANCES.**

No licensee, employee, or applicant shall have within their body any unauthorized controlled substance while within the enclosure of or on the premises managed by any association or the commission. (9-13-05)T

**044. TESTING.**

The board of stewards of the commission, or the commission acting through the executive director, will require any licensee, employee, or applicant to provide blood, urine, or saliva samples for the purpose of drug analysis under any of the following circumstances: (9-13-05)T

**01. Physical Examination.** As part of a physical examination, as described in Subsection 300.01 of these rules, as close as practicable prior to the testee’s participation in his first race meeting of a calendar year. (9-13-05)T

**02. Reasonable Suspicion.** When the board of stewards finds that there is reasonable suspicion to believe that the proposed testee has used any controlled substance. (9-13-05)T

**045. POST-ACCIDENT TESTING.**

Post-accident controlled substance or alcohol testing of all licensees, employees, or applicants who are involved in a racing or job-related accident on the track or on association grounds that requires treatment away from the scene of

the accident will be conducted, unless it is clearly evident in the judgment of the stewards by the circumstances of the accident that the licensee's, employee's or applicant's injury was caused by the actions of another and that there was no unsafe act on the part of the injured licensee, employee, or applicant. (9-13-05)T

**046. REFUSAL TO TEST.**

**01. Refusal to Supply a Sample.** When any licensee, employee, or applicant is requested to submit to a drug test in a manner prescribed in these rules, the person shall do so in a prompt manner. Refusal to supply such sample shall result in: (9-13-05)T

**a.** The immediate suspension of the licensee, employee, or applicant; (9-13-05)T

**b.** A hearing before the board of stewards in accordance with Subsection 180.24 of these rules. (9-13-05)T

**c.** Service shall be to the licensee, employee, or applicant personally by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mailing the notice to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing. (9-13-05)T

**02. Suspended from Racing for Refusal to Test.** If the board of stewards finds at the hearing that said refusal to test occurred, the licensee, employee, or applicant shall be suspended from racing for seven (7) calendar days and be subject to random testing for one (1) year. In the event of a finding of just cause the licensee, employee, or applicant must submit to a test immediately once the conditions which justly prevented testing abate or can be eliminated. (9-13-05)T

**03. Subject to Random Testing.** In the event a licensee, employee, or applicant refuses to test when requested after previously refusing to test or previously testing positive for drugs, that licensee, employee, or applicant shall be suspended from racing for a period of ninety (90) calendar days and subject to random testing for a period of one (1) year. (9-13-05)T

**047. TESTING PROCEDURE.**

**01. Accordance With Established Procedures.** Testing shall be done in accordance with established medical and law enforcement procedures. (9-13-05)T

**02. Retesting.** The sample may be retested at the request of the licensee, employee, or applicant at either the laboratory used by the commission or a separate laboratory selected from a list provided by the commission. The licensee, employee, or applicant is responsible for all costs associated with the retesting of the sample. (9-13-05)T

**048. RIGHT OF LICENSEE, EMPLOYEE OR APPLICANT TO EXPLAIN A POSITIVE TEST RESULT - MRO.**

Any licensee, employee, or applicant who tests positive for a controlled substance must be given written notice by the commission of that test result, including the type of drug involved. Thereafter, the commission may not take final disciplinary action against the licensee, employee or applicant for testing positive for a controlled substance until that licensee, employee or applicant has had an opportunity to discuss the positive test result with an MRO and provide a reasonable explanation for his positive test. An MRO may designate members of his staff to make initial contact with the donor to facilitate the consultation process. (9-13-05)T

**049. A POSITIVE TEST.**

On receiving written notice from the MRO that a sample has been found positive for a controlled substance, the presiding steward shall initiate the following procedure: (9-13-05)T

**01. Written Notice.** Written notice shall be given to the licensee, employee or applicant setting a hearing by the board of stewards in accordance with Section 047 of these rules within the next two (2) racing days or seven (7) calendar days, whichever is less, after service of the notice. The hearing may be held within a shorter or longer period of time if the licensee, employee, or applicant named and the board of stewards agree. Service shall be to the licensee, employee, or applicant personally by leaving the notice at the person's residence with someone of

reasonable age and discretion residing therein, or by mail to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing. (9-13-05)T

**02. Opportunity for Explanation.** The hearing shall be conducted before the board of stewards pursuant to Section 047 of these rules. At the hearing, the licensee, employee, or applicant shall be provided an opportunity to explain the positive test. (9-13-05)T

**03. Confidentiality.** The board of steward's hearing shall be closed and the facts therein will be kept confidential unless for use with respect to any subsequent contested hearing or order by the commission or judicial hearing with regard to such facts. Closure of the hearing and confidentiality of the proceedings may be waived by the licensee, employee, or applicant. The board may issue a public ruling which complies with the confidentiality requirements of this chapter and Subsection 180.24 of these rules. (9-13-05)T

**04. Lacking Satisfactory Explanation.** Lacking a satisfactory explanation and documentation or upon the licensee, employee, or applicant agreeing with the test results, the board of stewards shall suspend the licensee, employee, or applicant. (9-13-05)T

**050. PROCEDURES FOLLOWING A POSITIVE CHEMICAL ANALYSIS.**

**01. First Positive Test.** For a licensee's, employee, or applicant's first positive drug test he shall not be allowed to participate in racing for seven (7) calendar days and until such time as he has received a substance abuse evaluation and has begun the recommended rehabilitation program. Additionally, the licensee, employee or applicant will be subject to random testing for a period of one (1) year from the date the positive sample was taken. (9-13-05)T

**02. After Evaluation.** After such evaluation, but not before the tolling of the seven (7) calendar days awarded in Subsection 050.01 of these rules, if said licensee's, employee's or applicant's condition proves non-addictive and not detrimental to the best interest of racing, said licensee, employee, or applicant shall be allowed to participate in racing provided he can produce a negative test result from a laboratory approved by the commission and agrees to further testing at the discretion of the Stewards or designated Racing commission representative to insure his unimpairment. (9-13-05)T

**03. Second Violation.** For a licensee's, employee's or applicant's second violation, he shall be suspended for ninety (90) consecutive days and until he provides the Stewards with documentation that he has enrolled and is progressing satisfactorily in a certified drug rehabilitation program approved by the commission. (9-13-05)T

**04. Third Violation.** For a licensee's, employee's or applicant's third violation, he shall be suspended and the case referred to the Commission for consideration of revocation of the individual's license. (9-13-05)T

**051. CONFIDENTIALITY OF TEST RESULTS.**

All test results shall be obtained as part of an inquiry into a person's fitness to be granted or to retain a license and shall be exempt from public disclosure pursuant to Section 9-304C, Idaho Code. A statistical summary shall be made available annually. (9-13-05)T

**052. CONSUMPTION OF ALCOHOL.**

Any jockey, starter, assistant starter, pony person, outrider, or racing official shall not have present within his body any amount of alcohol while participating in any horse race held that day. (9-13-05)T

**053. TESTING EXPENSE.**

Except for retesting requested by a licensee, employee, or applicant, all testing ordered pursuant to this chapter, whether blood, urine, or breath, shall be at the expense of the commission. All expense of drug or alcohol evaluation, treatment, reports, and fees shall be at the expense of the licensee, employee, or applicant undergoing such evaluation or treatment. (9-13-05)T

~~04154.~~ -- 059. (RESERVED).

**IDAPA 11 - IDAHO STATE POLICE**  
**11.04.01 RULES GOVERNING HORSE RACING**  
**DOCKET NO. 11-0401-0602**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated regular rulemaking procedures. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

Rules are to define and establish the recognized horsemen's group and alternate horsemen's groups.

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

There is no fee or charge being imposed through this rulemaking.

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

There is no impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

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 July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0401-0602**

**004. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Address.** The place of business of the Idaho State Racing Commission is in Meridian, Idaho. The office is located at 700 S. Stratford Drive, Meridian, Idaho and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. ( )

**02. Mailing Address.** The mailing address is: Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho, 83680-0700. ( )

**03. Telephone and Fax.** The telephone of the office is (208) 884-7080. The facsimile number of the office is (208) 884-7098. The Racing Commission website is <http://www.isp.state.id.us/race>. ( )

**005. PUBLIC RECORDS COMPLIANCE AND AVAILABILITY.**  
These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. Public records are available during normal working hours for inspection and copying at the Idaho State Racing Commission Officer, 700 South Stratford Drive, Meridian, ID 83680-0700. ( )

**006. GENERAL JURISDICTION.**  
Simulcasting of Races within the State. The Idaho State Racing Commission shall have general jurisdiction over the simulcasting of horse and greyhound races within the state, and the Commission may issue rules in accordance with the provision of this article as provided for in Idaho Statutes. ( )

**007. -- 008. (RESERVED).**

**0049. DEFINITIONS.**

**01. Age of a Horse.** The age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled. (7-1-93)

**02. Arrears.** All monies due for entrance fees (including Jockey's fees), forfeitures, subscriptions, stake, purchase money in claiming races, and also any purchase money in claiming races, and also any default in money incidental to the Rules. (7-1-93)

**03. Association.** Any person or persons, Associations, district or county fair boards or corporations licensed by the Commission to conduct racing. (7-1-93)

**04. Authorized Agent.** A person appointed by a written instrument signed and acknowledged before a notary public by the owner and filed in accordance with the Rules. (7-1-93)

**05. Bleeder.** Any horse known to have bled from its nostrils during a workout or race, and so designated by the Commission Veterinarian. (7-1-93)

**06. Breeder.** Breeder of a horse is determined by the definition of breeder used by the registry of the particular breed of that horse. (7-1-93)

**07. Calendar Day.** Twenty-four (24) hours ending at midnight. (7-1-93)

**08. Chemical.** A substance composed of chemical elements or obtained by chemical processes. (7-1-93)

**09. Claiming Race.** A race in which any horse entered therein may be claimed in conformity with the rules. (7-1-93)

**10. Commission.** The Idaho State Racing Commission. (7-1-93)



- 11. Declaration.** The act of withdrawing an entered horse from a race before the closing of overnight entries. (7-1-93)
- 12. Drug.** Any chemical compound or any noninfectious biological substance not used for its mechanical properties, which may be administered to or used on or for patients, either human or animal, as an aid in diagnosis, treatment or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any physiological or pathological condition. See Subsection 004.45 for Prescription Drug definition. (7-1-93)
- 13. Entry.** Shall mean, according to the requirements of the text: (7-1-93)
- a.** A horse made eligible to run a race. (7-1-93)
- b.** Two (2) or more horses which are entered or run in a race and are coupled because of common ties or ownership. Where two (2) or more horses owned by separate owners but trained by the same Trainer are entered in the same race, the horses may run as separate betting interests. (7-1-93)
- 14. Equipment.** As applied to a horse shall mean whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plate, bandages, boots, hoods, flipping halters, goggles and plates. (7-1-93)
- 15. Forfeit.** Money due because of an error fault, neglect of duty, breach of contract or a penalty. (7-1-93)
- 16. Free Handicap.** A handicap in which no liability for entrance money is incurred. (7-1-93)
- 17. Grounds.** Any area owned or leased by any licensed Association, Corporation or Race Track which is operated for the purpose of conducting pari-mutuel racing. (7-1-93)
- 18. Handicap.** A weight adjustment for entered horses for the purpose of equalizing the respective chances of winning. (7-1-93)
- 19. Highweight Handicap.** A weight adjustment to the top horse in the handicap of not less than one hundred and forty (140) pounds. (7-1-93)
- 20. Horse.** Includes filly, mare, colt, horse and gelding in general; when referring to sex, a filly becomes a mare when five (5) years old; a horse is an entire male when five (5) years old or older. (7-1-93)
- 21. Horsemen's Group.** An organization composed of licensed owners and/or trainers duly registered with the Secretary of State and recognized by the Idaho State Racing Commission. ( )
- ~~212.~~ **Idaho Bred.** A foal dropped by a mare in Idaho. (7-1-93)
- ~~223.~~ **Jockey.** A race rider, whether a licensed Jockey, apprentice, or amateur. (7-1-93)
- ~~234.~~ **Maiden.** A horse that has never won a race on the flat in a state or country where racing is supervised by a legalized Racing Commission or board and where the races are covered by the Racing Form, American Quarter Horse chart books, the Appaloosa Horse Club chart books, the Paint Horse chart books and the Arabian Horse chart books. A maiden which has been disqualified after finishing first still is a maiden. (7-1-93)
- ~~245.~~ **Match.** A Private Sweepstakes between two (2) horses. (7-1-93)
- ~~256.~~ **Meeting.** The entire consecutive period for which a license to race has been granted to any one (1) association by the Commission. (7-1-93)
- ~~267.~~ **Mixed Race.** A race between horses of different breeds. (7-1-93)
- ~~278.~~ **Month.** A calendar month. (7-1-93)

- 289. Nominator.** A person in whose name a horse is entered for a race. (7-1-93)
- 2930. Optional Claiming Race.** A race restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less. (7-1-93)
- 301. Owner.** Includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In case of husband and wife, it is presumed that joint ownership exists. (7-1-93)
- 372. Owner's Handicap.** A race wherein the owner fixes, at the time of entry, the weight to be assigned the entered horse. (7-1-93)
- 323. Place.** Shall mean first, second or third and in that order is called "Win," "Place," and "Show". (7-1-93)
- 334. Post Position.** The starting position assigned. (7-1-93)
- 345. Post Time.** The time set for the arrival at the starting point. (7-1-93)
- 356. Prescription Drug.** (7-1-93)
- a.** A drug which under federal law is required prior to being dispensed or delivered to be labeled with either of the following statements: (7-1-93)
- i.** "Caution: Federal law prohibits dispensing without a prescription"; or (7-1-93)
- ii.** "Caution: Federal law restricts this drug to be used by or on the order of a licensed Veterinarian." (7-1-93)
- b.** Or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioner only. (7-1-93)
- 367. Produce Race or Futurity.** A race for younger horses, usually two (2) year olds, in which entries are made a considerable time before the running of the race, often before the entered horse is born. (7-1-93)
- 378. Purse Race.** A race for money or any other prize to which the owners of the horses do not contribute. (7-1-93)
- 389. Race.** A contest between horses for purse, stake or reward on any licensed race track and in the presence of a Judge or Judges. (7-1-93)
- 3940. Race Day.** Any period of twenty-four (24) hours beginning at midnight and included in the period of a race meeting and in the matter of penalties the word "DAY" means a "CALENDAR DAY". (7-1-93)
- 401. Recognized Meeting.** Any meeting wherever held, which is under the jurisdiction of the Idaho State Racing Commission. The Commission shall recognize all meetings conducted under the jurisdiction of members of the National Association of State Racing Commissioners, or associate members or state and other recognized authority. (7-1-93)
- 412. Ringer.** In addition to the definitions expressed in the Rules, shall mean any horse which runs under the name and identity of another or under a fictitious name. (7-1-93)
- 423. Rules.** The "Rules Governing Horse Racing" herein and any amendments or additions thereto. (7-1-93)
- 434. Scratch.** The act of withdrawing an entered horse from the race after closing of overnight entries.

