

# IDAHO ADMINISTRATIVE BULLETIN

September 7, 2011 -- Volume 11-9

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The Idaho Administrative Bulletin is published monthly by the Office of Administrative Rules, Department of Administration, Statehouse Mail, Boise, Idaho 83720-0306, pursuant to Title 67, Chapter 52, Idaho Code.

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# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho that are statutorily required to be published in the Bulletin. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and other such documents an agency may want promulgated through the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once formal rulemaking procedures have been initiated. The public receives notice that an agency has initiated formal rulemaking procedures through the Idaho Administrative Bulletin and a Public Notice of Intent (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

## 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 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 only published in the Bulletin and **not** printed in the Administrative Code.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, the reader should refer to the **Cumulative Rulemaking Index** that can be accessed through the Administrative Rules homepage at [adminrules.idaho.gov](http://adminrules.idaho.gov).

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

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

## **NEGOTIATED RULEMAKING**

Negotiated rulemaking is a process in which all interested 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 - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process normally results in the formulation of a proposed and the initiation of formal rulemaking procedures but the result may also be that formal rulemaking is not initiated and no further action is taken by the agency. The rulemaking effectively stops before it gets started.

## **PROPOSED RULEMAKING**

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a “Notice of Rulemaking - Proposed Rule” in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority 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) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

Any proposed rulemaking that is submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

## **TEMPORARY RULEMAKING**

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

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

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

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

State law requires 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 rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

## **PENDING RULEMAKING**

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

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

- a) a statement giving the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become

effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the 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 reviewed by the legislature and not rejected, amended or modified becomes 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**

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

### **SUBSCRIPTIONS AND DISTRIBUTION**

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

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

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

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



## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering 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 38.05.01.200.02.c.ii.**

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

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

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

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

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

“**02.**” refers to Subsection 200.**02**.

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

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

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a “**DOCKET NUMBER.**” The “Docket Number” is a series of numbers separated by a hyphen “-”, (**38-0501-1001**). 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 number:

### **“DOCKET NO. 38-0501-1001”**

“**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**).

“**1001**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

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 these rules.” OR “...in accordance with Subsection 201.06.c. of these rules.”**

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 2011**

<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>
11-1	January 2011	<b>*November 19, 2010</b>	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 11, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 13, 2011	June 1, 2011	June 22, 2011
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11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	<b>**August 31, 2011</b>	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012**

<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>
12-1	January 2012	<b>*November 25, 2011</b>	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 9, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 4, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 28, 2012
12-10	October 2012	<b>**August 31, 2012</b>	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

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

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

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<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho (PERSI)</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>
<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>
<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters Board, Idaho Certified</b>
<b>IDAPA 60</b>	<b>Soil and Water Conservation Commission, Idaho State</b>

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

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-03**

**PROHIBITING EXECUTIVE BRANCH DEPARTMENTS, AGENCIES AND INSTITUTIONS OF THE STATE FROM IMPLEMENTING THE PATIENT PROTECTION AND AFFORDABLE CARE ACT**

*WHEREAS, the Patient Protection and Affordable Care Act, P.L. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, 124 Stat. 1029 (2010) (PPACA) was signed into law by the President on March 23, 2010; and*

*WHEREAS, PPACA represents a dramatic attempt to assert federal command and control over this country's health care system, which accounts for one-sixth of our nation's economy; and*

*WHEREAS, the power to require or regulate a person's choice in the mode of securing health care services, require employers to provide health insurance coverage to their employees, determine the content of health insurance policies, or limit the construction or expansion of the hospital or medical facilities or to impose a penalty related thereto, is not found in the United States Constitution; and*

*WHEREAS, I have opposed the overreaching nature of the PPACA and its infringement on Idahoans and the authority of the State under the Tenth Amendment of the United States Constitution; and*

*WHEREAS, there are serious questions about the wisdom of any further efforts in this state to implement the PPACA after two separate federal courts have overturned it or its provisions as unconstitutional; and*

*WHEREAS, whether court, congressional or state action ends the PPACA, there will remain a need for homegrown solutions to healthcare issues in Idaho; and*

*WHEREAS, it is in the State's best interest to retain control over decisions concerning public health initiatives and health care for its citizens regardless of the constitutionality of the PPACA; and*

*WHEREAS, consistent with my obligation to protect Idaho's sovereign interests and those of its citizens, the boundary between state and federal government must be maintained to prevent an unwise and unsustainable federal takeover of health care in Idaho;*

*NOW, THEREFORE, I, C.L. "Butch" Otter, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby:*

- 1. Direct every executive branch department, agency and institution of the State as follows:*
  - a. No executive branch department, agency, institution or employee of the State shall establish or amend any program or promulgate any rule to implement any provisions of the PPACA;*
  - b. No executive branch department, agency, institution or employee of the State shall enter into any agreement or obligation to implement any provisions of the PPACA;*
  - c. No executive branch department, agency, institution or employee of the State shall provide assistance or resources of any kind to any agency, public official, employee or agent of the federal government to implement or enforce the PPACA; and*
  - d. No executive branch department, agency, institution or employee of the State shall accept or expend federal funds to implement the provisions of the PPACA.*



2. *Establish the following review and waiver process:*
- a. *Any executive branch department, agency, institution or employee of the State seeking a waiver from the prohibitions in section 1 of this executive order shall submit a written request to the Governor justifying the need for such a waiver;*
  - b. *The written request shall include:*
    - i. *An explanation of why the action prohibited in section 1 is required, mandated or otherwise desired;*
    - ii. *Confirmation that the requesting entity reasonably explored and exhausted available options that would have limited or negated the need for the waiver;*
    - iii. *An explanation of the desired action, detail of the funds that will be expended by fund source, a timetable for implementation and the number of employees who will be hired or involved; and*
    - iv. *Any additional information requested by the Governor.*
  - c. *The Governor will review all written requests. He must consent in writing before an executive branch department, agency, institution or employee of the State can undertake any of the actions prohibited in section 1 of this executive order.*



*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 20th day of April in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER**  
**GOVERNOR**

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**BEN YSURSA**  
**SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-04**

**RELATING TO FUNCTIONS OF THE DIVISION OF HUMAN RESOURCES**

*WHEREAS, the supreme executive power of the State is vested in the Governor by Article IV, Section 5 of the Constitution of the State of Idaho; and*

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

*WHEREAS, Title 67, section 5301 of the Idaho Code, established the Division of Human Resources in the Office of the Governor; and*

*WHEREAS, the Division of Human Resources is authorized and directed by the laws of the State of Idaho to administer a personnel system for classified Idaho employees; and*

*WHEREAS, an opportunity exists to improve the means whereby classified employees of the State of Idaho are examined, selected, retained and promoted on the basis of merit, thus effecting economy and efficiency in the administration of state government;*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of this State do hereby direct the Division of Human Resources to:*

- 1. Enter into an agreement with the Department of Labor whereby the Department will:
  - a) Conduct analysis of salary surveys at the direction of the Division of Human Resources; and*
  - b) Maintain an automated system for recruiting and tracking applicants for classified positions in state government.**
- 2. Enter into an agreement with and delegate to the Division of Professional-Technical Education the authority to train certain state employees on human resource related topics applicable to all state agencies including, but not limited to, supervision of employees, employee evaluations, dispute resolution and stress management.*
- 3. Delegate human resource functions to any state agency if the Division of Human Resources determines that the agency meets criteria developed by the Division.*

*All remaining duties and responsibilities for the state personnel system, including, but not limited to, the responsibility to promulgate administrative rules, shall be retained by the Division of Human Resources.*



*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 20th day of April in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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*C.L. "BUTCH" OTTER*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-05**

**AUTHORIZING THE TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT**

*WHEREAS, tremendous financial obligations and expenses have been incurred by various departments, agencies, and counties in responding to and assisting in efforts to deal with the extreme threat to public safety, health, property and the environment posed by declared disaster emergencies in Idaho; and*

*WHEREAS, all funds in the Disaster Emergency Account created by title 46, section 1005A of the Idaho Code have or soon will be expended; and*

*WHEREAS, funds in the General Fund are available to transfer to the Disaster Emergency Account under the requirements set forth in 46-1005A(2)(b); and*

*WHEREAS, it is my judgment, as Governor of the State of Idaho, that any moneys transferred from the General Fund up to the limits provided below will not be required to support the current year's appropriations.*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, 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 as follows:*

- 1. The State Controller is directed to transfer money from the General Fund to the Disaster Emergency Account in such amount and at such times as directed by me or my designee, the Administrator of the Division of Financial Management. In no event shall more than \$2 million dollars (\$2,000,000) be transferred for the purposes of this executive order from the General Fund to the Disaster Emergency Account.*
- 2. In no event may the revenues made available under this Executive Order exceed one percent (1%) of the annual appropriation of the General Fund Account moneys for this fiscal year.*



*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 2nd day of May in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER  
GOVERNOR**

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**BEN YSURSA  
SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-06**

**PROVISIONS FOR STATE COOPERATION WITH FEDERAL INSURANCE ADMINISTRATION  
UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED**

*WHEREAS, the development of the state's floodplains has occurred in a manner that may increase potential flood losses despite efforts to control floods; and*

*WHEREAS, national, state, and local studies of areas and property subject to flooding predict increases in flood damage potential and flood losses, despite continuing investment in flood protection structures; and*

*WHEREAS, the State of Idaho maintains programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, with resultant influence to patterns of commercial, residential, and industrial development; and*

*WHEREAS, the availability of flood insurance under the National Flood Insurance Program, as provided by the National Flood Insurance Act of 1968, as amended, is dependent upon state coordination of federal, state, and local activities to manage floodplains, mudslide(i.e. mudflow) areas, and flood-related erosion areas in the state; and*

*WHEREAS, the Department of Water Resources is the state agency responsible for assisting with local regulations necessary for flood insurance provided by the National Flood Insurance Act of 1968 and regulations set forth in 44 CFR §60.25; and*

*WHEREAS, the Federal Emergency Management Agency has promulgated and adopted rules and regulations governing eligibility of state and local communities to participate in the National Flood Insurance Program, which participation depends on state coordination of federal, state, and local activities to manage floodplains, mudslide(i.e. mudflow) areas, and flood-related erosion areas in the state;*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, 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 as follows:*

- 1. The Department of Water Resources is hereby designated to assist in the implementation of 44 CFR §60.25, Rules and Regulations of the Federal Insurance Administration and will encourage a broad and unified effort to achieve planned use and development of the state's floodplains and, in particular, to lessen the risk of flood losses in connection with state lands and installation and state-financed or supported improvement.*
- 2. Under the leadership and direction of the Department of Administration, all state agencies directly responsible for the construction of buildings, structures, roads, or other facilities shall preclude the unsafe or unnecessary use of floodplains in connection with such facilities; in the event of construction in the floodplain, management criteria set forth in 44 CFR §60.3, 60.4, and 60.5 of the National Flood Insurance Regulations shall apply; flood-proofing measures shall be applied to existing facilities in order to reduce flood damage potential.*
- 3. All state agencies responsible for the administration of grant or loan programs involving the construction of building, structures, roads or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief, shall preclude the unsafe or unnecessary use of floodplains in such connection.*
- 4. All state agencies responsible for the disposal of lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to other public instrumentalities or private*

*interests and, in order to minimize future state expenditures for flood protection and flood disaster relief, shall notify those instrumentalities and private interest that such hazards exist.*

5. *All state agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.*
6. *In evaluating flood hazard potential, all state agencies shall coordinate their work with the Department of Water Resources to assure that the most up-to-date data and/or methods of analysis are utilized.*
7. *As may be permitted by law, the head of each state agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency to be coordinated with the Department of Administration.*



*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 16th day of June in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER**  
**GOVERNOR**

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**BEN YSURSA**  
**SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-07**

**AUTHORIZING THE ADMINISTRATION OF THE STATE SMALL BUSINESS CREDIT  
INITIATIVE PROGRAM BY THE IDAHO HOUSING AND FINANCE ASSOCIATION**

*WHEREAS, Congress has passed the Small Business Jobs Act of 2010 (the "Act"), which authorized federal funding for the State Small Business Credit Initiative Program ("SSBCI Program"); and*

*WHEREAS, Idaho expects to receive federal money under this program to provide increased access to credit for small businesses in Idaho; and*

*WHEREAS, the United States Department of Treasury (the "Treasury") has promulgated guidelines for States and others concerning the expenditure of federal funds under the SSBCI Program; and*

*WHEREAS, the Idaho Housing and Finance Association (the "IHFA"), an independent public body corporate and politic and instrumentality of the State of Idaho, has the expertise to administer and implement the SSBCI Program.*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Idaho Constitution and the laws of the State of Idaho do hereby order:*

- 1. The authorization of the Idaho Housing and Finance Association to apply for, to administer and oversee the SSBCI Program in Idaho on behalf of the State of Idaho (the "State"), to receive federal funds from the Treasury and disburse the same for the Program and, on behalf of the State, to execute one or more agreements with the Treasury with respect to the SSBCI Program.*
- 2. The SSBCI Program shall be administered in accordance with the Act and the Treasury guidelines.*
- 3. The IHFA may appoint an advisory council with representatives of small businesses, banking institutions, economic development organizations, the Idaho Department of Commerce and the Idaho Department of Finance to provide advice and assistance for the SSBCI Program.*