(7-1-93)

**445. Scratch Time.** The time set by the Association for the closing of applications for permission to withdraw from the races of that day. (7-1-93)

**456. Stake Race or Sweepstakes.** A race to which nominators of the engaged entries contribute to a purse; to which money, or any other award, may be added; but no overnight race, regardless of its conditions, shall be deemed a stake race. (7-1-93)

**467. Starter.** (7-1-93)

**a.** The individual approved to dispatch the horses in a race. (7-1-93)

**b.** The horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses. (7-1-93)

**478. Starter Allowance Race.** A race whereby eligibility for the conditions of said race. A horse when claimed shall reestablish eligibility. (7-1-93)

**489. Stewards.** The Stewards of the meeting or their duly appointed deputies. (7-1-93)

**495. Subscriptions.** The act of nominating to a stake race. (7-1-93)

**501. Walkover.** When there are not two (2) or more horses of separate interests sent postward. In stake events, unless otherwise specified in the conditions, the entry which appears for the race may walk over the course and be declared the winner and thereby be entitled to the winning percentage of the purse. (7-1-93)

**512. Weight for Age.** Standard weight according to the scale adopted by the Commission and set forth herein. (7-1-93)

**523. Weight In.** Post race weight. (7-1-93)

**534. Weight Out.** Pre race weight. (7-1-93)

**545. Winner.** Winner of a single race of a certain sum or value unless otherwise expressed in the conditions. (7-1-93)

**556. Winnings.** Includes all money to the time appointed for the start, and shall apply to all races in any country, and embrace walking over or receiving forfeit, but not second and third money, or the value of any prize not of money or not paid in money. Winnings during the year shall be reckoned from January 1 preceding. (7-1-93)

**567. Year.** A calendar year. (7-1-93)

~~005.---010. (RESERVED):~~

**010. HORSEMEN'S GROUP.**

For purposes of Section 010, whoever was the recognized horsemen's group in 2004 is hereby designated as the existing horsemen's group. ( )

**01. Notice of Intent.** Upon the filing with the Commission of a notice of intent by an alternate horsemen's group to decertify an existing horsemen's group, the alternate horsemen's group shall have not more than six (6) months from the date of filing to acquire, on a petition, signatures of twenty-five percent (25%) of the existing horsemen's group's licensed members. ( )

**a. Contents of Notice.** The notice of intent shall contain the following: ( )

**i.** The name of the alternate horsemen's group: ( )

- ii. The names of the principals of the horsemen's group; ( )
  - iii. The date of filing; ( )
  - iv. The articles of incorporation and bylaws; and ( )
  - v. A copy of the petition as it will be circulated. ( )
- b.** Petition. No more than one (1) petition by any alternate horsemen's group to decertify an existing horsemen's group shall be circulated at any given time. ( )
- c.** Members. The alternate horsemen's group must, in addition, submit the names of a minimum of fifty (50) members who must be Idaho licensed owners or trainers. ( )
- 02.** Validation. Upon receipt of a petition that meets the criteria set forth above, the Commission shall consider the petition and shall validate the signatures found on said petition. Validation includes, but is not limited to, verification of current Idaho licensed owners and trainers and signature verification. If the validated signatures do not meet the requirements in this Rule, the commission shall notify the alternate and the existing horsemen's groups that no further action shall be taken on the petition. ( )
- 03.** Elections. If the validated signatures are found to meet these requirements, the Commission shall set the date for the election prior to the next regularly scheduled meeting. A representative of the alternate horseman's group shall appear to answer any questions at the meeting validating signatures. The existing horseman's group shall conduct an election among the licensed members. The election results shall be reported to the commission. A deciding vote of fifty percent plus one (50% + 1) of the ballots returned shall be used to determine the one organization to be recognized as the horsemen's group, absent clear and convincing evidence that the election was fraudulent. ( )
- 04.** Except for Good Cause. Except for good cause, the Commissions shall not conduct an election within eighteen (18) months of a prior election among the existing group's licensed members. ( )

**IDAPA 11 - IDAHO STATE POLICE**  
**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0601**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 13, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

Establish rules regarding simulcast purse money collection and distribution in accordance with Idaho Code 54-2508 and 54-2512 legislative changes.

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

To provide the commission with collection and distribution of simulcast purse monies collected from each simulcast operator in this state. The rules would address the problem recently experienced where monies could not be accounted for.

**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 IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

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 July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0601

**031. SIMULCAST PURSE MONEY COLLECTION AND DISTRIBUTION.**

**01. Designated Purse Monies.** Each simulcast operator/facility licensed by the racing commission shall remit to the racing commission those monies designated by the horsemen's agreement as purse monies. Payment shall be made on a timely basis as provided in said agreement which shall in no event be greater than thirty (30) days after accrual to the simulcast facility. (9-13-05)T

**02. Dual Signature Insured Account.** Each horsemen's group signatory to a horsemen's agreement authorizing simulcasting shall open and maintain a dual signature insured account, hereinafter called a purse accumulation account. (9-13-05)T

**03. Deposit into Appropriate Account.** The racing commission shall annually, prior to commencement of the live race meet, deposit into the appropriate purse accumulation account those funds paid to the racing commission by the respective simulcast operator(s). The racing commission has the authority to approve more frequent payments if requested by said horseman's group. (9-13-05)T

**04. Sanctions.** In addition to all available sanctions, any person or licensee who receives monies designated as purse monies as described in this rule, and who violates this rule can be ordered to pay a monetary penalty as set forth in Section 54-2509(4), Idaho Code, and daily interest accrued thereupon at the rate set by the Idaho State Treasurer. (9-13-05)T

**034. -- 034. (RESERVED).**

**IDAPA 11 - IDAHO STATE POLICE**  
**11.04.02 - RULES GOVERNING SIMULCASTING**  
**DOCKET NO. 11-0402-0602**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated regular rulemaking procedures. The action is authorized pursuant to 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose to the proposed rulemaking: Deletes duplicate advance deposit wagering distribution language in rules.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 13th, 2005; August 3rd, 2005; September 13th, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS AND WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eugene O. Baker, telephone (208) 884-7080.

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 July 26, 2006.

DATED this 26th day of May, 2006.

Eugene O. Baker  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700, Meridian, ID 83680-0700  
(208) 884-7050 / (208) 884-7090 (FAX)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0602**

**060. DISTRIBUTION OF RECEIPTS FROM MULTI-JURISDICTIONAL SIMULCASTING AND INTERACTIVE WAGERING TOTALIZATOR HUBS.**

**01. Distribution.** From the payments made to the Idaho State Racing Commission by Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hubs, the commission shall- ~~(3-20-04)~~

~~a-~~ Receive a source market fee of not less than ten percent (10%) of the handle shall be forwarded monthly to the commission. ~~Distribution of the source market fee shall be:~~ ~~(3-20-04)(\_\_\_\_\_)~~

- ~~i. Forty percent (40%) to purses at all tracks weighted by number of races ran through the year of distribution; (3-20-04)~~
- ~~ii. Forty percent (40%) to the simulcast sites in the state weighted by the annual simulcast handle; (3-20-04)~~
- ~~iii. Five percent (5%) to the track distribution fund pursuant to Section 54-2513, Idaho Code; (3-20-04)~~
- ~~iv. Five percent (5%) to the breed distribution fund pursuant to Section 54-2513, Idaho Code; (3-20-04)~~
- ~~v. Five percent (5%) to the Idaho State Racing Commission, and; (3-20-04)~~
- ~~vi. Five percent (5%) to the public school income fund pursuant to Section 54-2513, Idaho Code. (3-20-04)~~

**02. Acceptance of Advance Deposit Wagers.** Account wagers shall be accepted at the time and in the manner designated by the commission. (3-20-04)

**03. Closed Wagering.** Notwithstanding any other rules, the managing employee of the advance deposit wagering center may at any time declare the advance deposit wagering center closed for receiving wagers on any pari-mutuel pool, race, group of races, or closed for all wagering. Anytime the advance deposit wagering center is closed during normal wagering hours by the managing employee a written report must be filed with the commission within forty-eight (48) hours. (3-20-04)

**04. Refuse to Accept.** The advance deposit wagering center has the right at any time and for what it deems good and sufficient reason to refuse to accept all or part of any wager. (3-20-04)

**05. Account Holder Responsibilities.** Accounts are for the personal use of the account holder. The account holder is responsible for maintaining the secrecy of the account number and secure personal identification code. Except where the advance deposit wagering center or its employees or agents act without good faith or fail to exercise ordinary care, the advance deposit wagering center shall not be responsible for any loss arising from the use by any other person or persons of an account holder's account. The account holder must immediately notify the advance deposit wagering center of a breach of the account's security. (3-20-04)

**06. Payments on Winning Pari-Mutuel Wagers.** Payment on winning pari-mutuel wagers and credits for account wagers on entries which are scratched shall be posted to the credit of the account holder as soon as practicable after the race is declared official. (3-20-04)

**07. Written Statements.** The advance deposit wagering center shall, from time to time, but not less than once per year, provide written statements of an individual's account activity during the period to each account holder. In addition, an account holder has the right to request a statement at any time. Unless written notice to the contrary is received by the advance deposit wagering center within fourteen (14) days of the date that any statement is sent to an account holder, the statement will be deemed accepted as correct. (3-20-04)

**08. Mailing Address.** The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder. (3-20-04)

**09. Confidential Information.** No employee or agent of the advance deposit wagering center shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the advance deposit wagering center, except to the account holder as required by these rules, the commission, and as otherwise required by state or federal law, or the rules of racing of this state. (3-20-04)



## IDAPA 11 - IDAHO STATE POLICE

### 11.13.01 - THE MOTOR CARRIER RULES

DOCKET NO. 11-1301-0601

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2901A, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. There has been no change to the text of the rule change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the January 4, 2006 Idaho Administrative Bulletin, Vol. 06-1, pages 67 through 69.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no negative fiscal impact attributable to this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Captain Lamont Johnston (208) 884-7221.

DATED this 15th day of May, 2006.

Colonel R. Dan Charboneau, Director  
Idaho State Police  
700 S. Stratford Drive  
P.O. Box 700  
Meridian Idaho 83680-0700  
(208) 884-7003 telephone  
(208) 884-7090 facsimile

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#### DOCKET NO. 11-1301-0601 - PENDING RULE

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 06-1 January 4, 2006, pages 67 through 69.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2007 Idaho State Legislature as a final rule.**

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-0602**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is April 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-2901A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

It is an unneeded financial and personnel resource burden to Idaho carriers between 10,001 pounds and 26,000 pounds to abide by some administrative parts of the Federal Motor Carrier Safety Agency (FMCSA) regulations. This change in rule exempts them from those CFR parts.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: the rule change confers a benefit on those subject to these rules.

**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 impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no negative fiscal impact on the state general fund resulting from this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change eases rather than increases regulation for certain motor carriers without imposing additional burden on any motor carrier.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Capt. Lamont Johnston at (208) 884-7192.

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 July 26, 2006.

DATED this 11th day of May, 2006.

Colonel R. Dan Charboneau, Director  
Idaho State Police  
700 S. Stratford  
P. O. Box 700, Meridian, ID 83680-0700  
208-884-7003 Fax 208-884-7090

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1301-0602**

**019. CARRIER SAFETY REQUIREMENTS.**

**01. Adoption of Federal Regulations.** Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388.

(4-1-06)T

**a.** All interstate and foreign carriers and ~~all~~ intrastate carriers, except those carriers listed in Subsection 019.01.b., subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). ~~The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under this Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388.~~

(3-20-04)(4-1-06)T

**b.** Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers).

(4-1-06)T

**c.** The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code.

(4-1-06)T

**02. Obligation of Familiarity with Rules.** All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: (4-5-00)

- a.** Part 356. Authority to Serve a Particular Section - Construction. (3-20-04)
- b.** Part 365. How to Apply for Operating Authority. (3-20-04)
- c.** Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d.** Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e.** Part 385. Safety Fitness Standards. (4-5-00)

- f. Part 387. Financial Responsibility. (3-20-04)
- g. Part 388. Cooperative Agreements with States. (4-5-00)
- h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- i. Part 391. Qualifications of Drivers. (4-5-00)
- j. Part 392. Driving of Motor Vehicles. (4-5-00)
- k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- l. Part 395. Hours of Service of Drivers. (4-5-00)
- m. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- o. Part 398. Transportation of Migrant Workers. (4-5-00)
- p. Part 399. Employee Safety and Health Standards. (4-5-00)

**03. Recognition of Federal Waivers.** Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

**04. Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Subsection 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 394, and 396 through 399 published in the Code of Federal Regulations volumes dated October 1, 2002, and Part 393 published in the Code of Federal Regulations volumes dated January 4, 2004, and Part 395 published in the Code of Federal Regulations volume dated August 25, 2005. (10-3-05)T

**05. Availability of Incorporated Documents.** The 49 CFR's can be found at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the central office of the Idaho State Police. (3-20-04)

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0602**

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

**EFFECTIVE DATE:** There are three effective dates for this temporary rule. The dates are January 1, 2006, February 8, 2006, and July 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202(b), Idaho Code, and the federal Deficit Reduction Act (DRA) of 2005.

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

**DATE:** Thursday, July 13, 2006  
**TIME:** 10:00 a.m.  
**PLACE:** Department of Health and Welfare  
Pete T. Cenaarussa Bldg., 6th Floor Conference Room  
450 W. State Street, Boise, ID

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The "Deficit Reduction Act (DRA) of 2005" became law to help reduce and slow the rising costs for Medicaid. The DRA addresses several different issues with requirements that have several effective dates.

These temporary rules are being adopted to align the state rules with the DRA. The DRA requires applicants to disclose all interests in annuities and other financial instruments, extends the period of time that asset transfers must be reviewed and can be penalized, and requires the applicant to name the state as a remaining beneficiary. These amendments to the rules separate annuities and life estates into their own sections of rules, and align the trust rules with the federal requirements under the DRA. The rules that apply to trusts, life estates, and annuities also apply to estate recovery rules. These rules are being amended to help prevent the sheltering of assets. These rules apply the new requirements for documentation and proof of identity and citizenship, as established in the DRA to help in the determination of eligibility.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The Deficit Reduction Act (DRA) of 2005 is federal law governing this rulemaking and requires effective dates as noted above. Some changes have been made to clarify the language and intent for the existing rule without changing substance or adding content in the sections that are open for the DRA Act.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. There is no anticipated fiscal impact increase to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with parties that had expressed concerns with a previous rulemaking on these issues as well as the DRA. The Department held informal negotiations with the Trust and Estate Professionals of Idaho on this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to

the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720 , Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0602**

**102. -- 1043. (RESERVED).**

**1054. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.**

The applicant must provide his social security number (SSN) or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. An applicant with an unverified SSN is not eligible for AABD cash or Medicaid benefits. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (3-20-04)

**01. Application for SSN.** To be eligible, the applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

**02. Failure to Apply for SSN.** The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-20-04)

- a.** Is a member of a recognized religious sect or division of the sect; and (3-20-04)
- b.** Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (3-20-04)

**03. SSN Requirement Waived.** An applicant may have the SSN requirement waived when he is: (3-20-04)

- a.** Only eligible for emergency medical services as described in Section 801 of these rules; or (3-20-04)
- b.** A waived newborn child as described in Section 800 of these rules. (3-20-04)

**105. IDENTITY AND PROOF OF U.S. CITIZENSHIP DOCUMENTATION REQUIREMENTS.**

To be eligible, an individual must provide documentation of identity and either U.S. citizenship or qualified non-citizenship, unless he has otherwise met the requirements under Subsection 105.04 of this rule. The following are acceptable forms of documentation: (7-1-06)T

**01. Documents Accepted as Proof of Both Identity and U.S. Citizenship.** The following documents

may be accepted as proof of both U.S. citizenship and identity: (7-1-06)T

- a.** A U.S. passport: (7-1-06)T
- b.** A Certificate of Naturalization, DHS Forms N-550 or N-570: (7-1-06)T
- c.** A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561; or (7-1-06)T
- d.** A driver's license if the state issuing the license requires proof of citizenship before the license is issued. (7-1-06)T

**02. Documents Accepted as Proof of U.S. Citizenship but Not Identity.** The following documents may be accepted as proof of U.S. citizenship only. They are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 105.03 of this rule to establish both citizenship and identity. (7-1-06)T

- a.** A U.S. birth certificate: (7-1-06)T
- b.** A report of birth abroad of a U.S. Citizen, Form FS-545 or DS-1350: (7-1-06)T
- c.** A U.S. Citizen I.D. card, DHS Form I-197: (7-1-06)T
- d.** A hospital record of birth issued at the time of birth in one (1) of the fifty (50) states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam (on or after April 10, 1899), the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands. If the person was born to foreign diplomats residing in one (1) of the preceding jurisdictions of the U.S., he is not a citizen of the United States: (7-1-06)T

**e.** A religious record of birth recorded in the United States or its territories within three (3) months of birth which indicates a U.S. place of birth. This document must show either the date of birth or the individual's age at the time the record was made: (7-1-06)T

**f.** A Northern Mariana Identification Card issued by the Immigration and Naturalization Service (INS) to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 3, 1986: (7-1-06)T

**g.** An American Indian Card issued by the Department of Homeland Security: (7-1-06)T

**h.** Information from a primary source such as the State Data Exchange (SDX) or birth confirmations from Vital Statistics; or (7-1-06)T

**i.** An affidavit made by a blood relative of the individual and who has personal knowledge of the events establishing the individual's claim of citizenship. For example, the date and place of the individual's birth in the United States. (7-1-06)T

**03. Documents Accepted for Proof of Identity but Not Citizenship.** The following documents may be accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 105.02 of this rule to establish both citizenship and identity. (7-1-06)T