*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 16th day of June in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER  
GOVERNOR**

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**BEN YSURSA  
SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-08**

**THE LEWIS AND CLARK TRAIL COMMITTEE**

*WHEREAS, the Lewis and Clark Trail has great historical significance to the State of Idaho; and*

*WHEREAS, the trail passes through multiple state and federal jurisdictions and private property, it is important that Idaho have an official organization to promote responsible recreational use and tourism associated with the trail and assure the protection and stewardship of this historic resource; and*

*WHEREAS, it is important to continue the coordination of activities related to the Lewis and Clark Trail;*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby establish and designate the Idaho Lewis and Clark Trail Committee as an advisory body to state, local and federal governments on preserving and managing the Lewis and Clark Trail and activities relating to the Lewis and Clark Expedition.*

*The Committee shall:*

- 1. Coordinate and organize activities to gain regional and national recognition of the historic significance of the Lewis and Clark expedition and trail in Idaho;*
- 2. Promote appropriate development and recreation in the vicinity of the Lewis and Clark Trail route as well as protection of the trail and associated historic sites;*
- 3. Act in an advisory capacity to other Idaho commissions, bureaus, agencies and committees by making recommendations regarding their activities and policies that relate to the trail and history of the Lewis and Clark Expedition; and*
- 4. Serve as the official liaison with other Lewis and Clark Trail states, the national Lewis and Clark Trail Heritage Foundation, Inc. and federal departments, bureaus, and committees concerned with the Lewis and Clark Trail, including promotion of the aims and recommendations of the federal Lewis and Clark Trail Commission that existed from 1964 to 1969.*

*The Committee shall consist of no more than nine (9) people who are appointed by the Governor and serve at his pleasure.*

*The voting membership of the Committee shall include:*

- 1. The President of the Idaho Chapter of the Lewis and Clark Trail Heritage Foundation;*
- 2. A representative of the Idaho State Historical Society;*
- 3. A representative of the Idaho Department of Parks and Recreation;*
- 4. The Governor's designee; and*
- 5. Five Idaho residents with a demonstrated interest in Lewis and Clark history.*

*In addition, each of the following organizations will be invited to appoint one non-voting, ex-officio member:*

*Nez Perce Tribal Council  
Shoshone Bannock Tribal Council*



*Bureau of Land Management  
National Park Service  
USDA Forest*

*The Committee shall elect its own Chairperson and have regular meetings as determined by the majority of the Committee and called by the Chairperson.*

*Members will serve without compensation except for travel expenses. Operating funds will be from the sale of Lewis and Clark license plates and commemorative medallion sales.*



*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 19th day of July in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER**  
**GOVERNOR**

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**BEN YSURSA**  
**SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-09**

**THE GOVERNOR'S ROADLESS RULE IMPLEMENTATION COMMISSION**

*WHEREAS, Idaho's 250 inventoried roadless areas comprise approximately 9.3 million acres in 12 national forests across Idaho; and*

*WHEREAS, Idaho has more inventoried roadless acres than any other state in the coterminous forty-eight; and*

*WHEREAS, Idaho's inventoried roadless areas provide pristine habitat for protected species and a significant benefit to Idaho's economy; and*

*WHEREAS, Idaho roadless areas provide excellent recreational opportunities for hunters, fishermen and outdoor enthusiasts, as well as a significant source for drinking and irrigation water throughout the Northwest; and*

*WHEREAS; Idaho counties, communities and interested parties provided input during the drafting of management recommendations for inventoried roadless areas in Idaho; and*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, 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. The creation of the Governor's Roadless Rule Implementation Commission (Commission).*
- 2. The members of the Commission shall be appointed by and serve at the pleasure of the Governor through calendar year 2013.*
  - i. The Commission shall be composed of 15 members, representing the various geographic areas of the State.*
  - ii. Commission members shall be appointed from the following three categories:*
    - 1. Five individuals who:*
      - a. Participated as a member of the Roadless Area Conservation National Advisory Committee (RACNAC); or*
      - b. Represent developed outdoor recreation, off highway vehicle users, or commercial recreation activities; or*
      - c. Represent energy or mineral development interests; or*
      - d. Represent the commercial timber industry; or*
      - e. Hold federal a grazing permit or other federal land use permits.*
    - 2. Five individuals representing:*
      - a. A nationally, regionally or locally recognized environmental organization; or*
      - b. Dispersed recreational activities; or*
      - c. Archaeological and historical interest; or*

- d. *Nationally or regionally recognized wildlife or sportsmen's interest groups.*
- 3. *Five individuals who:*
  - a. *Hold State elected office or their designee; or*
  - b. *Hold county or local elected office; or*
  - c. *Represent an American Indian Tribe within the State of Idaho; or*
  - d. *Represent the public at large.*
- iii. *The Chair and Vice Chair of the Commission shall be selected by a majority vote of the members. The chair and vice chair shall serve at the pleasure of the Governor. Vacancies in the chair or vice chair shall be filled by a majority vote of the commission at the next meeting.*
- 3. *The Commission shall, in partnership with the U.S. Forest Service, Department of Agriculture and Tribes of Idaho ensure the implementation of the Inventoried Roadless Area Rule for Idaho.*



*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 19th day of July in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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*C.L. "BUTCH" OTTER*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-10**

**ESTABLISHING THE IDAHO HEALTH PROFESSIONS EDUCATION COUNCIL  
REPEALING AND REPLACING EXECUTIVE ORDER NO. 2009-07**

*WHEREAS, Idaho faces a severe shortage in all health professions; and*

*WHEREAS, Idaho currently ranks 40th in physicians per capita and has the 6th oldest physician population among the 50 states; and*

*WHEREAS, Idaho does not train a sufficient number of physicians, especially in primary care, to meet the needs of its citizens; and*

*WHEREAS, in addition to nursing, shortages in such fields as pharmacy, dentistry, allied health, primary care and mental health are acute; and*

*WHEREAS, the State has a vested interest in finding workable and realistic solutions to its healthcare provider shortages; and*

*WHEREAS, a sufficient supply of healthcare professionals in all disciplines is necessary to address the healthcare of Idaho citizens; and*

*WHEREAS, to address the shortages the Governor's Select Committee on Health Care recommended to the Governor the creation of the Idaho Health Professions Education Council;*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order:*

- 1. The creation of the Idaho Health Professions Education Council (Council);*
- 2. Members of the Council shall be appointed by and serve at the pleasure of the Governor;*
- 3. The chair of the Council shall be appointed by and serve at the pleasure of the Governor;*
- 4. The members of the Council shall include but are not limited to:*
  - a. Representatives from the health industry;*
  - b. Representatives from health organizations;*
  - c. Representatives for Idaho colleges/universities;*
  - d. Representatives from the public at large;*
- 5. The Council's responsibilities shall be:*
  - a. Conduct health workforce analyses;*
  - b. Assess Idaho's capacity for training healthcare professionals;*

- c. Advise the Governor and legislators on healthcare workforce issues;*
  - d. Develop healthcare workforce objectives for the State of Idaho and provide policy recommendations for achieving the objectives;*
  - e. Recommend strategies to address healthcare provider shortages in rural locations; and*
  - f. Develop strategies to encourage public/private partnerships to increase the number of healthcare providers in Idaho;*
6. *Committee members will serve without compensation; however, they shall receive reimbursement for the actual costs of attending Committee meetings from the Idaho Department of Labor; and*
7. *The Council shall submit an annual report of its activities to 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 19th day of July in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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*C.L. "BUTCH" OTTER*  
**GOVERNOR**

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*BEN YSURSA*  
**SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2011-11**

**CONTINUING THE IDAHO CRIMINAL JUSTICE COMMISSION**

*WHEREAS, it is in the best interest of the citizens of the State of Idaho that government promote efficiency and effectiveness of the criminal justice system and, where possible, encourage dialogue among the respective branches of government to achieve this effectiveness and efficiency; and*

*WHEREAS, combating crime and protecting citizens from criminal deprecations is of vital concern to government; and*

*WHEREAS, communication and cooperation among the various facets of the community of criminal justice professionals is of utmost importance in promoting efficiency and effectiveness; and*

*WHEREAS, providing policy makers and criminal justice decision makers with accurate information results in better decisions, which improves public safety and results in the efficient use of public resources; and*

*WHEREAS, under the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and the Crime Control Act of 2005, each state is encouraged to develop and implement a competitive mechanism for awarding certain federal grant funds; and*

*WHEREAS, Idaho's current criminal justice efforts and initiatives require clear strategic planning and continued coordination;*

*NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me by the Constitution and the laws of the State of Idaho, do hereby establish the Idaho Criminal Justice Commission.*

- 1. The Idaho Criminal Justice Commission ("Commission") shall consist of 26 members. The Commission members representing the judiciary will serve in a non-voting, advisory capacity. The Commission's membership shall be as follows:*
  - a. A representative from the Governor's Office;*
  - b. The Attorney General or his designee;*
  - c. Two (2) members from the Idaho Senate as designated by the President Pro Tempore;*
  - d. Two (2) members from the Idaho House of Representatives as designated by the Speaker;*
  - e. The Director of the Idaho Department of Correction;*
  - f. The Director of the Idaho State Police;*
  - g. The Director of the Idaho Department of Juvenile Corrections;*
  - h. The Administrator of the Office of Drug Policy;*
  - i. A representative from the Idaho Department of Education;*
  - j. The Executive Director of the Idaho Commission of Pardons and Parole;*
  - k. The Director of the Idaho Department of Health and Welfare;*
  - l. The Administrative Director of the Courts;*
  - m. Three (3) representatives from the judiciary as designated by the Chief Justice;*
  - n. One (1) representative from the Idaho Prosecuting Attorney's Association;*
  - o. One (1) representative from the Office of the Idaho State Appellate Public Defender;*
  - p. One (1) representative from the Idaho Commission on Hispanic Affairs;*
  - q. One (1) representative from the Idaho Sheriffs' Association;*

- r. *One (1) representative from the Idaho Chiefs of Police Association;*
  - s. *The Executive Director of the Idaho Association of Counties; and*
  - t. *Two (2) citizens at large who with special consideration given to individuals within disciplines related to the purpose of the Commission.*
2. *The purpose of the Commission shall be to provide policy-level direction and to promote efficient and effective use of resources, based on best practices or evidenced-based practices, for matters related to the State's criminal justice system. To that end it shall:*
- a. *Identify critical challenges facing the criminal justice system and recommend strategies to resolve them by;*
    - i. *Developing and adopting a three-year strategic plan to be reviewed annually;*
    - ii. *Analyzing the long-range needs of the criminal justice system;*
    - iii. *Assessing the cost-effectiveness, return on investment, and performance measures of the use of state and local funds in the criminal justice system;*
  - b. *Advise and develop recommendations for the Governor and the Legislature, when appropriate, on public policy and strategies to improve the State's criminal justice system.*
  - c. *Review and evaluate criminal justice policies and proposed legislation to determine the impact on the State's adult and juvenile justice systems.*
  - d. *Promote communication among criminal justice professionals and the respective branches of State government to improve professionalism, create partnerships, and improve cooperation and coordination at all levels of the criminal justice system.*
  - e. *Research and evaluate best practices, and evidenced-based practices, and use findings to influence decisions on policy.*
3. *Unless stated otherwise, Commission members shall be appointed by the Governor. All Commission members appointed by the Governor serve at the pleasure of the Governor.*
4. *The Governor may, at any time, increase the number of voting and non-voting members of the Commission.*
5. *The Commission members shall serve a term of four (4) years.*
6. *The Chair of the Commission shall be appointed annually by the Governor. A Vice-Chair shall be selected annually by the members of the Commission. The term of office of the Chair and Vice-Chair shall be one (1) year. The Chair and the Vice-Chair may succeed themselves as approved by the Governor.*
7. *The Commission shall receive administrative staff support from the State agencies represented on the Commission.*
8. *The Commission will meet no less than four times annually.*
9. *The Commission may appoint sub-committees consistent with the needs of the Commission to address pertinent issues that merit more in-depth consideration.*
10. *Commission members will serve without compensation or reimbursement for expenses, including related travel and per diem to attend Commission meetings.*