**a.** A current state driver's license bearing the individual's picture: (7-1-06)T

**b.** A state-issued identity card issued to a non-driver bearing the individual's picture for which the state required proof of identity as a condition of issuing the identity document; or (7-1-06)T

**c.** Any other document the state finds that establishes the true identity of the individual. (7-1-06)T

**04. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation**

**Requirements.** The following individuals are considered to have met the U.S. citizenship and identity documentation requirements: (7-1-06)T

- a. Children receiving Title IV-E foster care assistance: (7-1-06)T
- b. SSI or RSDI recipients; and (7-1-06)T
- c. Medicare recipients. (7-1-06)T

**106. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 106.01 through 106.145 of ~~this~~ these rules. An individual must also provide proof of identity as provided in Section 105 of these rules. (~~3-20-04~~)(7-1-06)T

**01. U.S. Citizen.** A U.S. Citizen; ~~or.~~ (~~3-20-04~~)(7-1-06)T

**02. U.S. National, National of American Samoa or Swain's Island.** A U. S. National, National of American Samoa or Swain's Island; ~~or.~~ (~~3-20-04~~)(7-1-06)T

**03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (7-1-06)T

a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (7-1-06)T

b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (7-1-06)T

c. The child is under eighteen (18) years of age; (7-1-06)T

d. The child is a lawful permanent resident; and (7-1-06)T

e. If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (7-1-06)T

**034. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; ~~or.~~ (~~3-20-04~~)(7-1-06)T

**045. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; ~~or.~~ (~~3-20-04~~)(7-1-06)T

**056. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); ~~or~~ and remained continuously present in the U.S. until they became a qualified alien. (~~3-20-04~~)(7-1-06)T

**067. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (~~3-20-04~~)(7-1-06)T

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; ~~or~~ (~~3-20-04~~)(7-1-06)T

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; ~~or~~ (~~3-20-04~~)(7-1-06)T



**c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**078. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has ~~had~~ held a qualified non-citizen status for at least five (5) years; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**089. American Indian Born in Canada.** An American Indian born in Canada under 8 U.S.C. 1359; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**0910. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); ~~or~~ ~~(3-20-04)(7-1-06)T~~

**101. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**112. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

**a.** Is under the age of eighteen (18) years; or (3-20-04)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

**i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

**ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons; ~~or~~ ~~(3-20-04)(7-1-06)T~~

**123. Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

**134. Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

**145. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 106.01 through 106.134 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. ~~(3-20-04)(7-1-06)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**238. HOME EXCLUDED AS RESOURCE.**

*The value of a participant's home is an excluded resource. An participant's individual's home is property he owns, and servings serves as his principal place of residence. His principal place of residence is the place he considers his principal home. If the participant individual is absent from his home, it is still his principal place of residence if he*

intends to return.

~~(7-1-99)~~(1-1-06)T

**01. AABD Cash, and Medicaid With the Exception of Long-Term Care.** For AABD Cash and Medicaid with the exception of long-term care, the value of an individual's home is an excluded resource. (1-1-06)T

**02. Long-Term Care Services.** For long-term care services, when the value of a participant's equity in the home is five hundred thousand dollars (\$500,000) or less, the home is excluded as a resource. When the equity value exceeds five hundred thousand dollars (\$500,000), the individual is ineligible for long-term care services. The equity value, regardless of the amount, is an excluded resource when one (1) of the following applies: (1-1-06)T

**a.** The spouse of the individual lives in the home: or (1-1-06)T

**b.** The individual's child, who is under age twenty-one (21), or is blind, or meets the disability requirements for AABD cash, lives in the home. (1-1-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**247. LIFE ESTATE INTEREST IN ANOTHER'S HOME.**

The purchase of a life estate interest in another individual's home is a resource unless the purchaser resides in the home for a period of at least one (1) year after the date of purchase. (2-8-06)T

~~247~~. -- 254. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

~~273~~. -- ~~276~~5. (RESERVED).

**276. EXCLUDED REAL ESTATE CONTRACT.**

The principal balance of a real estate contract is excluded from resources of a participant in long-term care when the Department determines it is in the Department's best interest to exclude the contract. The determination by the Department of its best interest is final. (3-20-04)

**277. FEES PAID TO A CONTINUING CARE RETIREMENT COMMUNITY (CCRC) OR LIFE CARE COMMUNITY.**

An entrance fee to a CCRC or a life care community is a resource if the participant or applicant for long-term care has discretion to spend the fee or if the fee may be used to pay for care in a contingency. A CCRC or life care community is a type of long-term care facility that offers varying levels of care and in which a resident contracts with the facility to obtain care that is intended to endure for the remainder of the resident's life in exchange for valuable consideration. (2-8-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**285. AABD PERIOD OF INELIGIBILITY FOR RESOURCE TRANSFERS.**

The resource transfer period of ineligibility is a period of AABD ineligibility for up to ~~thirty-six~~ (36) months. The period of ineligibility begins the first day of the month after the transfer month. The participant must be notified, in writing, at least ten (10) days before a resource transfer period of ineligibility is imposed. ~~(3-15-02)~~(2-8-06)T

**286. RESOURCE TRANSFER LOOK-BACK PERIOD.**

The resource transfer ~~period of ineligibility~~ penalty applies to any transfers in a thirty-six (36) month look-back period for less than fair market value made during a period preceding a request for cash assistance. The look-back period is determined as follows: ~~(3-15-02)~~(2-8-06)T

01. ~~Look-Back for an Applicant. The look-back period begins thirty-six (36) months before the application date.~~ Transfers Prior to February 8, 2006. For any resource transferred prior to February 8, 2006, the look-back period is thirty-six (36) months. The look-back period is counted from the month prior to the month the application was submitted. (3-15-02)(2-8-06)T

02. ~~Look-Back for a Participant. The look-back date is the date the participant transferred the resource. A transfer of resources at any time after the look-back start date may result in a period of ineligibility.~~ Transfers On or After February 8, 2006. Any resource transferred on or after February 8, 2006, regardless of type, is subject to a look-back period of sixty (60) months. The look-back period is counted from the date of the application for cash, or the date of the transfer, whichever is later in time. (3-15-02)(2-8-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**288. LENGTH OF PERIOD OF INELIGIBILITY.**

The period of ineligibility begins with the month after the month the transfer took place. The period of ineligibility continues whether or not the participant receives AABD. Ineligibility continues until all the resources are returned to the participant or spouse, adequate consideration for all the resources is received, ~~thirty-sixty (360)~~ months passes, or the ~~penalty period of ineligibility~~ ends. (3-15-02)(2-8-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**744. INCOME COUNTED FIRST FOR CSRA REVISION.**

Income is determined prior to determining resources. If the couple's income is more than the minimum CSA, the CSRA cannot be increased. If the community spouse has less income than the minimum CSA, the CSRA ~~may~~ must be increased as provided in Section 745. Couple income is the community spouse's gross income plus the long-term care spouse's income. The long-term care spouse's income is his gross income less the AABD cash income exclusions and his patient liability income deductions, but not the CSA deduction. (7-1-99)(2-8-06)T

**745. UPWARD REVISION OF CSRA.**

If the community spouse's income, including income from his CSA and income-producing resources in his CSRA, is less than the minimum CSA, the CSRA ~~may~~ must be increased. The CSRA is increased by enough resources, transferred from the long-term care spouse, to raise the community spouse's income to the minimum CSA. Resources included in the transfer are presumed to produce income of five percent (5%) yearly, whether or not the resources produce income, or produce five percent (5%). If the community spouse shows he is making reasonable use of his income and resources, to generate income, the Department may waive the five percent (5%) yearly income requirement. Actual income produced by the resources transferred to the community spouse is used to compute the CSA. If the transferred resources produce more than five percent (5%) yearly income, the actual income produced is used to determine the additional resources that can be transferred to the community spouse in the CSRA. The long-term care spouse must transfer the resources to the community spouse, or the CSRA is not revised. (7-1-99)(2-8-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**831. ASSET TRANSFER RESULTING IN PENALTY.**

Starting August 11, 1993, the participant is subject to a penalty if he transfers his income or resources for less than fair market value. The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. Asset transfers subject to penalty under these rules may be voided and set aside by court action as provided in Section 56-218, Idaho Code. The asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. (5-3-03)(2-8-06)T

**01. Rebuttable Presumption.** Unless a transfer meets the requirements of Section 841 of these rules, it is presumed that the transfer was made for the purpose of qualifying for Medicaid. The asset transfer penalty is applied unless the participant shows that the asset transfer would not have affected his eligibility for Medicaid or the transfer was made for another purpose than qualifying for Medicaid. (4-11-06)

**02. Contract for Services Provided by a Relative.** A contract for personal services to be furnished to the participant by a relative is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows that: (3-15-02)

**a.** A written contract for personal services was signed before services were delivered. The contract must require that payment be made after services are rendered. The contract must be dated and the signatures notarized. Either party must be able to terminate the contract; and (3-15-02)

**b.** The contract must be signed by the participant or a legally authorized representative through a power of attorney, legal guardianship or conservatorship. A representative who signs the contract must not be the provider of the personal care services under the contract; and (3-15-02)

**c.** Compensation for services rendered must be comparable to rates paid in the open market. (3-15-02)

**03. Transfer of Income or Resources.** Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. (4-5-00)

**04. Transfer of Income or Resources by a Spouse.** A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. (4-5-00)

**05. Transfer of Certain Notes and Loans.** Funds used to purchase a promissory note, loan, or mortgage are considered a transferred asset which subjects the participant to a period of ineligibility, unless the note, loan or mortgage: (2-8-06)T

**a.** Has a repayment term that is actuarially sound; (2-8-06)T

**b.** Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made; and (2-8-06)T

**c.** Prohibits the cancellation of the balance upon the death of the lender. (2-8-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**833. ASSET TRANSFER LOOK-BACK PERIOD.**

The asset transfer penalty applies to any transfers in a thirty-six (36) month look-back for less than fair market value made during a period preceding or following a request for long-term care services. The look-back period is sixty (60) months for transfers to or from a trust. determined as follows: (7-1-99)(2-8-06)T

**01. Look Back for a Person Entitled to Medicaid.** The look-back period begins the month long-term care or HCBS starts for a person entitled to Medicaid. A person "entitled to Medicaid" is receiving or applying for Medicaid when long-term care or HCBS starts. The person would be eligible for the month of application or any of the three (3) calendar months before it, if not for the asset transfer penalty. **Transfers Prior to February 8, 2006.** For any asset transferred prior to February 8, 2006, the look-back period is thirty-six (36) months, unless the transfer is to or from a trust. If the transfer is to or from a trust, the look-back period is sixty (60) months. If the person is entitled to Medicaid or HCBS services, the look-back period is counted from the month long-term care or HCBS services began, or would have begun, were it not for a penalty. If the person is not entitled to Medicaid, the look-back period is counted from the month prior to the month the application was submitted. (7-1-99)(2-8-06)T

02. ~~**Look-Back for a Person Not Entitled to Medicaid.**~~ *The look back period begins the month before the application month for a person not entitled to Medicaid when long-term care starts.* **Transfers On or After February 8, 2006.** Any asset transferred on or after February 8, 2006, regardless of type, is subject to a look-back period of sixty (60) months. The look-back period is counted from the date of the application for long-term care or HCBS services or the date of the transfer, whichever is later in time. (7-1-99)(2-8-06)T

**834. PERIOD OF RESTRICTED COVERAGE FOR ASSET TRANSFERS.**

The period of restricted coverage is the number of months computed by dividing the ~~unpaid asset uncompensated value of the transferred asset~~ by the statewide average cost of nursing facility services to a private patients ~~of nursing facility services or HCBS~~. The cost is computed for the time of the participant's most recent request for Medicaid. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. (7-1-99)(2-8-06)T

**835. CALCULATING APPLYING THE PENALTY PERIOD OF RESTRICTED COVERAGE.**

~~If the amount transferred is less than the cost of one (1) month's care, there is no penalty. The penalty period begins running the month the transfer took place. The month the transfer took place is counted as one (1) of the penalty months.~~ Restricted coverage continues until the participant or spouse ~~gets~~ recovers all the assets, ~~back, gets adequate consideration~~ receives fair market value for all of the assets, or the period of restricted coverage ends. The penalty continues whether or not the participant is in long-term care. The penalty period for asset transfers is applied as follows: (7-1-99)(2-8-06)T

01. ~~**Single Penalty Period for Transfer Prior to February 8, 2006.**~~ *A period of restricted coverage ends the last day of the last full month of the penalty period.* For assets transferred prior to February 8, 2006, there is no penalty if the amount transferred is less than the cost of one (1) month's care. The penalty period begins running the month the transfer took place. The month the transfer took place is counted as one (1) of the penalty months. A penalty period is computed for each transfer. A penalty period must expire before the next begins. Each partial month before the end of consecutive penalty periods is a penalty month. A partial month at the end of a single consecutive penalty periods is dropped. (7-1-99)(2-8-06)T

02. ~~**Consecutive Penalty Periods for Transfers On or After February 8, 2006.**~~ *Each partial month before the end of consecutive penalty periods is a penalty month. A partial month at the end of consecutive penalty periods is dropped.* For assets transferred on or after February 8, 2006, the penalty period begins running the first day of the month after the month the transfer took place, or the date the individual would have been eligible for long-term care services, if not for the transfer, whichever date is later in time. The value of all asset transfers made during the look-back period is accumulated for the purpose of calculating the penalty. If an additional transfer is discovered after the penalty has been served, a new penalty period begins the month following timely notice of closure of benefits. When a penalty period ends after the first day of the month, eligibility for long-term care services begins the day after the penalty period ends. (7-1-99)(2-8-06)T

**836. MULTIPLE PENALTY PERIODS APPLIED CONSECUTIVELY (RESERVED).**

~~A penalty period is computed for each transfer. One penalty period must expire before the next begins.~~ (7-1-99)

**837. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.**

~~Conditions for determining if~~ When a life estate in real property is retained by an individual, and a remainder interest in the property is an asset transferred during the look-back period for less than the fair market value ~~are listed in Subsection 837.01 of this rule.~~ The purchase of an annuity is an asset transfer that is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows the purchase of the annuity would not have affected his eligibility for Medicaid or, the payment from the annuity is not greater than necessary to meet the reasonable and ordinary monthly needs of the beneficiary. For the purposes of Section 837, the reasonable and ordinary monthly needs are those defined by the maximum community spouse allowance at Section 725 of these rules. The participant must also show that the annuity meets the conditions in Subsections 837.03 and 837.04 of this rule of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. (5-3-03)(2-8-06)T

01- ~~**Life Estate.**~~ A life estate worth less than the value of the transferred real property is subject to the asset transfer penalty. To compute the value of the life estate remainder, multiply the fair market value of the real

property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.04 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
0	.02812	1	.01012	2	.00983	3	.00922
4	.01019	5	.01062	6	.01116	7	.01178
8	.01252	9	.01337	10	.01435	11	.01547
12	.01671	13	.01802	14	.01934	15	.02063
16	.02185	17	.02300	18	.02410	19	.02520
20	.02635	21	.02755	22	.02880	23	.03014
24	.03159	25	.03322	26	.03505	27	.03710
28	.03938	29	.04187	30	.04457	31	.04746
32	.05.058	33	.05.392	34	.05.750	35	.06132
36	.06540	37	.06974	38	.07433	39	.07917
40	.08429	41	.08970	42	.09543	43	.10145
44	.10779	45	.11442	46	.12137	47	.12863
48	.13626	49	.14422	50	.15257	51	.16126
52	.17031	53	.17972	54	.18946	55	.19954
56	.20994	57	.22069	58	.23178	59	.24325
60	.25509	61	.26733	62	.27998	63	.29304
64	.30648	65	.32030	66	.33449	67	.34902
68	.36390	69	.37914	70	.39478	71	.41086
72	.42739	73	.44429	74	.46138	75	.47851
76	.49559	77	.51258	78	.52951	79	.54643
80	.56341	81	.58033	82	.59705	83	.61358
84	.63002	85	.64641	86	.66236	87	.67738
88	.69141	89	.70474	90	.71779	91	.73045
92	.74229	93	.75308	94	.76272	95	.77113
96	.77819	97	.78450	98	.79000	99	.79514
100	.80025	101	.80468	102	.80946	103	.81563
104	.82144	105	.83038	106	.84512	107	.86591
108	.89932	109	.95455				

(3-15-02)(2-8-06)T

838. ~~(RESERVED)~~ ANNUITY AS ASSET TRANSFER.

When assets are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption, the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for Medicaid or avoid recovery. (2-8-06)T

**01. Revocable Annuity.** The surrender amount of a revocable annuity is a countable resource. (2-8-06)T

**02. Irrevocable Annuity.** An irrevocable annuity is an *asset transfer if it does not provide fair market value to the participant. To provide fair market value, an irrevocable annuity must meet life expectancy and annual interest tests listed in Subsections 837.03 and 837.04 of this rule. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. The sixty (60) month look-back applies* annuity that under no circumstance can be sold or traded for value, including the sale of the stream of income from the annuity. The purchase of an irrevocable annuity is an asset transfer if it does not provide fair market value to the participant. The sixty (60) month look-back period applies. The irrevocable annuity provides fair market value to the participant if it passes all of the following tests. (5-3-03)(2-8-06)T

**03a. Irrevocable Annuity Life Expectancy Test.** The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table ~~837.03~~ 838.02.a, compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE <del>837.03</del> 838.02.a. - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.75	95	2.71	3.26

72	11.24	14.06
73	10.67	13.40

100	2.05	2.39
110	1.14	1.22

(3-15-02)(2-8-06)T

~~04d.~~ **Irrevocable Annuity Annual Interest and Insurer Rating Test.** The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. ~~The participant can~~ To rebut the five percent (5%) interest test, ~~He the participant~~ must show that single premium annuities were not offered by insurers when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. The insurers must be rated excellent or superior by an insurance rating firm ~~such as A.M. Best Co.~~ (5-3-03)(2-8-06)T

**c.** Third Party Beneficiary Test. Effective February 8, 2006, the annuity must name the State of Idaho, Medicaid Estate Recovery, as follows: (2-8-06)T

**i.** The remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or (2-8-06)T

**ii.** The remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value. (2-8-06)T

**d.** Equal Payment Test. The annuity must provide for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. (2-8-06)T

~~05.~~ **Revocable Annuity.** ~~The surrender amount of a revocable annuity is a resource. Early surrender of a revocable annuity is not an asset transfer for less than fair market value.~~ (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**841. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.**

A participant is not subject to the asset transfer penalty for taking any action described in Subsections 841.01 through 841.14 of these rules. (3-20-04)

**01. Home to Spouse.** The asset transferred was a home. Title to the home was transferred to the spouse. (7-1-99)

**02. Home to Minor Child or Disabled Adult Child.** The asset transferred was a home. Title to the home was transferred to the child of the participant or spouse. The child must be under age twenty-one (21) or blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

**03. Home to Brother or Sister.** The asset transferred was a home. Title to the home was transferred to a brother or sister of the participant or spouse. The brother or sister must have an equity interest in the transferred home. The brother or sister must reside in that home for at least one (1) year immediately before the month the participant starts long-term care. (7-1-99)

**04. Home to Adult Child.** The asset transferred was a home. Title to the home was transferred to a son or daughter of the participant or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in that home for at least two (2) years immediately before the month the participant started long-term care. The adult child must prove he provided nursing facility level medical care to the participant which permitted him to live at home rather than enter long-term care. The son or daughter must not have provided services as a paid Medicaid provider. (3-20-04)(2-8-06)T



**05. Benefit of Spouse.** The assets were transferred to the participant's spouse or to another person for the sole benefit of the spouse. (7-1-99)

**06. Transfer From Spouse.** The assets were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. (7-1-99)

**07. Transfer to Child.** The assets were transferred to the participant's child, or to a trust established solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. (7-1-99)

**08. Intent to Get Fair Market Value.** The participant or spouse proves he intended to dispose of the assets at fair market value or for other adequate consideration. (7-1-99)

**09. Assets Returned.** All assets transferred for less than fair market value have been returned to the participant. (7-1-99)

**10. Medicaid Qualification Not the Intent.** The participant or spouse proves the assets were transferred exclusively for a purpose other than to qualify for Medicaid or to avoid recovery. (3-20-04)

**11. Undue Hardship.** ~~Denying eligibility would cause an undue hardship. The participant, his representative, or the facility in which he resides may request the hardship waiver. The hardship waiver must be requested in writing within ten (10) days of the date of the asset transfer penalty notice.~~ Undue hardship exists if any of the conditions in Subsections 841.11.a. through 841.11.ed. of these rules apply. (3-20-04)(2-8-06)T

**a.** The participant proves he is not able to pay for his nursing facility services or his wavier services by any means ~~and assigns his rights to recover the asset to the state of Idaho.~~ (3-20-04)(2-8-06)T

**b.** The participant proves that he did not knowingly transfer the asset and assigns his rights has made reasonable efforts, consistent with his physical and financial ability, to recover the transferred asset to the state of Idaho. The participant must fully cooperate with the state of Idaho in efforts to recover the transferred asset and, upon request, must assign his rights to recover the asset to the State of Idaho. (3-20-04)(2-8-06)T

**c.** The participant proves he did not knowingly transfer the asset. (2-8-06)T

**ed.** ~~The waiver participant proves he would be deprived of food, clothing or shelter if all income transferred to the trust is used only for waiver costs and assigns his rights to recover the asset to the state of Idaho. If the participant proves undue hardship, the income paid to meet his needs for food, clothing or shelter is exempt from the asset transfer penalty. It does not invalidate the trust. It is not income for eligibility.~~ The participant proves he would be deprived of food, clothing, shelter or other necessities of life if the asset transfer penalty is imposed and he assigns his rights to recover the asset to the State of Idaho. (3-20-04)(2-8-06)T

**12. Exception to Fair Market Value.** The amount received is adequate, even if not fair market value. This exception must meet one (1) of the conditions in Subsections 841.12.a. through 841.12.c. of these rules. (3-20-04)

**a.** A forced sale was done under reasonable circumstances. (7-1-99)

**b.** Little or no market demand exists for the type of asset transferred and the lack of market demand was not created by a voluntary act of the participant. (7-1-99)(2-8-06)T

**c.** The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred asset. (7-1-99)

**13. No Benefit to Participant.** The participant received no benefit from the asset. This exception must meet one (1) of the conditions in Subsections 841.13.a. and 841.13.b. of these rules. (3-20-04)

**a.** The participant or spouse held title to the property only as a trustee for another person. The

participant or spouse had no beneficial interest in the property.

(7-1-99)

**b.** The transfer was done to clear title to property. The participant or spouse had no beneficial interest in the property. The defect in the title was not created in an attempt to transfer assets to qualify for assistance or avoid recovery. ~~(7-1-99)~~(2-8-06)T

**14. Fraud Victim.** The asset was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the assets or property, or its equivalent in damages and must assign recovery rights to the state of Idaho. (3-20-04)

**842. -- 870. (RESERVED).**

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

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE  
AGED, BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0605**

**NOTICE OF RULEMAKING - PROPOSED RULE**

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

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

**Date:** Thursday, July 13, 2006  
**Time:** 10:00 am  
**Place:** Department of Health and Welfare  
Pete T. Cenarussa Bldg., 6th Floor Conference Room  
450 W. State Street, Boise, ID

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the substance and purpose of the proposed rulemaking:

Federal law has changed due to the passage of the Deficit Reduction Act (DRA) of 2005 requiring the Department to update and clarify several sections of this chapter of rule. The rules that apply to trusts, life estates, and annuities also apply to estate recovery rules. These rules are being amended to help prevent the sheltering of assets. Clarification has been made to the section dealing with "Inheritance," "Resources Excluded from Assessment," "Treatment of Trusts," and new definitions were added for "annuities" and "assets".

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. There is no anticipated fiscal impact increase to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with parties that had expressed concerns with a previous rulemaking on these issues as well as the DRA. The Department held informal negotiations with the Trust and Estate Professionals of Idaho on this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 16th day of June, 2006.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720 , Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0605**

**005. DEFINITIONS.**

These definitions apply to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)": (7-1-99)

**01. AABD Cash.** An EBT payment to a participant, a participant's guardian, or a holder of a limited power of attorney for EBT payments. (5-3-03)

**02. Applicant.** A person applying for public assistance from the Department, and whose application is not fully processed. (7-1-99)

**03. Annuity.** A right to receive periodic payments, either for life, a term of years, or other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially-based payment from an insurance pool. It does not include an annuity: ( )

**a.** Described in Sections 408(b) or 408(q), Internal Revenue Code of 1986; or ( )

**b.** Purchased with proceeds from an account or trust described in Sections 408(a), 408(c), or 408(p), Internal Revenue Code, a simplified employee pension as described in Section 408(k), Internal Revenue Code, or a Roth IRA described in Section 408A, Internal Revenue Code. ( )

**04. Asset.** Includes all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to, but does not receive because of action by: ( )

**a.** The individual or such individual's spouse; ( )

**b.** A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or ( )

**c.** A person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse. ( )

**035. Asset Transfer for Sole Benefit.** An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (5-3-03)

**046. Child.** A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (7-1-99)

**057. Department.** The Department of Health and Welfare. (7-1-99)

**063. Direct Deposit.** The electronic deposit of a participant's AABD cash to the participant's personal account with a financial institution. (7-1-99)

**079. Electronic Benefits Transfer (EBT).** A method of issuing AABD cash to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, "Rules Governing Electronic Payments of Public Assistance, Food Stamps and Child Support". (7-1-99)

**0810. Essential Person.** A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person provides the services a participant needs to live at home. (5-3-03)

~~0911.~~ **Fair Market Value.** The fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. (5-3-03)

~~102.~~ **Medicaid.** The Federally-funded program for medical care (Title XIX, Social Security Act). (5-3-03)

~~143.~~ **Medical Assistance Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, "Rules Governing the Medical Assistance Program". (7-1-99)

~~124.~~ **Medicaid for Families With Children Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children". (7-1-99)

~~135.~~ **Participant.** An individual applying for or receiving assistance. (7-1-99)

~~146.~~ **Sole Beneficiary.** The only beneficiary of a trust, including a beneficiary during the grantor's life, a beneficiary with a future interest, and a beneficiary by the grantor's will. (7-1-99)

~~157.~~ **TAFI Rules.** Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho". (7-1-99)

~~168.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. INHERITANCE.**

An inheritance is cash, a right, including probate allowances, trust payments and annuities, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the next month. Participants are required to make claims and take all reasonable action necessary to obtain any inheritance to which they may be entitled. Failure to make such claims or take reasonable steps to obtain an inheritance is an asset transfer. A contested inheritance is not counted as a resource until the contest is settled and money is distributed. (7-1-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**737. RESOURCES EXCLUDED FROM ASSESSMENT.**

Resources excluded in determining AABD cash are excluded in determining the couple's total combined FSI resources except: There is no limit on the total value of household goods and personal effects and one (1) automobile is excluded regardless of its value. Any additional automobiles are countable resources in the amount of their equity value. (7-1-99)(\_\_\_\_)

**01. Resources For Sale.** Excess resources offered for sale, are not excluded from the couple's total combined resources for the FSI resource assessment. (7-1-99)(\_\_\_\_)

**02. Jointly Owned Real Property.** Jointly owned real property that is not the principal residence of the participant, is not excluded, if the community spouse is the joint owner. (7-1-99)(\_\_\_\_)

**03. Excluded Home.** An excluded home placed in trust retains its exclusion for purposes of the resource assessment. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**871. TREATMENT OF TRUSTS.**

These trust treatment rules apply to all Medicaid participants. These rules apply to trusts established with the participant's assets on August 11, 1993 or later, and to trusts funded August 11, 1993 or later. ~~This~~ Section 871 does not apply to an irrevocable trust if the participant meets the undue hardship exemption in Subsection 841.11 of these rules. Assets transferred to a trust are subject to the asset transfer penalty. Section 871 does not apply to a trust created with assets other than those of the individual, including a trust established by a will. ~~(4-11-06)( )~~

**01. Revocable Trust.** Revocable trusts are treated as listed in Subsections 871.01.a. through 871.01.d. of these rules. A revocable burial trust is not a trust for the purposes of Subsection 871.01 of these rules. (4-11-06)

**a.** The body (corpus) of a revocable trust is a resource. (7-1-99)

**b.** Payments from the trust to or for the participant are income. (7-1-99)

**c.** Any other payments from the trust are an asset transfer, triggering an asset transfer penalty period. (7-1-99)

**d.** The home and adjoining property loses its exclusion when transferred to a revocable trust, unless the participant or spouse is the sole beneficiary of the trust. The home is excluded again if removed from the trust. The exclusion restarts the next month. (7-1-99)

**02. Irrevocable Trust.** Irrevocable trusts are treated as listed in Subsections 871.02.a. through 871.02.g. of these rules. (4-11-06)

**a.** The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the participant, is a resource. (7-1-99)

**b.** Payments made to or for the participant are income. (7-1-99)

**c.** Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. (7-1-99)

**d.** Any part of the trust from which payment cannot be made to, or for the benefit of, the participant under any circumstances, is an asset transfer. (7-1-99)

**e.** The effective date of the transfer is the date the trust was established, or the date payments to the participant were foreclosed. (7-1-99)

**f.** The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (7-1-99)

**g.** An irrevocable burial trust is not subject to treatment under Subsection 871.02 of these rules, unless funds in the trust can be paid for a purpose other than the participant's funeral and related expenses. The trust can provide that funds not needed for the participant's funeral expenses are available to reimburse Medicaid, or to go to the participant's estate. (4-11-06)

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.34 - CERTIFICATE OF LIABILITY INSURANCE FOR MOTOR VEHICLES

DOCKET NO. 18-0134-0601

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Title 67, Chapter 52, Idaho Code, and Sections 49-1229, 49-1231, and 49-1608A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 653, enacted this year, requires that the Director of the Department of Insurance prescribe a form for proof of liability insurance to be used by motor vehicle dealers. The purpose of this rulemaking is to comply with this requirement. Additional changes to the rule have been made to bring it into conformance with Office of the Administrative Rules Coordinator format and style requirements for rules.

**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: The rulemaking is needed to comply with changes to governing law made by House Bill 653, which becomes effective July 1, 2006.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is needed to comply with a newly enacted law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest at (208) 334-4250.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 30th of May, 2006.

Shad Priest, Deputy Director  
Idaho Department of Insurance  
700 W. State St. 3<sup>rd</sup> Floor  
PO Box 83720  
Boise, ID 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334- 4298

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0134-0601

**000. LEGAL AUTHORITY.**

The statutory authority for this rule is Title 67, Chapter 52, ~~Idaho Code~~, and Sections 49-1229, ~~and 49-1231, and 49-1608A~~, Idaho Code. (7-1-93)(7-1-06)T

**001. TITLE AND SCOPE.**

~~Inasmuch as IDAPA 18.01.34, "Certificate of Liability Insurance for Motor Vehicles," was promulgated and became effective August 1, 1983, under the authority of then existing Sections 49-243 and 49-244, Idaho Code, and said Section 49-243 having been repealed by the Idaho legislature (1988 Idaho Sess.Laws, ch.265, sec. 3, p. 571) and Section 49-244 having been amended and redesignated by the Idaho Legislature (1988 Idaho Sess.Laws, ch. 265, sec. 319, p. 738) to its present codification at Section 49-1231, Idaho Code, the Director of the Idaho Department of Insurance deems it advisable to modify and restate this rule to conform to the recent amendments to the statutory framework. The purpose of this rule is to supplement the provisions of Sections 49-1229 and 49-1231, Idaho Code, pertaining to a form for a certificate of liability insurance to be prescribed by the Director of the Department of Insurance; to provide that a currently valid original contract, or a copy thereof, of insurance which demonstrates the existence of current liability insurance coverage against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance or use of a motor vehicle or motor vehicles described thereon in an amount not less than that required by Sections 49-117(16) and 49-1229(1), Idaho Code, and also demonstrates the current existence of any other coverage required by Title 41, Idaho Code, qualifies as a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance; to provide minimum specifications of other documents which will be deemed to qualify as a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance; to provide minimum specifications of other documents which will be deemed to qualify as a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance in lieu of the insurance contract or a copy thereof; to provide an example of a form of a certificate of liability insurance, which is not exclusive, but which shall demonstrate the format of a certificate of liability insurance which will qualify as a form prescribed by the Director of the Department of Insurance; to provide that forms for certificate of liability insurance in lieu of the insurance contract or a copy thereof which deviate from the example of the form of a certificate of liability insurance provided in this rule will also be deemed to be a form prescribed by the Director of the Department of Insurance provided that such forms meet the minimum qualifications of this rule; to provide a form for a certificate of liability insurance which may be issued by the Director of the Department of Insurance pursuant to Idaho Code Sections 49-1229(2) and 49-1231; to provide for the separability of this rule; and to provide for an effective date.~~ (7-1-93)

**01. Title.** These rules shall be cited as IDAPA 18.01.34, "Certificate of Liability Insurance for Motor Vehicles". (7-1-06)T

**02. Scope.** These rules identify requirements for a certificate of liability insurance for motor vehicles pursuant to Sections 49-1229, 49-1331 and 49-1608A, Idaho Code. (7-1-06)T

**002. WRITTEN INTERPRETATIONS.**

This agency does not rely on written interpretations for these rules. (7-1-06)T

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (7-1-06)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference. (7-1-06)T

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

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday



and legal holidays.