11. *The Grant Review Council (“Council”) shall be established under the Commission and is charged with the responsibility to disburse grant funding appropriated under provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, of the Violence Against Women Act of 1994, and other such federal grant programs as may come within the purview of Planning, Grants, and Research of the Idaho State Police with the overall mission of enhancing the efficiency and effectiveness of the criminal justice system in Idaho.*
- a. *The Council shall consist of thirteen (13) members of the Idaho Criminal Justice Commission for the purpose of assisting the Idaho State Police in its distribution of grant funds. The Council membership shall be as follows:*
- i. *The Attorney General or his or her designee;*
  - ii. *The Administrative Director of the Courts;*
  - iii. *The Director of the Idaho Department of Correction;*
  - iv. *The Director of the Idaho State Police;*
  - v. *The Director of the Idaho Department of Juvenile Corrections;*
  - vi. *The Administrator of the Office of Drug Policy;*
  - vii. *One (1) representative from the Office of the Idaho State Appellate Public Defender;*
  - viii. *One (1) representative from the Idaho Prosecuting Attorneys Association;*
  - ix. *The Executive Director of the Idaho Association of Counties;*
  - x. *Two (2) citizens at large;*
  - xi. *One (1) representative from the Idaho Sheriffs' Association;*
  - xii. *One (1) representative from the Idaho Chiefs of Police Association;*
- b. *In addition, the Council shall consist of the following seven (7) members appointed by the Chair of the Commission upon recommendation by the Commission:*
- i. *One (1) representative from the Idaho Council on Domestic Violence;*
  - ii. *One (1) representative from a statewide advocacy agency;*
  - iii. *One (1) prosecuting attorney;*
  - iv. *One (1) representative from the juvenile justice system;*
  - v. *One (1) representative from the misdemeanor probation system;*
  - vi. *One (1) Chief of Police;*
  - vii. *One (1) Sheriff;*
- c. *The Chair of the Council shall be a representative of a local agency and appointed by vote of the members of the Council and shall serve a term of four (4) years. The Chair will report to the Commission not less than annually on the activities, actions, and decisions of the Council regarding the distribution of grant funds.*
- d. *Each member of the Council shall be entitled to one vote in the matters before them.*
- e. *No member may participate in a vote for a direct award of funds in which the member receives personal pecuniary benefits, as defined by Idaho Code. Unless prohibited by Federal grant restriction, when a member has authority over an entity or agency which has applied for a direct award of funds, the member shall disclose the relationship to the Council. Upon disclosure of such relationship, the member may vote upon the award unless the member requests to be excused.*
- f. *Participation by Council members (or their designees) in the scoring and evaluation of the individual grant applications is required. Members not participating in the scoring and evaluation process will not be entitled to vote on the awarding of the application.*
- g. *Meetings of the Council shall be convened as determined necessary by the Chair of the Council, Chair of the Commission, or Planning, Grants, and Research.*



- h. The principal staff functions of the Council shall be located with the Idaho State Police, Planning, Grants, and Research.*
- i. Members of the Council will receive travel reimbursement in accordance with Planning, Grants, and Research and the Idaho State Police policy and procedures.*
- j. The Council will establish by-laws in accordance with guidance provided by the Bureau of Justice Assistance and the Idaho State Police, Planning, Grants, and Research, and consistent with the Commission's long-term strategies.*
- k. Members of the Council will receive training provided by Planning, Grants, and Research and in conjunction with the Commission.*
- l. Members of the Council will meet at least once a year to assist in strategic planning efforts with members of the Commission and Planning, Grants, and Research. The Council shall develop a strategic funding plan consistent with the statewide strategic planning efforts of the Commission.*



*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 19th day of July in the year of our Lord two thousand and eleven and of the Independence of the United States of America the two hundred thirty-fifth and of the Statehood of Idaho the one hundred twenty-first.*

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**C.L. "BUTCH" OTTER**  
**GOVERNOR**

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**BEN YSURSA**  
**SECRETARY OF STATE**

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.33 - ORGANIC FOOD PRODUCT RULES**

#### **DOCKET NO. 02-0633-1101**

### **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 22-1103, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

The Idaho State Department of Agriculture is an accredited certifying agent under the National Organic Program (NOP) of the United States Department of Agriculture, and ISDA must comply the federal NOP Regulations, 7 C.F.R. Part 205. ISDA may not require compliance with provisions not in the NOP Regulations. In order to comply with the NOP Regulations, ISDA must eliminate certain provisions of IDAPA 02.06.33, Organic Food Product Rules that are more stringent than NOP Regulations. Therefore, this rulemaking will eliminate the following provisions: the educational activity requirements for certification, the July 1st deadline for certification, and the fees for chemical residue analysis.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes are required to comply with the NOP Regulations. The elimination of the education activity requirements is also required to comply with House Bill 38 passed by the Idaho Legislature in 2011.

**INCORPORATION BY REFERENCE:** No documents are being incorporated by reference as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

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 September 28, 2011.

DATED this 3rd day of August, 2011.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, ID 83701

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0633-1101

012. -- ~~099.~~ (RESERVED)

~~100.~~ EDUCATIONAL ACTIVITY REQUIREMENTS.

~~01. Eligibility. In addition to the requirements outlined in this rule, all producers and handlers shall participate in at least one (1) approved educational activity annually to be eligible for continued certification. (3-19-07)~~

~~02. Request for Approval. A producer or handler who intends to attend an educational activity, that is either in or out of state, or the organizer of an educational activity, shall submit to the department a request for approval of the educational activity not less than thirty (30) days prior to the scheduled educational activity. Such a request shall be submitted on a form prescribed by the department. Under exceptional circumstances, as described in writing by the producer or handler requesting approval, the thirty (30) day requirement may be waived. (3-19-07)~~

~~03. List of Attendees. The organizer of an approved educational activity shall submit to the department a list of attendees within thirty (30) days of the conclusion of the educational activity. (3-19-07)~~

~~04. Official Approval. Official approval shall be given only for those educational activities that deal with: (3-19-07)~~

~~a. Organic production; (4-2-03)~~

~~b. Integrated pest management; (4-2-03)~~

~~c. Sustainable agriculture practices; (4-2-03)~~

~~d. Organic handling; or (4-2-03)~~

~~e. Processing practices. (4-2-03)~~

~~101.—199.~~ (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

301. CERTIFICATION REQUIREMENTS, ~~DEADLINES~~ AND FEES.

01. Certification Requirements ~~and Deadlines~~. All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed ~~or approved~~ by the Department ~~by July 1st of each year.~~ (3-29-10)(    )

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification in place of registration. (4-7-11)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

- d.** Livestock producer and handler applications will be accepted throughout the year. (3-19-07)
- 02. Certification Fees.** (3-29-10)
- a.** Organic producers/handlers with annual gross organic sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (4-7-11)
- b.** Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (4-7-11)
- c.** A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)
- 03. Certification Inspection Fees.** (3-19-07)
- a.** The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)
- b.** Travel time from an inspector’s normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)
- c.** There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)
- d.** A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)
- ~~**e.** *The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler.* (3-19-07)~~
- f.** Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)
- g.** Upon approval by the Department, private inspectors may be utilized. The applicant shall bear the total cost of the private inspection. (3-29-10)

# IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

## 10.01.01 - RULES OF PROCEDURE

### DOCKET NO. 10-0101-1101

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

1. Eliminate the need for engineer intern and land surveyor intern applicants to provide references on their examination application;
2. Adopt national standards for the evaluation of non-accredited engineering programs;
3. Allow individuals to select retired status at any time upon request; and
4. Amend the examination submittal deadlines to accommodate converting some examinations to computer-based format.