(7-1-06)T

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043.

(7-1-06)T

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043.

(7-1-06)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho.

(7-1-06)T

**0027. -- 010. (RESERVED).**

**011. CONTRACT OF INSURANCE, OR COPY THEREOF -- CERTIFICATE OF LIABILITY INSURANCE.**

The original contract of liability insurance, or copy thereof, which demonstrates the current existence of liability insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance or use of a motor vehicle or motor vehicles described therein in an amount not less than that required by Sections 49-117(18), ~~and~~ 49-1212, and 49-1608A, Idaho Code, and also demonstrates the current existence of any other coverage required by Title 41, Idaho Code, is a form of a certificate of liability insurance prescribed as such by the Director of the Department of Insurance, provided said contract of liability insurance is issued by an insurer or surety authorized to do business in this state. For the purpose of this rule a written binder qualifies as a contract of liability insurance provided that it binds coverage in an amount not less than that required by Section 49-117(18), Idaho Code, and demonstrates the existence of any other coverage required by this rule, and provides further that the binder is not valid beyond issuance of the policy with respect to which it was given or beyond ninety (90) days from its effective date, whichever period is shorter.

(7-1-93)(7-1-06)T

**012. MINIMUM SPECIFICATIONS FOR A CERTIFICATE OF LIABILITY INSURANCE IN LIEU OF THE CONTRACT OF INSURANCE, OR COPY THEREOF.**

A document, which meets the minimum specifications provided in this rule, is deemed to be a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance which is acceptable in lieu of an original contract of liability insurance or copy thereof, demonstrating the current existence of liability insurance as ~~heretofore~~ described in Section 011 of this rule. The minimum requirement of a document which will be deemed a certificate of liability insurance in lieu of the original contract of liability insurance, or copy thereof, are as follows:

(7-1-93)(7-1-06)T

**01. Individual-Owned Motor Vehicles.**

(7-1-06)T

**01a.** Name of Insurer. The document shall contain the name of the insurer or surety company authorized to do business in this state.

(7-1-93)

**01b.** Name and Address of Motor Vehicle Owner. The document shall set forth the name and address of the owner of the motor vehicle that is insured.

(7-1-93)

**01c.** Description of Motor Vehicles. The document shall set forth a description of the motor vehicle including identification number, if there be one, or in lieu of the identification number, the last three digits of the identification number which is commonly known in the insurance industry as the VIN (Vehicle Identification Number), if there be one vehicle, or in lieu of the vehicle identification number, the words "all owned vehicles" may be used if more than one vehicle is insured.

(7-1-93)

**01d.** Effective Date. The document shall set forth the effective date the liability insurance coverage commences.

(7-1-93)

**01e.** Title of Document. The document may, but is not required to be entitled "Certificate of Liability Insurance" or "Liability Insurance Identification Card". The words "State of Idaho" may be added to the title at the

insurer's option, but the words "State of Idaho" are not required. (7-1-93)

**06f.** Date Coverage Ceases. The document may set forth the date the liability insurance coverage ceases, or in lieu thereof and at the insurer's option, the document may state "not valid beyond \_\_\_\_\_", provided that the phrase is completed to indicate termination of coverage at the end of a fixed period, or "not valid for more than one year," or "continuous until cancelled". (7-1-93)

**07g.** Policy Number. The number of the insurance policy or the document is suggested, but is nevertheless optional and need not be placed on the document. (7-1-93)

**08h.** Suggested Language. The sentence "KEEP THIS CERTIFICATE IN YOUR AUTOMOBILE AT ALL TIMES" is suggested, but nevertheless is optional and need not be placed on the document. (7-1-93)

**02. Dealer and Manufacturer Vehicles. (7-1-06)T**

**a.** Name of Insurer. The document shall contain the name of the insurer or surety company authorized to do business in this state. (7-1-06)T

**b.** Name and Address of Dealer or Manufacturer. The document shall set forth the name and address of the dealership and identify the owner(s) (name of dealer, partners, corporation or LLC members) of the motor vehicle that is insured. (7-1-06)T

**c.** Effective Date. The document shall set forth the effective date the liability insurance coverage commences. (7-1-06)T

**d.** Title of Document. The document may, but is not required to be entitled "Certificate of Liability Insurance" or "Liability Insurance Identification Card". The words "State of Idaho" may be added to the title at the insurer's option, but the words "State of Idaho" are not required. (7-1-06)T

**e.** Date Coverage Ceases. The document may set forth the date the liability insurance coverage ceases, or in lieu thereof and at the insurer's option, the document may state "not valid beyond \_\_\_\_\_", provided that the phrase is completed to indicate termination of coverage at the end of a fixed period, or "not valid for more than one year," or "continuous until cancelled". (7-1-06)T

**f.** Policy Number. The number of the insurance policy or the document is suggested, but is nevertheless optional and need not be placed on the document. (7-1-06)T

**013. EXAMPLE OF A NONEXCLUSIVE FORMAT FOR A DOCUMENT WHICH MEETS THE REQUIREMENTS OF A CERTIFICATE OF LIABILITY INSURANCE IN A FORM PRESCRIBED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE.**

**01.** Exhibit A. ~~Appendix~~ Exhibit "A" to this rule is a format for a document which meets the requirements of a certificate of liability insurance as required by Section 49-1231, Idaho Code, in a form prescribed by the Director of the Department of Insurance; provided, however, that the following form is not exclusive, and other formats for documents which meet the minimum specifications provided in Section ~~004~~ 012 of this rule are also deemed to qualify as a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance. (7-1-93)(7-1-06)T

**02.** Exhibit B. Exhibit "B" to this rule is a format for a document which meets the requirements of a certificate of liability insurance for dealers and vehicle manufacturers as required by Section 49-1608A, Idaho Code, in a form prescribed by the Director of the Department of Insurance; provided, however, that the following form is not exclusive, and other formats for documents which meet the minimum specifications provided in Section 012 of this rule are also deemed to qualify as a certificate of liability insurance in a form prescribed by the Director of the Department of Insurance. (7-1-06)T

**014. EXAMPLE OF CERTIFICATE OF LIABILITY INSURANCE TO BE ISSUED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE.**

The Director of the Department of Insurance will issue a certificate of liability insurance to the owner(s) of a motor vehicle who posts an indemnity bond in a form approved by the Director of the Department of Insurance, pursuant to Section 49-1229(2), Idaho Code in an amount of not less than fifty thousand dollars (\$50,000) for any one (1) accident of which fifteen thousand dollars (\$15,000) shall be for property damage for each vehicle registered up to a maximum of one hundred twenty thousand dollars (\$120,000) for five (5) or more vehicles. Exhibit "~~BC~~" to this rule reflects the format for a certificate of liability insurance to be issued by the Director of the Department of Insurance when an indemnity bond is posted with the Department pursuant to Section 49-1229(2), Idaho Code, in lieu of purchasing a policy of insurance. ~~(7-1-93)~~(7-1-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**EXHIBIT "B"**  
**DEPARTMENTAL RULE NO. 34**  
**CERTIFICATE OF LIABILITY INSURANCE**  
**DEALER AND VEHICLE MANUFACTURER**

**TO BE COMPLETED BY INSURANCE COMPANY LICENSED TO DO**  
**BUSINESS IN THE STATE OF IDAHO**

<u>EFFECTIVE DATE</u>	<u>EXPIRATION DATE</u>	<u>INSURANCE COMPANY NAME (NOT AGENT)</u>	
<u>INSURANCE COMPANY</u> <u>ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>

THIS POLICY IS ISSUED TO (NAME OF DEALER, PARTNERS, CORPORATION OR LLC NAME.)

BUSINESS NAME OF DEALER/MANUFACTURER: \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

DEALER NUMBER \_\_\_\_\_

CERTIFY THAT THE FOLLOWING IS TRUE AND CORRECT

The above described policy has been issued and provides limits of coverage required under Section 49-1608A, Idaho Code: covers all vehicles manufactured, owned, operated, used or maintained by, or under the control of the named insured; covers all persons who, with the consent of the named insured, use or operate vehicles manufactured, owned or maintained by, or under the control of, the named insured.

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE                      TELEPHONE NO.                      DATE

SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE                      INSURER'S STAMP OR SEAL

**EXHIBIT "BC"**  
**DEPARTMENTAL RULE NO. 34**  
**CERTIFICATE OF LIABILITY INSURANCE**

(Name and Address of Owner(s) of Registered Motor Vehicles):

(Name) (Address)

(Name) (Address)

(Name) (Address)

The above-named owner(s) of the following described motor vehicle(s) with identification number(s):

\_\_\_\_\_  
\_\_\_\_\_

in lieu of obtaining a policy of liability insurance has posted bond pursuant to Section 49-1229(2), Idaho Code, in a form approved by the Director of the Department of Insurance:

(Surety) \_\_\_\_\_

Bond No. \_\_\_\_\_

Bond Amount \_\_\_\_\_

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20.

(SEAL)

Director,

Department of Insurance

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

**DOCKET NO. 21-0101-0601**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rulemaking is necessary to implement 2006 Idaho Session Laws, Chapter 50, which authorizes the admission of spouses to the Idaho State Veterans Homes.

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

The rulemaking is necessary to comply with deadlines in amendments to governing law.

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

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

This rulemaking will have no fiscal impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes in the rules are required to comply with amended governing law effective July 1, 2006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

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 July 26, 2006.

DATED this 23rd day of May, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd., Boise, Idaho 83702  
Phone: (208) 334-3513; Fax: (208) 334-2627

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0601**

**010. DEFINITIONS.**

For the purposes of the rules contained in this Chapter, the following terms are used as defined: (3-15-02)

**01. Applicant.** A person who has expressed interest in applying for residency in an Idaho State Veterans Home. (3-30-01)

**02. Bona Fide Resident.** A person who maintains a principal or primary home or place of abode in the state of Idaho coupled with the present intent to remain at that home or abode and return to it after any period of absence pursuant to Section 66-901, Idaho Code. (3-30-01)

**03. Commission.** The Idaho Veterans Affairs Commission. (3-30-01)

**04. County Service Officer.** A person appointed by the county to provide assistance to veterans in accordance with Section 65-601, Idaho Code. (3-30-01)

**05. Department.** The Idaho Department of Self Governing Agencies. (3-30-01)

**06. Division.** Division of Veterans Services in the Idaho Department of Self Governing Agencies. (3-30-01)

**07. Division Administrator.** The Administrator of the Division of Veterans Services in the Department of Self Governing Agencies, or his designee. The chief officer of the Division of Veterans Services. (3-30-01)

**08. Home Administrator.** Administrator of an Idaho State Veterans Home. The chief officer of each respective Veterans Home. (3-30-01)

**09. Home.** An Idaho State Veterans Home. (3-30-01)

**10. Idaho State Veterans Home.** Pursuant to Section 66-901, Idaho Code, a Home for eligible veterans. (3-30-01)

**11. Legal Dependents.** The mother, father, spouse, or minor children of an applicant not or a resident who, by reason of insufficient financial resources, or non-minor children who because of disease, handicap or disability, must have financial support from the applicant not or resident in order to maintain themselves. ~~(3-30-01)~~(7-1-06)T

**12. Liquid Assets.** Those assets which can be liquidated for cash within a reasonable period of time including, but not limited to, money market certificates, certificates of deposit, stocks and bonds, and some tax shelter investments. (3-30-01)

**13. Maintenance Charge.** A charge made for care and residence at an Idaho State Veterans Home, based upon the current established rate. (3-30-01)

**14. Net Income.** That income used to compute charges after allowable deductions have been made. (3-30-01)

**15. Resident.** A veteran person who is a resident of an Idaho State Veterans Home. ~~(3-30-01)~~(7-1-06)T

**16. Spouse.** The husband or wife, under a marriage recognized by Title 32, Idaho Code, of a veteran or the widow or widower of a veteran under a marriage recognized by Title 32, Idaho Code. (7-1-06)T

~~167.~~ **VA.** United States Department of Veterans Affairs. (3-30-01)

~~178.~~ **Veteran.** Shall have the meaning established in Section 65-203, Idaho Code. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. ELIGIBILITY REQUIREMENTS.**

~~An~~ Applicants ~~and residents~~ must be a veteran of the armed forces and must satisfy the following requirements; ~~(3-30-01)(7-1-06)T~~  
pursuant to Sections 66901 and 66907, Idaho Code:

**01. Veterans or Eligible Spouse.** (7-1-06)T

**a. Nursing Care.** Applicants for and residents of nursing care must be a veteran or the spouse of a veteran who is eligible for admission to a Home. The death of a veteran shall not disqualify a resident spouse if the veteran was eligible for admission to a Home at the time of death. (7-1-06)T

**b. Residential Care and Domiciliary Care.** Applicants for and residents of residential care and domiciliary care must be a veteran. A Home will not grant spouses admission for residential care or domiciliary care. (7-1-06)T

~~02.~~ **Idaho Residency.** The applicant must be a bona fide resident of the state of Idaho at the time of admission to a Home. (3-30-01)

~~03.~~ **Incompetent Applicants.** Applicants and residents who are ~~considered~~ incompetent must provide copies of a legally sufficient guardianship or power of attorney. ~~(3-30-01)(7-1-06)T~~

~~034.~~ **Necessity of Required Services.** Applicants and residents must meet the requirements for the level of care for which they apply or are receiving. At the request of the Home, residents must provide recertification of their need for services from a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. ~~(3-30-01)(7-1-06)T~~

**a. Nursing Care.** To be eligible to receive nursing care in a state veterans home, applicants must be referred by a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-01)

**b. Residential Care.** Each applicant must submit to a physical examination performed by a licensed physician and meet the physical limitation requirements for residential care. ~~The~~ Applicants and residents must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each residential care resident must ambulate independently or with the aid of a wheelchair, walker, or similar device and be capable of performing at the time of admission, and for the duration of his residency, all of the following with minimal assistance: ~~(3-20-04)(7-1-06)T~~

- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)

- x. Making rational decisions as to his desire to remain or leave the Home. (3-30-01)
- c.** Domiciliary Care. Each applicant must submit to a physical examination performed by a licensed physician and meet the physical limitation requirements for domiciliary care. ~~The Applicants and residents~~ must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each domiciliary care resident must be able to ambulate independently and must be capable of performing at the time of admission, and for the duration of his residency, all of the following without assistance:  
(~~3-20-04~~)(7-1-06)T
- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational and competent decisions as to his desire to remain or leave the Home. (3-30-01)
- 045. Placement Restriction.** A Home shall not accept applicants or continue to extend care to residents for whom the facility does not have the capability or services to provide an appropriate level of care. (3-30-01)
- 056. Financial Statement.** Each applicant must file a signed, dated statement with the Home Administrator containing a report of income from all sources and a report of all liquid assets which will be used to determine the amount of the maintenance charge which is required in accordance with Section 66-907, Idaho Code, and IDAPA 21.01.01, "Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure". (3-30-01)
- 067. Social Security Benefits.** If eligible for Social Security benefits, the applicants ~~and residents~~ and their spouses must apply for those benefits unless waived by the Home Administrator. (~~3-30-01~~)(7-1-06)T
- 078. Medicare Coverage.** If eligible for Medicare ~~parts "A" and "B"~~, the applicants ~~and residents~~ must elect to participate, unless participation is waived by the Home Administrator. (~~3-30-01~~)(7-1-06)T
- 089. Income Limitation.** (3-30-01)
- a.** Nursing Care. None. (3-30-01)
- b.** Residential and Domiciliary Care. An applicant whose total monthly net income, at the time of his application for residency, exceeds the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12) cannot be admitted unless granted a waiver by the Home Administrator. This waiver must include a statement from a VA Medical Center physician indicating the veteran is in "need of continuing medical care". (3-30-01)
- 0910. VA Pension -- Nursing Care.** Unless waived by the Home Administrator, a wartime veteran, as



defined in 5 U.S.C. Section 2108, who is a nursing care applicant ~~or~~ resident must be eligible for, apply for, ~~and~~ or be in receipt of a VA disability pension in accordance with Public Law 95588. Such waivers may be considered only when the applicant ~~or~~ resident has signed a statement ~~indicating~~ that he is ~~unable~~ to defray the necessary expenses of the medical care for which he is applying or receiving and arrangements are made to secure medical services not provided by the VA. ~~(5-3-03)(7-1-06)T~~