The differences between the proposed text and the pending text is to change one submittal date from October 10 to October 1 and add the phrase "and be reviewed by the staff and/or Board".

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [July 6, 2011 Idaho Administrative Bulletin, Vol. 11-7, pages 23-30](#).

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

There is no impact to the state general fund or to the dedicated fund of the Board.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact David L. Curtis, P.E., Executive Director, at [dave.curtis@ipels.idaho.gov](mailto:dave.curtis@ipels.idaho.gov) or at (208) 373-7210.

DATED this 8th day of August, 2011.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyors  
1510 E Watertower St. Ste 110  
Meridian, ID 83642  
Voice (208) 373-7210; Fax (208) 373-7213  
Email: [dave.curtis@ipels.idaho.gov](mailto:dave.curtis@ipels.idaho.gov)

DOCKET NO. 10-0101-1101 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.  
*Italicized* text that is underscored is new text that has been added to the pending rule.

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 11-7, July 6, 2011, pages 23 through 30.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

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FOLLOWING IS THE AMENDED TEXT OF THE PENDING RULE FOR DOCKET NO. 10-0101-1101

016. APPLICATION FOR LICENSURE OR CERTIFICATION.

*Subsection 016.03*

03. Dates of Submittal and Experience Cutoff Date. ~~Applications for the Spring and Fall examination, respectively, must be received by the Executive Director or postmarked by January 10 or August 1 of any year.~~ Examinations may be given in various formats and different submittal dates apply depending on the examination format. For examinations administered once or twice a year in the Spring and Fall, there is an examination assignment cutoff date that varies depending on the actual date of the examination. For examinations administered once or twice a year in the Spring and Fall, receipt of the applications after October 1 for the Spring exam or after July 1 for the Fall exam, may not provide sufficient time for required credentials to arrive at the Board office and be reviewed by the staff and/or Board prior to the exam assignment cutoff date. If this occurs, the applicant will be assigned to a later examination if all requirements are met. For examinations administered in a computer-based format during testing windows, there is no deadline for submittal of the application and the applicant, if assigned to the exam, will be allowed to test during the current testing window, if open on the date of the letter notifying of assignment, or during the next two (2) available testing windows. Failure to test during these periods will void the assignment. For examinations administered continuously in a computer-based format, there is no deadline for submittal of the application and the applicant, if assigned to the exam, will be allowed to test during a nine (9) month period beginning on the date of the letter notifying of assignment. Failure to test during this period will void the assignment. In order for the Board to be able to verify experience, only experience up to the date of submittal of the application will be considered as valid. Experience anticipated between the date of the application submittal and the date of the examination or issuance of license or certificate will not be considered. For students, the application filing date for the Fundamentals of Engineering and the Fundamentals of Surveying examination may be extended at the discretion of the Board. (5-8-09)(\_\_\_\_\_)

# IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

## 10.01.04 - RULES OF CONTINUING PROFESSIONAL DEVELOPMENT

DOCKET NO. 10-0104-1101

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

1. Clarify that routine job assignments are not considered qualified activities for continuing professional development purposes;
2. Allow newly licensed persons to carry forward professional development hours earned during the biennium prior to the first renewal following the issuance of the license;
3. Allow continuing professional development credit for authoring each chapter of a book;
4. Allow professional development hours for peer review of published technical or professional papers, articles or book chapters;
5. Allow license holders who are residing outside the United States to earn the required professional development hours upon return to the United States; and
6. Extend the same exemption from compliance to civilians deployed with the military as is extended to the military.

The difference between the proposed text and the pending text is to extend the same exemption from compliance to civilians deployed with the military as is extended to the military.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [July 6, 2011 Idaho Administrative Bulletin, Vol. 11-7, pages 34-37](#).

**FISCAL IMPACT:** The following is a specific 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 impact to the state general fund or to the dedicated fund of the Board.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact David L. Curtis, P.E., Executive Director, at [dave.curtis@ipels.idaho.gov](mailto:dave.curtis@ipels.idaho.gov) or at (208) 373-7210.

DATED this 8th day of August, 2011.

David L. Curtis, P.E., Executive Director  
Board of Professional Engineers and Professional Land Surveyors  
1510 E Watertower St. Ste 110  
Meridian, ID 83642  
Voice (208) 373-7210; Fax (208) 373-7213  
Email: [dave.curtis@ipels.idaho.gov](mailto:dave.curtis@ipels.idaho.gov)

**DOCKET NO. 10-0104-1101 - ADOPTION OF PENDING RULE**

Substantive changes have been made to the pending rule.  
*Italicized* text that is underscored is new text that has been added to the pending rule.

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 11-7, July 6, 2011, pages 34 through 37.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

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**FOLLOWING IS THE AMENDED TEXT OF THE PENDING RULE FOR DOCKET NO. 10-0104-1101**

**009. EXEMPTIONS.**

A Licensee may be exempt from the continuing professional development requirements for one (1) of the following reasons: (7-1-99)

***Subsection 009.02***

**02. Active Duty in the Armed Forces.** A Licensee serving on active duty in the armed forces of the United States, or a civilian deployed with the military, and temporarily assigned duty at a location other than their normal home station for a period of time exceeding one hundred twenty (120) consecutive days in a renewal period or the two (2) calendar year period closest to the renewal biennium shall be exempt from obtaining the professional development hours required during that renewal period or the two (2) calendar year period closest to the renewal biennium. (5-8-09)( )



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

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1104**

**NOTICE OF PUBLIC HEARINGS AND EXTENSION OF COMMENT PERIOD**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. This rulemaking action is authorized pursuant to Sections 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 56-1504, 56-1505, and 56-1511 and 56-1601 through 56-1610, Idaho Code.

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

**THURSDAY, SEPTEMBER 15, 2011, 1:00 p.m.**

**DHW Medicaid Office  
3232 Elder  
Conference Room D-East  
Boise, ID**

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

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

Rule changes in this docket implement 2011 legislative intent language in House Bill 260 regarding nursing facilities and intermediate care facilities for people with intellectual disabilities. The Division of Medicaid will conduct a public hearing on these rule changes published under Docket 16-0310-1104, in the [August 3, 2011, Idaho Administrative Bulletin, Vol. 11-8, pages 114 through 124](#), at the hearing site listed above.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Robert Kellerman at (208) 364-1994.

**SUBMISSION OF WRITTEN COMMENTS:** The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking.

Any written comments submitted at a public hearing carry the same weight as oral testimony. All written comments must be directed to the undersigned and must be delivered on or before Thursday, September 15, 2011.