**101. Agreements for Behavior and Care Needs.** The Idaho State Veterans Homes may require that applicants or residents enter into agreements concerning the applicant or resident's behavior and/or care needs while residing in the Home. The resident's failure to perform these agreements is a basis for discharge from the Home. (3-15-02)

**12. Limit on Admission of Spouses.** Unless waived in writing by the Division Administrator, a Home shall not accept spouses for admission if the Home's residency is at ninety-five percent (95%) or more of capacity. Homes shall not admit a spouse if the number of spouses residing in the home will exceed twenty-five percent (25%) of the residents of the Home following admission of the applicant. ~~(7-1-06)T~~

**101. -- 149. (RESERVED).**

**150. APPLICATION PROCEDURE.**

**01. Availability of Application Forms.** Forms to apply for residence in a Home are available: (3-30-01)

**a.** From any Idaho State Veterans Home; (3-30-01)

**b.** From any county service officer; or (3-30-01)

**c.** From any active post or barracks service officer of veterans organizations. (3-30-01)

**02. Submission of Application.** An application may be submitted to the administrative offices of an Idaho State Veterans Home. (3-30-01)

**03. Application Processing.** Completed applications will be processed no later than three (3) working days from receipt. (3-30-01)

**04. Waiting List.** An applicant who is approved for admission for whom a vacancy does not exist will be placed on a waiting list and accepted on a first come, first served basis dependent on the Home's ability to provide a level of care consistent with the needs of the applicant. The Home Administrator may award "priority status" to prospective Home residents resulting in their names being placed near the top of the Home waiting list, provided they have completed all preadmission requirements and meet one (1) or more of the following criteria: ~~(3-30-01)(7-1-06)T~~

**a.** Veterans who served during any war or conflict officially engaged in by the government of the United States. (3-30-01)

**b.** Previous residents of Idaho State Veterans Homes who have been discharged for therapeutic treatment or to live in a lesser level of care or in an independent setting and whose discharge plan indicates a readmission priority. (3-30-01)

**c.** Current Home residents who demonstrate a need for a level of care provided by an Idaho State Veterans Home and who would benefit from maintaining a stable environment. (3-30-01)

**d.** Receive special consideration as per the request of the medical director because of his desire to provide a very specific continuum of care. (3-30-01)

**05. Provision If Application Rejected.** An applicant whose application has been rejected and who feels he meets the eligibility requirements can request a hearing in accordance with the procedures specified in Section 982, et seq. (3-30-01)

## **IDAPA 21 - DIVISION OF VETERANS SERVICES**

### **21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

**DOCKET NO. 21-0101-0602**

#### **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 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

This rulemaking incorporates all rules governing the Idaho State Veterans Homes into a single chapter and allows for written interpretations of the rules.

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

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

This rulemaking will have no fiscal impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the proposed rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

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 July 26, 2006.

DATED this 23rd day of May, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise, Idaho 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0602**

**002. WRITTEN INTERPRETATIONS.**

*There are no written interpretations for this Chapter.* In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of these rules, or to compliance with these rules. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**915. MAINTENANCE CHARGES.**

Upon becoming a resident of an Idaho State Veterans Home, each resident is liable for the payment of a maintenance charge as well as expenses for supplies, medication, equipment, and services (other than basic services for the assigned level of care) that are not provided or paid for by VA, Medicaid, Medicare, or other insurance unless otherwise determined by the Home Administrator. Residents living in a Home for any part of a month must pay for each day, based on the actual number of days in the month, at that fraction of their total charge. Refusal or failure to pay the established maintenance charge or related expenses is cause for discharge from the Home. (3-30-01)

**01. Charges.** Charges will be computed, based on the following factors: (3-30-01)

**a.** If the resident has an income, those items used to compute the charge will include: (3-30-01)

i. Social Security benefits; (3-30-01)

ii. Retirement benefits; (3-30-01)

iii. Income from annuities; (3-30-01)

iv. Insurance benefits; (3-30-01)

v. Rental from property; (3-30-01)

vi. Farm income; (3-30-01)

vii. VA pensions or compensations; (3-30-01)

viii. Tax refunds; and (3-30-01)

ix. Income from any and all other sources. (3-30-01)

**b.** If the resident is single, incompetent, and has liquid assets in excess of one thousand five hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than one thousand five hundred dollars (\$1,500). (3-15-02)

**c.** If the resident is single, competent, and has liquid assets in excess of fifteen hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than fifteen hundred dollars (\$1,500). (3-30-01)

**d.** Joint income will be used in computing charges for married persons. If the resident has dependents who rely upon him for financial support, the amount of liquid assets will not be drawn upon after they have declined to a level of five thousand dollars (\$5,000). (3-30-01)

**02. Exclusions from Income or Payment.** The only exclusions in computing monthly charges will be: (3-30-01)

**a.** Those funds which a resident receives from the sale of hobby/craft items constructed and sold as part of a Home occupational therapy program; or (3-30-01)

**b.** Those unusual expenses specified below, which are incurred after the resident's admission to a Home and are approved by the Home Administrator, up to a maximum monthly allowance which is established pursuant to Section 980: (3-30-01)

i. Prosthetic, orthopedic, and paraplegic appliances; (3-30-01)

ii. Sensory aids; (3-30-01)

iii. Wheelchairs; (3-30-01)

iv. Therapy services; (3-30-01)

v. Hospital, medical, surgical expenses and bills for prescription drugs incurred and paid by the individual in the current month and documented by a paid receipt. (3-30-01)

**c.** Reasonable medical insurance premiums, as paid, with documentation of payment. Other insurance premiums are excluded from consideration; or (3-30-01)

**d.** An allowance established pursuant to Section 980 for retention by a resident for personal needs; (3-30-01)

**e.** That amount necessary for a resident of a Home to contribute to the support of a legal dependent where proof of actual payment is documented. A monthly allowance will be established for a spouse or additional dependents pursuant to Section 980. (These allowances take into consideration housing and utility costs.) (3-30-01)

**03. Income Eligibility Limits.** (3-30-01)

**a.** Nursing Care. None. (3-30-01)

**b.** Residential and Domiciliary Care. A resident's total monthly net income, from all sources, may not exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) unless waived by the Home Administrator in accordance with Subsection 100.08. (3-30-01)

**c.** While in residence at a Home, a domiciliary resident may seek outside employment and receive income so that his total monthly net income from all sources will exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) for a one (1) month transitional period. At the end of this one (1) month transitional period, the resident will be discharged. (3-30-01)

**04. Continued Eligibility.** (3-30-01)

**a.** Nursing Care. A resident may continue to be eligible for residency in a Home, regardless of income changes, if the conditions defined in Subsection 100.09 continue to be met. (3-30-01)

**b.** Residential and Domiciliary Care. If a resident's net monthly income exceeds the income eligibility limit after admission to the Home, the resident may appeal to the Home Administrator for a waiver of the income eligibility limit which may be granted for good cause. Consideration for good cause must include "need for continuing medical care" as documented by a VA Medical Center physician. (3-30-01)

**05. Charges.** (3-30-01)

**a.** Nursing Care. After allowable deductions, a resident will be assessed a fee equal to the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge is based on historical costs that are adjusted to include anticipated costs and an inflation factor. Changes to the maximum charge are made pursuant to Section 980. (3-30-01)

**b.** Residential Care. After allowable deductions, a resident will be assessed a fee of seventy-five percent (75%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be seventy-five percent (75%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

**c.** Domiciliary Care. After allowable deductions, a resident will be assessed a fee of sixty percent (60%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be sixty percent (60%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

**06. Payment Schedule.** Maintenance charges are due the first of each month and must be paid in full by the resident or guardian on or before the tenth (10) day of the month. Payments may be made either by cash or by check, and a receipt will be issued. (3-15-02)

**07. Security Deposit.** A deposit of one hundred dollars (\$100) will be required by domiciliary and residential care residents upon admission to a Home, unless waived by the Home Administrator. This deposit will be held until the resident leaves. Any debts or liabilities on behalf of the resident will be offset against this deposit at that time. After payment of any debts or liabilities, the remaining balance of the deposit will be returned to the outgoing resident. (5-3-03)

**08. Leave of Absence or Hospitalization.** ~~No reduction in~~ Residents receiving Medicaid or Medicare will be charged for leave of absence or hospitalization in accordance with Medicaid and Medicare requirements. The Home will not reduce charges ~~will be made~~ for leave of absence or hospitalization of residents not receiving Medicaid or Medicare and each day will count as if the resident were present at a Home. Unless waived by the Home Administrator, the Home will charge residents receiving Medicaid the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of twenty-four (24) hours. Also, in the case ~~Unless waived by the Home Administrator, the Home will charge residents not receiving Medicaid the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of ninety-six (96) hours or a hospital stay in excess of ten (10) days, the resident will be charged the current VA per diem rate for each absent day unless waived by the Home Administrator. Residents receiving Medicaid may be granted therapeutic leaves upon a doctor's orders for up to seventy-two (72) hours, not to exceed fifteen (15) days in a calendar year.~~ (3-15-02)( )

**09. Medicaid Eligibility.** All nursing care residents, including re-admitted residents, entering a Home on or after July 1, 2000 must either apply for or become eligible for Medicaid benefits, or must pay the maximum monthly charge as it may be established from time to time. Eligibility for Medicaid benefits is determined entirely by the Idaho Department of Health and Welfare and its agents. Residents who cannot, or choose not to, qualify for Medicaid shall be required to pay for services in full from other than Medicaid funds. Care and services for those residents who are Medicaid eligible will be billed to and paid by Medicaid. Residents eligible for Medicaid will be assessed a fee equal to the resident's liability as determined by Medicaid. ( )

## IDAPA 21 - DIVISION OF VETERANS SERVICES

### 21.01.03 - RULES GOVERNING MEDICAID QUALIFIED UNITS IN IDAHO STATE VETERANS HOMES

#### DOCKET NO. 21-0103-0601 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

This rulemaking repeals IDAPA 21, Title 01, Chapter 03, "Rules Governing Medicaid Qualified Units in Idaho State Veterans Homes". This rulemaking helps simplify the Division's rules governing the State Veterans Homes by placing all applicable rules into a single chapter.

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

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

This rulemaking will have no fiscal impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the non-technical nature of the repeal.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

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 July 26, 2006.

DATED this 23rd day of May, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise, Idaho 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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**IDAPA 21.01.03 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 21 - DIVISION OF VETERANS SERVICES**  
**21.01.04 - RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY**

**DOCKET NO. 21-0104-0601**

**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 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

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

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

This rulemaking clarifies that use of cemetery property for recreation is limited to uses that are consistent with honoring deceased veterans and their families.

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

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

This rulemaking will have no fiscal impact on the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because affected interests are unlikely to reach consensus and there are no alternatives available to provide adequate respect to the deceased and their families.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joe Bleymaier, Administrator, (208) 334-3513.

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 July 26, 2006.

DATED this 23rd day of May, 2006.

Joe Bleymaier, Administrator  
Division of Veterans Services  
320 Collins Rd.  
Boise, Idaho 83702  
Phone: (208) 334-3513  
Fax: (208) 334-2627

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0104-0601**

**002. WRITTEN INTERPRETATIONS.**

*There are no written interpretations that pertain to the interpretation of the rules of this chapter. In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office.* (5-3-03)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. Administrator.** The administrator of the Idaho Division of Veterans Services or his designee. (5-3-03)
- 02. Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. (5-3-03)
- 03. Armed Forces Member.** A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 C.F.R. Section 1.620 and 38 U.S.C. Section 2402. (5-3-03)
- 04. Cemetery.** The Idaho State Veterans Cemetery authorized pursuant to Section 65-108, Idaho Code. (5-3-03)
- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (5-3-03)
- 06. Cremains.** Cremated human remains. (5-3-03)
- 07. Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. ( )
- ~~078.~~ **Disinterment.** The removal of human remains from their place of interment. (5-3-03)
- ~~089.~~ **Division.** The Idaho Division of Veterans Services. (5-3-03)
- ~~0910.~~ **Interment.** The disposition of human remains by burial or the placement of cremains in a grave plot or in any location designated by the administrator for use as a permanent location of cremains. (5-3-03)
- ~~101.~~ **Qualified Person.** A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 C.F.R. Section 1.620 and 38 U.S.C. Section 2402. (5-3-03)
- ~~112.~~ **Reinterment.** The interment of previously interred human remains. (5-3-03)
- ~~123.~~ **Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (5-3-03)
- ~~134.~~ **USDVA.** The United States Department of Veterans Affairs. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. PUBLIC BEHAVIOR IN THE CEMETERY.**



- 01. Littering.** Littering is prohibited in the cemetery. (5-3-03)
- 02. Preservation of Cemetery Property.** The destruction, injury, defacement, removal or disturbance in or of any building, sign, equipment, monument, statute, marker or any other structures, or of any tree, flower, or other vegetation, or of any artifact or any other property in the cemetery is prohibited unless authorized by the administrator. (5-3-03)
- 03. Recreation and Entertainment.** The cemetery shall not be used for any form of sports, entertainment or recreation, other than use limited solely to designated interpretive trails. The administrator may limit access to designated interpretive trails to one (1) or more routes designated by a marker or sign. The cemetery shall not be used as a picnic ground. (~~5-3-03~~)(\_\_\_\_)
- 04. Public Ceremonies and Gatherings.** Except for committal services, any individual or group organizing a ceremony or gathering in the cemetery must first obtain the prior written approval of the administrator. The cemetery shall not be used for partisan activities. Parties receiving authority to hold a ceremony or public gathering shall comply with all restrictions placed upon the ceremony or public gathering by the administrator. (~~5-3-03~~)(\_\_\_\_)
- 05. Animals.** Animals shall be allowed in the cemetery only on designated interpretive trails and marked designated interpretive trail access areas. Dogs shall be on a leash while ~~in the cemetery~~ on designated interpretive trails and marked designated interpretive trail access areas. Animal owners shall observe posted requirements for gaining access to designated interpretive trails, the use and behavior of animals, and the disposal of animal waste. (~~5-3-03~~)(\_\_\_\_)
- 06. Motor Vehicles.** Except as authorized by the administrator: (5-3-03)
- a.** Motor vehicles shall remain on authorized, established roadways or parking areas; (5-3-03)
- b.** Motor vehicles are prohibited on interpretive trails; (5-3-03)
- c.** Motor vehicle drivers shall observe posted traffic, directional, parking, and speed signs and all applicable state and local laws governing traffic on public roads; and (5-3-03)
- d.** Overnight parking is prohibited in the cemetery. (5-3-03)
- 07. Alcohol.** No alcoholic beverages shall be consumed in the cemetery. (5-3-03)
- 08. Photographs.** No commercial video or commercial still photographs shall be taken in the cemetery without the prior written approval of the administrator. (5-3-03)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-0602

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 317 needs to be changed to be consistent with the homeowner's exemption changes in House Bill 421 when applying the homeowner's exemption to properties subject to the occupancy tax and to make technical corrections.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

A temporary/proposed rule change is needed for Rule 317 due to the enactment of the homeowner's exemption changes in House Bill 421, effective January 1, 2006.

**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: No fiscal impact to state government.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0602

**317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).**

Section 63-317, Idaho Code. (5-3-03)

**01. Property Subject to Occupancy Tax.** Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

**02. Value Prorated Monthly.** The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

**03. Notice of Appraisal.** When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

**04. Examples for Calculation of Value Less ~~Homeowner's~~ Homestead Exemption (HO).** The following examples show the ~~correct~~ procedure for the calculation of the taxable value subject to the occupancy tax less the ~~homeowner's~~ homestead exemption (HO): (4-6-05)(1-1-06)T

**a.** Example for prorated market value ~~of one hundred thousand dollars (\$100,000) or more exceeding maximum amount of the homestead exemption, as prescribed in statute for tax year 2006. For years after 2006, the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.~~

Full Market Value of Home: <del>\$42300,000</del>
Prorated Market Value for 11 Month Occupancy: <del>\$42300,000 x 11/12 = \$410275,000</del>
Taxable Value: <del>\$410275,000 - \$5075,000 (HO) = \$6200,000</del>

(4-6-05)(1-1-06)T

**b.** Example for prorated market value ~~of less than one hundred thousand dollars (\$100,000) resulting in less than the maximum amount of the homestead exemption.~~

Full Market Value of Home: \$120,000
Prorated Market Value for 3 Month Occupancy: $\$120,000 \times 3/12 = \$30,000$
Taxable Value: $\$30,000 - \$15,000 (HO) = \$15,000$

(4-6-05)(1-1-06)T

**05. Market Value.** The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-23-94)(1-1-06)T

**06. Allocation to Urban Renewal Agencies.** ~~Beginning with any distribution of occupancy tax resulting from occupancy taxes levied after approval of levies for the year 2000, the~~ Occupancy tax revenue shall be allocated to any applicable school district and urban renewal agency. The revenue distribution to any applicable school district must be satisfied prior to the distribution to the urban renewal agency. Only the occupancy tax revenue from properties within the revenue allocation area shall be distributed in this manner. School districts shall be allocated an amount of occupancy tax equal to four tenths of one percent (0.4%) of the prorated value of property

subject to occupancy tax, provided that such property is located within the school district and within the revenue allocation area of an urban renewal agency. ~~(4-5-00)~~(1-1-06)T

**07. Property Qualifying for the Homestead Exemption on Occupancy Value.** When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (1-1-06)T

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0603

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 700 needs to be changed to be consistent with the property tax reduction changes in House Bill 422, effective January 1, 2006, and the homeowner's exemption changes in House Bill 421, effective January 1, 2006 and to make technical corrections.

**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:

A temporary/proposed rule change is needed for Rule 700 due to the enactment of the property tax reduction (circuit breaker) changes in House Bill 422, effective January 1, 2006, and the homeowner's exemption changes in House Bill 421, effective January 1, 2006.

**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: This change to Rule 700 only implements the laws (House Bill 422 and House Bill 421) and has no fiscal impact to state government beyond that caused by these laws.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7500

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0603

**700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).**

Section 63-701, Idaho Code. (3-15-02)

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden of Proof.** See Rule 600 of these rules. (3-15-02)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. ~~(3-15-02)~~(1-1-06)T

**a.** An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (1-1-06)T

**i.** The annuity must not be part of any pension plan available to an employee; (1-1-06)T

**ii.** No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (1-1-06)T

**iii.** The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (1-1-06)T

**iv.** Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (1-1-06)T

**b.** Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (1-1-06)T

**c.** The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (1-1-06)T

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction of Value.** Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. (3-15-02)

**a.** There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)

**b.** In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by

multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. For example:

Land Market Value	\$ 50,000
Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value & Improvement Market Value (Land Market Value & Improvement Market Value x Percentage of Ownership)	\$ <del>25,000</del> <u>100,000</u>
<del>Claimant's Share of Improvement Market Value</del> ( <del>Improvement Market Value x Percentage of Ownership</del> )	<del>\$ 75,000</del>
Claimant's Homeowner's Exemption Claimant's Share of Improvement and Land Market Value x 50% (not to exceed \$ <del>50,000</del> <u>75,000</u> for 2006)	<\$ <del>37,500</del> <u>50,000</u> >
Claimant's Eligible Net Taxable Value equals <del>Land plus Improvement</del> Claimant's Share of Market Value less Homeowner's Exemption ( <del>\$25,000 + \$75,000 - \$37,500 = \$62,500</del> ) (\$100,000 - \$50,000 = \$50,000)	\$ <del>62,500</del> <u>50,000</u>

In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of \$~~62,500~~ 50,000. ~~(3-15-02)~~(1-1-06)T

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-15-02)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0604

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 802 needs to be changed to provide direction on when new construction roll values can be increased because of the "change in land use classification" resulting from the repeal of the partial exemption under Section 63-602FF, Idaho Code, by House Bill 676.

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

A temporary/proposed rule change is needed for Rule 802 due to the repeal of the exemption under Section 63-602FF, Idaho Code, by House Bill 676, effective January 1, 2006.

**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: No fiscal impact to state government; however, taxing districts could be able to increase property tax funded budgets because of increases on the new construction rolls.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500



THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0604

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, and 63-301A, ~~and 63-602FF~~, Idaho Code. ~~(3-20-04)~~(1-1-06)T

**01. Definitions.** (4-5-00)

**a.** "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current property roll. (1-1-06)T

**i.** This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (1-1-06)T

**ii.** The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. ~~(4-11-06)~~(1-1-06)T

**iii.** When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (1-1-06)T

**b.** "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any category not described as residential, manufactured homes, or improvements to manufactured homes pursuant to Rule 130 of these rules. (5-3-03)

**02. New Construction Roll Listing.** "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, including qualifying new construction within any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (7-1-99)

**03. Manufactured Housing.** "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

**04. Partial New Construction Values.** The net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2004. The improvement was occupied February 2, 2004. Assume the ten thousand dollars (\$10,000) value was on the 2004 new construction roll. Assume that in 2005 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2005 new construction roll is calculated as follows:

2005 Value	\$90,000
2004 Value Already Reported on New Construction Roll	<\$10,000>

2005 New Construction Roll Value (this improvement)	\$ 80,000
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(4-11-06)

**05. Change in Exemption Status.**

(5-3-03)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Idaho Code. (7-1-99)

**b.** For any rural subdivision parcels of land changing use as a result of removal of the exemption under Section 63-602FF, Idaho Code, the increase in value resulting from the removal of this exemption shall not be listed on the new construction roll when the increase in value was already listed on any previous year's new construction roll. (5-3-03)

**06. Value of Annexation to Exclude New Construction.** When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction. The value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area. (4-11-06)

**07. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0605

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, 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 July 19, 2006.

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 443 establishes the date by which the taxpayer will make payment for recapture of property tax exemption in lieu of investment tax credit. Rule 989 must be corrected to be consistent with law and the table for recapture percentage must be corrected to be consistent with income tax rules.

**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:

A temporary/proposed rule change is needed for Rule 989 due to the enactment of the date for payment of the recapture tax in House Bill 443, effective January 1, 2006.

**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: No fiscal impact to state government.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0605

**989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).**

Section 63-3029B, Idaho Code.

(4-6-05)

**01. In General.** If a taxpayer has elected the property tax exemption (also know as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. (4-6-05)

**02. Notification by Taxpayer That Property Ceases to Qualify.** If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the ~~date by which the personal property declaration or operator's statement is due in the next calendar year~~ due date of that taxpayer's income tax return for the taxable year in which such event occurs. If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following:

~~(4-6-05)~~(1-1-06)T

- a. A description of the item that ceases to qualify, (4-6-05)
- b. The county where the item was located, (4-6-05)
- c. The date the item was placed in service, (4-6-05)
- d. The date the item was no longer qualified for the QIE, (4-6-05)
- e. The amount of value exempted from property tax each year, and (4-6-05)
- f. The amount of the property tax benefit recapture. (4-6-05)

**03. Notification in Case of Failure by Taxpayer to File Form 49ER.** If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

**04. Protest of Recapture.** If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

**05. Property Tax Benefit Subject to Recapture.** For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than <del>or equal to</del> one (1) year	100%
<del>More than</del> <u>Equal to</u> one (1) year but less than <del>or equal to</del> two (2) years	80%
<del>More than</del> <u>Equal to</u> two (2) years but less than <del>or equal to</del> three (3) years	60%
<del>More than</del> <u>Equal to</u> three (3) years but less than <del>or equal to</del> four (4) years	40%
<del>More than</del> <u>Equal to</u> four (4) years but less than <del>or equal to</del> five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. ~~(4-6-05)~~(1-1-06)T

**06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property.** For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

**a. Property Tax Budget Summation.** For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)

**b. Average Property Tax Levy.** The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)

**c. Notice to Each County Auditor.** The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

**07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property.** For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

**08. Noticing Remittance for the Recapture of the Property Tax Benefit.** When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

**a. Owner.** Name of the owner receiving the QIE; (4-6-05)

**b. Property Description.** A description of the property that received the QIE; (4-6-05)

**c. First Year Value of QIE.** The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)

- d.** Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)
- e.** Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)
- f.** Amount Remitted. The amount of money remitted for any item. (4-6-05)
- 09. No Allocation of Remittances to Urban Renewal Agencies.** Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)
- 10. Penalty and Interest.** Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)
- 11. Cross Reference.** For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.11 - GROUND WATER QUALITY RULE

#### DOCKET NO. 58-0111-0601

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Sections 39-105, 39-107, 39-120 and 39-126, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before July 19, 2006. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to make revisions that would allow the Department of Environmental Quality (DEQ) to use improvements in analytical technology implemented since the Ground Water Quality Rule was promulgated in 1997 to identify the subset of coliform bacteria more likely to be harmful to human health. The proposed revisions augment the ground water quality standards for bacteria by adding standards for fecal coliform and *Escherichia coli* (*E. coli*) bacteria.

The proposed standard for both fecal coliform and *E. coli* bacteria is less than one viable colony or less than one colony forming unit/100 ml as determined by any EPA approved method. This standard is based on comments received from the state health lab during negotiated rulemaking. The state health lab indicated that test results for bacteria may be reported three ways: as zero, presence or absence, or less than one. A standard of less than one would satisfy all three reporting options. In addition, DEQ proposes to remove the reference to Subsection 200.01.c. from Subsection 400.02.a.iii. The reference to Subsection 200.01.c. is no longer correct due to revisions made to Section 200 in 2003.

In the preliminary draft for negotiated rulemaking, DEQ proposed to remove the standard for total coliform bacteria to eliminate redundancy due to the proposed addition of standards for fecal coliform and *E. coli* bacteria. However, during the negotiated rulemaking process, DEQ received comments in favor of maintaining the current total coliform standard due to its widespread use, both historically and currently.

As proposed, the numerical ground water quality standard for bacteria will become a two-step process. The first step will be to screen the sample for bacteria using total coliform testing. If the primary ground water quality standard of 1 colony forming unit/100 ml for total coliform is exceeded, an additional analysis for fecal coliform and *E. coli* would be conducted to determine if the bacteria are likely to be harmful to human health. Laboratory tests currently in use can identify *E. coli* or fecal coliform when total coliform bacteria are present in the sample.

This phased implementation approach would eliminate the redundancy in the rule caused when standards for fecal coliform and *E. coli* are added, while maintaining the total coliform standard. It also allows DEQ to fulfill statutory requirements by requiring an action - testing for fecal coliform or *E. coli* - when a standard is exceeded. More importantly, the proposed rule change enables DEQ and other agencies to focus resources on those sites where bacterial impacts are the result of fecal contamination and are more likely to pose a threat to human health.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. Domestic well owners and the public at large may be interested in this rulemaking.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2007 legislative session if approved by the Legislature.

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

**IDAHO CODE SECTION 39-107D STATEMENT:** Section 39-107D, Idaho Code, provides that DEQ must meet

certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Ground Water Quality Rule. Therefore, the proposed changes to the rule are not broader in scope or more stringent than federal law or regulations. Section 39-107D, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government”. This rule may be used to regulate an activity not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code. Information relating to Section 39-107D(2) has also been provided. The requirements set forth in this proposed rule are based upon best available peer reviewed science and studies and analyses conducted by other states, the U.S. Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention (CDC), the U.S. Food and Drug Administration (FDA), and professional scientific and medical journals. The referenced studies and analyses will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding health effects.

***Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.***

The presence of E. coli or fecal coliform in water is universally accepted as evidence that the water has been contaminated with the fecal material of man or other animals. Fecal contamination is an indicator that a potential health risk exists for individuals exposed to or ingesting this water. The requirements set forth in this proposed rule are based upon best available peer reviewed science and studies and analyses conducted by other states, the U.S. Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention (CDC), the U.S. Food and Drug Administration (FDA), and professional scientific and medical journals. The referenced studies and analyses will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding health effects.

***Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.***

Data were not collected or analyzed by DEQ as part of this rulemaking process. DEQ relied on information readily available to the public from federal and state government publications and articles from medical and scientific professional journals.

***Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.***

Escherichia coli (E. coli) is a normal inhabitant of the intestines of all animals including humans. The primary reservoir of this bacterium has been found to be healthy cattle (Jackson et al., 1998). While there are many harmless E. coli strains, E. coli O157:H7 can cause food- and waterborne illness. E. coli O157:H7 causes approximately 73,000 infections and about 61 deaths per year in the U.S (CDC, 2005). It was first recognized in 1982, when it was associated with two foodborne outbreaks of bloody diarrhea and abdominal cramps (Gugnani, 1999).

Hemorrhagic colitis is the name of the acute disease caused by E. coli O157:H7 (FDA, 2005). E. coli O157:H7 infection often causes severe bloody diarrhea and abdominal cramps; sometimes the infection causes diarrhea or other symptoms. This bacterium produces potent toxins (verotoxins) related to Shigella toxins. The incubation period is 3-4 days, and the symptoms occur for 7-10 days (Moe, 1997; Rice, 1999). Usually little or no fever is present. However, in some persons, particularly children under 5 years of age and the elderly, the infection can cause a complication called hemolytic uremic syndrome (HUS), in which the red blood cells are destroyed and the kidneys fail. About 2%-7% of infections lead to this complication. In the United States, HUS is the principal cause of acute kidney failure in children, and most cases of HUS are caused by E. coli O157:H7. HUS is a life threatening condition usually treated in an intensive care unit. Blood transfusions and kidney dialysis are often required. With intensive care, the death rate for HUS is 3%-5% (CDC, 2005). In the elderly, HUS, plus two other symptoms, fever and neurologic symptoms constitutes thrombotic purpura (TTP). This illness can have a mortality rate in the elderly as high as 50% (FDA, 2005).

One route of human exposure to E. coli is through the consumption of contaminated drinking water. The bacteria are shed in animal and human fecal matter, and drinking water sources may become contaminated during rain or snowmelts that wash E. coli-contaminated wastes into surface and ground water. If the source water is not properly



treated, drinking water may remain contaminated with *E. coli* (USEPA, 2006a). Additionally, bacteria can contaminate ground water as a result of malfunctioning septic systems, leaking sewer lines, and above-ground pathways that extend below the surface, such as deep cracks in the ground.

Although *E. coli* O157:H7 is not usually a concern in treated drinking water, outbreaks involving consumption of drinking water contaminated with human sewage or cattle feces have been documented (Swerdlow et al., 1992; Bruce-Grey-Owen Sound Health Unit, 2000).

*E. coli* O157:H7 infections can be deadly. Recent water related outbreaks of *E. coli* O157:H7 in North America include a May 2000 tragedy in Walkerton, Ontario, where 7 people died and approximately 2,300 persons became ill from consuming *E. coli* O157:H7-contaminated ground water. Of the more than 2,300 individuals affected, 65 were hospitalized, 27 developed hemolytic uremic syndrome (HUS), a serious and potentially fatal kidney ailment (Hrudley et al, 2002). In 1999, at a fair near Albany, New York, approximately 804 cases of *E. coli* O157:H7 infections were linked to consumption of contaminated ground water. Sixty-five people were hospitalized and two people died (USEPA, 2006a). There were also drinking water *E. coli* O157:H7 outbreaks reported in Wyoming, Illinois, and Washington in 1997 and 1998; all were associated with contaminated ground water systems (Barwick et al, 2000).

***Section 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk.***

The U.S. EPA (USEPA, 2006b) reports that preliminary data from eight ground water microbial studies of public water system wells indicate pathogen occurrence rates from 6% to 12% and pathogen indicator occurrence rates of 12% to 38%. If these occurrence rates are extrapolated to Idaho, where approximately 400,000 people are not served by regulated public water systems, but rely on private domestic wells to withdraw ground water for drinking water people, then between 24,000 and 152,000 Idahoans are potentially at risk.

This estimate of risk does not include the approximately 1 million Idahoans served by regulated public water systems. About 95% of these public water systems use ground water as the source of their drinking water. If treatment used by the public water systems fails to work properly during a bacterial contamination event then incidents similar to those reported in the previous section could occur. The threat associated with this possibility is not quantified.