DATED this 30th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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

**16.03.19 - CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-1101**

**NOTICE OF PUBLIC HEARINGS AND EXTENSION OF COMMENT PERIOD**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled six (6) public hearings and extended the period of public comment. This rulemaking action is authorized pursuant to Section 56-264, Idaho Code.

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

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**FRIDAY, SEPTEMBER 23, 2011, 9:00 a.m. MDT**

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**DHW Medicaid Office  
3232 Elder  
Conference Room D  
Boise, ID**

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**TELECONFERENCE HEARINGS WILL BE HELD  
CONCURRENTLY AT THE FOLLOWING LOCATIONS:  
(9:00 a.m. MDT AND 8:00 a.m. PDT)**

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**DHW - Region II Office  
1118 "F" Street  
1st Floor Conference Room  
Lewiston, ID**

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**DHW - Region IV Office  
1720 Westgate Drive  
Suite A Room 131  
Boise, ID**

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**DHW - Region V Office  
823 Harrison  
Room 116  
Twin Falls, ID**

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**DHW - Region VI Office  
1070 Hilina Road  
Room 230  
Pocatello, ID**

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**DHW - Region VII Office  
150 Shoup Avenue  
Suite 17, Room 240  
Idaho Falls, ID**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the public hearings must do one of the following:

Attend a face-to-face hearing at the DHW Medicaid Office, 3232 Elder Street, Boise, Idaho, or attend a teleconference meeting at other Region Offices as scheduled above.

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

The Department of Health and Welfare was directed by the legislature under Section 56-264, Idaho Code, to “create approval criteria for new certified family homes; recertify current certified family homes; and develop applicant and licensing fees to cover certifying and recertifying costs.” The Division of Medicaid will conduct public hearings for these rule changes published under Docket 16-0319-1101, in the [July 6, 2011, Idaho Administrative Bulletin, Vol. 11-7, pages 113 through 116](#), at the hearing sites listed above.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Karen Vasterling at (208) 239-6260.

**SUBMISSION OF WRITTEN COMMENTS:** The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony. All written comments must be directed to the undersigned and must be delivered on or before Friday, September 23, 2011.

DATED this 8th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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

**16.04.17 - RESIDENTIAL HABILITATION AGENCIES**

**DOCKET NO. 16-0417-1101**

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

**EFFECTIVE DATE:** The effective date of these temporary rules is August 5, 2011.

**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 39, Chapter 46, and Sections 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking has been scheduled for:

**MONDAY, SEPTEMBER 19, 2011, 10:00 A.M.**

**DHW Medicaid Office  
3232 Elder  
Conference Rm. D East and West  
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:

Rule changes in this docket implement 2006 legislative intent regarding selective contracting, and legislation passed by the 2011 Legislature under House Bill 260. The Department has eliminated the provider support services known as affiliation and replaced it with a contract for a waiver administrative function that will be referred to as Residential Habilitation Program Coordination for Certified Family Home (CFH) Providers. These rules clarify the certification requirements for residential habilitation agency providers, the health and safety critical incident reporting requirements, and certification enforcement procedures.

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

These rule changes protect the public health, safety, and welfare of Medicaid participants receiving residential habilitation agency services, and implement 2006 legislative intent regarding selective contracting and legislative changes adopted by the 2011 Legislature in House Bill 260, effective July 1, 2011.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

The estimated fiscal impact of moving to a selective contract will be a total annual savings of \$3.7 million of which \$800,000 will be to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Paige Grooms (208) 947-3364.

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 September 28, 2011.

DATED this 9th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0417-1101**

**010. DEFINITIONS -- A THROUGH N.**

For the purposes of these rules the following terms are used as defined below: (3-20-04)

**01. Abuse.** Any conduct of an employee, ~~affiliated residential habilitation provider~~ or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence under Section 39-5202, Idaho Code. ~~(3-20-04)~~(8-5-11)T

**02. Administrator.** The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts. (7-1-95)

**03. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A participant may act as his own advocate. (3-20-04)

**04. Agency.** Any business entity that directly provides ~~or affiliates with residential habilitation providers who provide~~ residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities. ~~(7-1-95)~~(8-5-11)T

**05. Appeal.** A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-95)

**06. Audit.** A methodical examination and review. (7-1-95)

**07. Board.** The Idaho ~~State~~ Board of Health and Welfare. ~~(7-1-95)~~(8-5-11)T

08. **Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)
09. **Certificate.** A permit to operate a residential habilitation agency. (7-1-95)
10. **Certifying Agency.** ~~Regional~~ Units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. ~~(7-1-95)~~(8-5-11)T
11. **Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)
12. **Complaint Investigation.** An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)
13. **Department.** The Idaho Department of Health and Welfare. (7-1-95)
14. **Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-20-04)
- a. Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)
- b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-95)
- c. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)
15. **Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (7-1-95)
16. **Director.** Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)
17. **Exploitation.** An action which may include the misuse of a vulnerable participant's funds, property, services, or resources by another person for profit or advantage. (3-20-04)
18. **Full Certificate.** A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)
19. **Governing Authority.** The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)
20. **Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)
21. **Guardian.** A legally-appointed person who has the care of the person or property of another, under Section 66-404, Idaho Code. (3-20-04)
22. **Implementation Plan.** Written documentation of participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and participant satisfaction of the program developed, implemented, and provided by the agency specific to the plan of service. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

100. CERTIFICATION -- GENERAL REQUIREMENTS.

**01. Certificate Required.** After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. No agency may provide services without a current certificate. ~~(3-20-04)~~(8-5-11)T

**02. Application.** An application for a certificate must be made to the ~~regional office of the~~ Department upon forms provided by ~~it~~ the Department and must contain ~~such~~ the required information ~~as it reasonably requires under Section 101 of these rules,~~ ~~that must~~ include ~~ing~~ affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. ~~(3-20-04)~~(8-5-11)T

~~02. Issuance—Full Certificate. Upon receipt of an application for certification, the certifying agency must issue a certificate if the applicant meets the requirements established under this chapter. A certificate to provide residential habilitation services must be issued specifically for the persons or governmental units named in the application and is not transferable or assignable except with written approval of the certifying agency. Every agency must be designated by a distinctive name in applying for a certificate, and the name must not be changed without first notifying the certifying agency in writing at least thirty (30) days prior to the date the proposed change in name is to be effective. Certificates must be posted in a conspicuous place on the certified premises.~~ ~~(3-20-04)~~

**03. Denial.** The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any participant. (3-20-04)

a. Additional causes for denial of certificate may include: (7-1-95)

i. The residential habilitation agency does not meet the needs of participants as written on the plans of service or Implementation Plans which will violate the participants' rights; or (3-20-04)

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

b. Before denial is final, the certifying agency must provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any participant. The decision to grant a waiver must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency. Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