In 1995, a significant bacterial contamination event occurred in Island Park, Idaho resulting in 82 cases of shigellosis. The likely cause of the contamination is believed to be leakage from nearby septic tanks or sewer lines. The findings of the investigation indicated possible transmission from multiple wells in the same area, suggesting the spread of organisms through the groundwater (CDC, 1996).

***Section 39-107D(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.***

According to the Center for Risk Science and Public Health at The George Washington University School of Public Health and Health Services, “much of what is known about the risk factors in populations comes from outbreak data. In the United States, waterborne disease outbreaks are tracked using voluntary passive surveillance techniques by the Centers for Disease Control and Prevention (CDC) in collaboration with the Environmental Protection Agency. State and local health departments may report the epidemiologic data from an outbreak to CDC, but reporting varies by the type of outbreak, state, infectious agent, and time period. Such data often do not include the demographic or other characteristics essential for assessing inter-individual differences in susceptibility. Exposure analysis is also very limited, and water quality parameters are not always included in the analysis” (Balbus and Embrey, 2002).

“The likelihood that individual cases of illness will be detected, epidemiologically linked, and associated with water is slim. For an outbreak to be detected, a series of events must happen. First, people who are ill must consult a health care provider, and generally, at least two patients must consult the same provider for an association to be made. Next, the health care provider must recognize the possibility of an outbreak and perform appropriate laboratory testing or report the cases to a local or state health department. The availability and patterns of use of laboratory testing, the requirements for laboratories or physicians to report results to local or state health departments, and the activities of state and local health and environmental agencies all affect the likelihood that an outbreak will be recognized and

reported. Often, pathogens are not identified because the appropriate tests are not ordered. For example, most laboratories do not test for *Cryptosporidium parvum* on a routine ova and parasites examination, and *E. coli* O157:H7 will not be detected from a routine stool culture. The most frequently identified etiologic agents traced to both drinking water and recreational water outbreaks representing the three pathogen classifications, protozoa, viruses, and bacteria, are *Giardia* and *Cryptosporidium*, Norwalk-like viruses, and *E. coli* O157:H7” (Balbus and Embrey, 2002).

According to information from the U.S. Food and Drug Administration (FDA, 2005) the infective dose of *E. coli* is unknown, but from a compilation of outbreak data, the dose may be similar to that of *Shigella* spp (as few as 10 organisms). A study of outbreak data indicates less than 50 *E. coli* organisms can result in an infective dose (Tilden et al, 1996).

Studies have shown that the *E. coli* dose required to produce symptoms is lower than that for most other enteric pathogenic bacteria. The probability of becoming ill depends on the number of organisms ingested, the health status of the person, and the resistance of the person to the organism or toxin (AWWA Committee Report, 1999). Children and the elderly are most susceptible to HUS complications. In susceptible individuals such as infants, the elderly, and immunocompromised individuals, the effects may be severe, chronic (e.g., kidney damage), or even fatal.

***Section 39-107D(3)(e), Idaho Code. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.***

The referenced studies and analyses will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding health effects.

**REFERENCES:**

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USEPA (U.S. Environmental Protection Agency), (2006b). Office of Ground Water and Drinking Water, Ground Water Rule: Public Health Concerns. Available: <http://www.epa.gov/safewater/standard/phs.html>

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 5, 2006, Vol. 06-4, page 102.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Edward Hagan at [ed.hagan@deq.idaho.gov](mailto:ed.hagan@deq.idaho.gov), (208)373-0356.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 2, 2006.

Dated this 13th day of June, 2006.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0111-0601**

**200. GROUND WATER QUALITY STANDARDS.**

The following numerical and narrative standards apply to all ground water of the state and shall not be exceeded unless otherwise allowed in this rule. (3-20-97)

**01. Numerical Ground Water Quality Standards.** (3-20-97)

**a.** The Primary Constituent Standards are based on protection of human health and are identified in Table II.

<b>Table II - Primary Constituent Standards</b>		
<b>Chemical Abstract Service Number</b>	<b>Constituent</b>	<b>Standard (mg/l unless otherwise specified)</b>
7440-36-0	Antimony	0.006
7440-38-2	Arsenic	0.05
1332-21-4	Asbestos	7 million fibers/l longer than 10 um
7440-39-3	Barium	2
7440-41-7	Beryllium	0.004
7440-43-9	Cadmium	0.005
7440-47-3	Chromium	0.1
7440-50-8	Copper	1.3
57-12-5	Cyanide	0.2
16984-48-8	Fluoride	4
7439-92-1	Lead	0.015
7439-97-6	Mercury	0.002
*1	Nitrate (as N)	10
*1	Nitrite (as N)	1
*1	Nitrate and Nitrite (both as N)	10
7782-49-2	Selenium	0.05
7440-28-0	Thallium	0.002
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene (PAH)	0.0002
75-27-4	Bromodichloromethane (THM)	0.1
75-25-2	Bromoform (THM)	0.1
1563-66-2	Carbofuran	0.04
56-23-5	Carbon Tetrachloride	0.005

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
57-74-9	Chlordane	0.002
124-48-1	Chlorodibromomethane (THM)	0.1
67-66-3	Chloroform(THM)	0.002
94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl) adipate	0.4
96-12-8	Dibromochloropropane	0.0002
541-73-1	Dichlorobenzene m-	0.6
95-50-1	Dichlorobenzene o-	0.6
106-46-7	1,4(para)-Dichlorobenzene or Dichlorobenzene p-	0.075
107-06-2	1,2-Dichloroethane	0.005
75-35-4	1,1-Dichloroethylene	0.007
156-59-2	cis-1, 2-Dichloroethylene	0.07
156-60-5	trans-1, 2-Dichloroethylene	0.1
75-09-2	Dichloromethane	0.005
78-87-5	1,2-Dichloropropane	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
100-41-4	Ethylbenzene	0.7
106-93-4	Ethylene dibromide	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
23135-22-0	Oxamyl (Vydate)	0.2
87-86-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	3.0 x 10 <sup>-8</sup>
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1
*1	Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)]	0.1
8001-35-2	Toxaphene	0.003
93-72-1	2,4,5-TP (Silvex)	0.05
120-82-1	1,2,4-Trichlorobenzene	0.07
71-55-6	1,1,1-Trichloroethane	0.2
79-00-5	1,1,2-Trichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-01-4	Vinyl Chloride	0.002
1330-20-7	Xylenes (total)	10
*1	Gross alpha particle activity (including radium -226, but excluding radon and uranium)	15 pCi/l
*1	Combined beta/photon emitters	4 millirems/year effective dose equivalent
*1	Combined Radium - 226 and radium 228	5 pCi/l
*1	Strontium 90	8 pCi/l
*1	Tritium	20,000 pCi/l
*1	Total Coliform <sup>2</sup>	1 colony forming unit/100 ml
	<u>Escherichia coliform (E. coli)</u>	<u>Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method</u>

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
	Fecal coliform	Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method
Table Footnotes		
* <sup>1</sup> No Chemical Abstract Service Number exists for this constituent.		
* <sup>2</sup> An exceedance of the primary ground water quality standard for total coliform is not a violation of these rules. If the primary ground water quality standard for total coliform is exceeded, additional analysis for fecal coliform and E. coli will be conducted. An exceedance of the primary ground water quality standards for either fecal coliform or E. coli is a violation of these rules.		

(3-20-97)( )

b. The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

TABLE III - SECONDARY CONSTITUENT STANDARDS	
Constituent	Standard (mg/l unless otherwise specified)
Aluminum	0.2
Chloride	250
Color	15 Color Units
Foaming Agents	0.5
Iron	0.3
Manganese	0.05
Odor	3.0 Threshold Odor Number
pH	6.5 to 8.5 (no units apply)
Silver	0.1
Sulfate	250
Total Dissolved Solids	500
Zinc	5

(3-20-97)

c. Sample preservation and analytical procedures to determine compliance with the standards identified in Subsection 200.01 shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Department: (5-3-03)

i. Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 2001; or (3-20-97)

ii. Another method approved by the Department. (3-20-97)

**02. Narrative Ground Water Quality Standards.** Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the ground water to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on: (3-20-97)

a. Best scientific information currently available on adverse effects of the contaminant(s); (3-20-97)

b. Protection of a beneficial use; or (3-20-97)

c. Practical quantitation levels for the contaminant(s), if they exceed the levels identified in Subsection 200.02.a. or 200.02.b. (3-20-97)

**03. Natural Background Level.** If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. GROUND WATER CONTAMINATION.**

**01. Releases Degrading Ground Water Quality.** No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that: (3-20-97)

a. Causes a ground water quality standard to be exceeded; (3-20-97)

b. Injures a beneficial use of ground water; or (3-20-97)

c. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method. (3-20-97)

**02. Prevention Measures.** (3-20-97)

a. When a numerical standard is not exceeded, but degradation of ground water quality is detected and deemed significant by the Department, the Department shall take one (1) or more of the following actions: (3-20-97)

i. Require a modification of regulated activities to prevent continued degradation; (3-20-97)

ii. Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Department; (3-20-97)

iii. Allow limited degradation of ground water quality for the constituents identified in Subsections 200.01.a. ~~and 200.01.e.~~, if it can be demonstrated that: (3-20-97)(\_\_\_\_)

(1) Best management practices, best available methods or best practical methods, as appropriate for the aquifer category, are being applied; and (3-20-97)

(2) The degradation is justifiable based on necessary and widespread social and economic considerations; or (3-20-97)



iv. Allow degradation of ground water quality up to the standards in Subsection 200.01.b., if it can be demonstrated that: (3-20-97)

(1) Best management practices are being applied; and (3-20-97)

(2) The degradation will not adversely impact a beneficial use. (3-20-97)

**b.** The following criteria shall be considered when determining the significance of degradation: (3-20-97)

i. Site specific hydrogeologic conditions; (3-20-97)

ii. Water quality, including seasonal variations; (3-20-97)

iii. Existing and projected future beneficial uses; (3-20-97)

iv. Related public health issues; and (3-20-97)

v. Whether the degradation involves a primary or secondary constituent in Section 200. (3-20-97)

**03. Contamination Exceeding a Ground Water Quality Standard.** The discovery of any contamination exceeding a ground water standard that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions, as determined by the Department, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination, as required under the Environmental Protection and Health Act, Section 39-108, Idaho Code. (3-20-97)

**04. Agricultural Chemicals.** Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered ground water contaminants as long as the chemicals remain within the crop root zone, and have been applied in a manner consistent with all appropriate regulatory requirements. (3-20-97)

**05. Site-Specific Ground Water Quality Levels.** The Department may allow site-specific ground water quality levels, for any aquifer category, that vary from a standard(s) in Section 200 or Section 300, based on consideration of effects to human health and the environment, for: (3-20-97)

**a.** Remediation conducted under the Department's oversight; (3-20-97)

**b.** Permits issued by the Department; (3-20-97)

**c.** Situations where the site background level varies from the ground water quality standard; or (3-20-97)

**d.** Other situations authorized by the Department in writing. (3-20-97)

**06. Mineral Extraction.** Naturally occurring constituents found in ground water within a specified area surrounding an active mineral extraction area, as determined by the Department, will not be considered contaminants as long as all applicable best management practices, best available methods or best practical methods, as approved by the Department, are applied. (7-1-98)

# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

*(The written comment submission deadline for the following rulemakings is 7/26/06, unless otherwise listed.)*

#### **IDAPA 02 – DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, ID 83701**

**02-0602-0601, Rules Pertaining to the Idaho Commercial Feed Law.** Updates the incorporation by reference of the 2007 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO).

**02-0612-0601, Rules Pertaining to the Idaho Commercial Fertilizer Law.** Updates the incorporation by reference of the 2007 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO).

**02-0641-0601, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001.** Updates the incorporation by reference of the 2007 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO).

#### **IDAPA 11 – IDAHO STATE POLICE P.O. Box 700, Meridian, ID 83680-0700**

**11.04.01 - Rules Governing Horse Racing (Idaho State Racing Commission).**

**11-0401-0601, (Temporary and Proposed Rule)** Implements controlled substance and alcohol testing to protect the integrity of horseracing in the state.

**11-0401-0602,** Defines and establishes the recognized horsemen's group and alternate horsemen's groups.

**11.04.02 - Rules Governing Simulcasting. (Idaho State Racing Commission)**

**11-0402-0601, (Temporary and Proposed Rule)** Establishes rules regarding simulcast purse money collection and distribution per Idaho statute.

**11-0402-0602,** Deletes duplicate advance deposit wagering distribution language in the rule.

**11-1301-0602, The Motor Carrier Rules. (Temporary and Proposed Rule)** Exempts Idaho carriers between 10,001 lbs. & 26,000 lbs. from certain administrative parts of the Federal Motor Carrier Safety Agency regulations.

#### **IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE P.O. Box 83720, Boise, ID 83720-0036**

**16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD).**

**16-0305-0601, (Temporary and Proposed Rule)** Changes conform to the federal Deficit Reduction Act of 2005 and require applicants to disclose all interests in annuities and other financial instruments, extends the period of time that asset transfers must be reviewed and can be penalized, and requires the applicant to name the state as a remaining beneficiary.

**16-0305-0605**, Changes conform to changes in the federal Deficit Reduction Act of 2005 and apply to trusts, life estates, and annuities to help prevent the sheltering of assets; clarifies rules on “Inheritance,” “Resources Excluded from Assessment,” “Treatment Trusts,” and new definitions were added for “annuities” and “assets”.

**IDAPA 18 – DEPARTMENT OF INSURANCE**

**PO Box 83720, Boise, ID 83720-0043**

**18-0134-0601, Certificate for Liability Insurance for Motor Vehicles. (Temporary and Proposed Rule)** Conforms to HB 653 that requires the Director to prescribe a form for proof of liability insurance to be used by motor vehicle dealers.

**IDAPA 21 – DIVISION OF VETERANS SERVICES**

**320 Collins Rd., Boise, ID 83702**

**21.01.01 - Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.**

**21-0101-0601**, (Temporary and Proposed Rule) Implements 2006 Idaho Session Laws, Chapter 50, authorizing the admission of spouses to the Idaho State Veterans Homes.

**21-0101-0602**, Incorporates all rules governing Idaho State Veterana Homes into this chapter and amends the written interpretation section of the rules.

**21-0103-0601, Rules Governing Medicaid Qualified Units in Idaho State Veterans Homes.** Chapter repeal consolidates the Division’s veterans’ homes rules into a single chapter.

**21-0104-0601, Rules Governing the Idaho State Veterans Cemetery.** Clarifies that use of cemetery property for recreation is limited to uses that are consistent with honoring deceased veterans and their families.

**IDAPA 35 – IDAHO STATE TAX COMMISSION**

**P.O. Box 36, Boise, ID 83722-0410**

**Property Tax Administrative Rules.**

**35-0103-0602, (Temporary and Proposed Rule)** Changes to Rule 317 conform to HB 421 when applying the homeowner’s exemption to properties subject to the occupancy tax.

**35-0103-0603, (Temporary and Proposed Rule)** Changes to Rule 700 conform to HB 422 that reduced property tax and HB 421 that changed the homeowner’s exemption.

**35-0103-0604, (Temporary and Proposed Rule)** Changes to Rule 802 provide direction on when new construction roll values can be increased because of the “change in land use classification” resulting from the repeal of the partial exemption by HB 676.

**35-0103-0605, (Temporary and Proposed Rule)** Changes to Rule 989 conform to HB 443 that establishes the date by which the taxpayer will make payment for recapture of property tax exemption in lieu of investment tax credit.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**1410 N. Hilton, Boise, ID 83706-1255**

**58-0111-0601, Ground Water Quality Rule.** Proposed revisions augment the ground water quality standards for bacteria by adding standards for fecal coliform and Escherichia coli (E. coli) bacteria. Comment by: 8/2/06.

*A Negotiated Rulemaking Meeting Is Being Held on the Following Docket:  
(See July Bulletin for dates, times, and locations)*

**IDAPA 10 - Board of Professional Engineers and Professional Land Surveyors  
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Please refer to the Idaho Administrative Bulletin, **July 5, 2006, Volume 06-7** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

**Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.**

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at [www.adm.idaho.gov/adminrules/](http://www.adm.idaho.gov/adminrules/) or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

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**This index tracks the history of all agency rulemakings from 1993 to the present.  
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