**04. Revocation.** The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include: (3-20-04)

a. The agency has a history of repeat deficiencies; ~~or~~ ~~(7-1-95)~~(8-5-11)T

b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; ~~or~~ ~~(7-1-95)~~(8-5-11)T

c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of participants;

- ~~or~~ (3-20-04)(8-5-11)T
- d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; ~~or~~ (7-1-95)(8-5-11)T
- i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; ~~or~~ (7-1-95)(8-5-11)T
- ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; ~~or~~ (7-1-95)(8-5-11)T
- e. The agency refuses to allow inspection of all residential habilitation records; ~~or~~ (7-1-95)(8-5-11)T
- f. The agency is not in substantial compliance with the provisions for services of participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.g.; or (3-20-04)
- g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

~~05. **Emergency Powers of the Director.** In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing.~~ (3-20-04)

~~06. **Injunction to Prevent Operation Without Certificate.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter.~~ (7-1-95)

~~075. **Conformity.** Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department.~~ (3-20-04)

~~086. **Inspection of Residential Habilitation Records.** The residential habilitation agency and all records required under these rules must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access must result in revocation of the residential habilitation agency's certificate.~~ (3-20-04)

~~097. **Agency Provider Training.** The Department must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to participants.~~ (3-20-04)

## ***Section 101 has been moved and renumbered to proposed Section 104***

### **101. CERTIFICATION - ISSUANCE OF CERTIFICATES.**

**The Department will conduct an initial survey upon receipt of a completed application.** (8-5-11)T

**01. Initial Certificate.** When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. During this six (6) month period, the Department evaluates the agency's ongoing capability to provide services and to meet the standards of these rules. The Department will resurvey the agency prior to the end of the initial certification period. (8-5-11)T

**02. Renewal of Certificate.** A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. (8-5-11)T



**03. Provisional Certificate.** When a residential habilitation agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a certificate will be issued. If the agency is determined to be out of compliance, the certificate will be denied or revoked. (8-5-11)T

**04. Expiration of Certificate.** An agency must request renewal of its certificate no less than ninety (90) days before the expiration of the certificate to ensure there is no lapse in certification. After initial certification the Department may issue a certificate that is in effect for up to three (3) years based upon an agency's substantial compliance with this chapter of rules. (8-5-11)T

**102. CERTIFICATE NOT TRANSFERABLE.**  
The certificate is issued only to the agency named in the application, only for the period specified, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. (8-5-11)T

**103. RETURN OF CERTIFICATE.**  
The certificate is the property of the state and must be returned to the state if it is revoked or suspended. (8-5-11)T

**104. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.**

**01. Notification to Department.** Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee must notify the Department in writing. (3-20-04)

**02. New Application Required.** A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

**03. Arms Length Agreement.** Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (3-20-04)

**105. -- 199. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. ADMINISTRATION.**

**01. Scope.** Each residential habilitation agency must be organized and administered under one authority. If other than a single owner or partnership, the agency must have a governing board which assumes full legal responsibility for the overall conduct of the agency. (3-20-04)

**02. Structure.** The administrative responsibilities of the agency must be documented by means of a current organizational chart. (3-20-04)

**03. Responsibilities.** The governing authority must assume responsibility for: (3-20-04)

- a. Adopting appropriate organizational bylaws and policies and procedures; ~~and~~ (7-1-95)(8-5-11)T
- b. Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator must participate in deliberation of policy decisions concerning all services; ~~and~~ (3-20-04)(8-5-11)T
- c. Providing a continuing and annual program of overall agency evaluation; ~~and~~ (7-1-95)(8-5-11)T
- d. Assuring that appropriate training, space requirements, support services, and equipment for ~~staff or affiliated~~ residential habilitation ~~providers~~ agency staff are provided to carry out assigned responsibilities; and (7-1-95)(8-5-11)T
- e. Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the plan of service. (3-20-04)

**202. ADMINISTRATOR.**

An administrator is responsible and accountable for implementing the policies and procedures approved by the governing authority. (3-20-04)

**01. Administrator Qualifications.** Each agency must have a designated administrator who: (3-20-04)

- a. Is at least twenty-one (21) years of age; ~~and~~ (7-1-95)(8-5-11)T
- b. Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- c. Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)

**02. Absences.** The administrator must designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. (3-20-04)

**03. Responsibilities.** The administrator, or his designee, must assume responsibility for: (3-20-04)

- a. Developing and implementing written administrative policies and procedures which comply with applicable rules; ~~and~~ (7-1-95)(8-5-11)T
- b. Developing and implementing policies and procedures for agency staff and ~~affiliated residential habilitation~~ provider training, quality assurance, evaluation, and supervision; ~~and~~ (7-1-95)(8-5-11)T
- c. Conducting regular agency staff ~~and affiliated residential habilitation provider~~ meetings to review program and general participant needs and plan appropriate strategies for meeting those needs; ~~and~~ (3-20-04)(8-5-11)T
- d. Maintaining adequate financial accounting records according to government accepted accounting principles; ~~and~~ (7-1-95)(8-5-11)T
- e. Making all records available to the Department for review or audit; ~~and~~ (7-1-95)(8-5-11)T
- f. Developing and implementing a policy addressing safety measures to protect participants, ~~and~~ staff, ~~and affiliated residential habilitation providers~~ as mandated by state and federal rules; and (3-20-04)(8-5-11)T
- g. Ensuring that agency personnel, ~~and affiliated providers~~ including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (7-1-95)(8-5-11)T

**203. STAFF ~~AND AFFILIATED~~ RESIDENTIAL HABILITATION PROVIDER TRAINING.**

Training must include orientation and ongoing training at a minimum as required under IDAPA 16.03.10, "Medicaid

Enhanced Plan Benefits,” Sections 700 through 706. Training is to be a part of the orientation training and is required initially prior to accepting participants. All required training must be completed within six (6) months of employment ~~or affiliation~~ with a residential habilitation agency and documented in the employee ~~or affiliated~~ residential habilitation provider record. The agency must ensure that all employees, ~~affiliated residential habilitation providers,~~ and contractors receive orientation training in the following areas: ~~(3-20-04)(8-5-11)T~~

01. **Rights.** Personal, civil, and human rights. (7-1-95)
02. **Disabilities.** Developmental disabilities commensurate with the skills of participants served. (3-20-04)
03. **Understanding of Participants' Needs.** A basic understanding of the needs, desires, goals and objectives of participants served. (3-20-04)
04. **Supervision.** Appropriate methods of supervision. (7-1-95)
05. **Review of Services.** A review of the specific services that the participant requires. (3-20-04)
06. **First Aid and CPR.** First aid, CPR, and universal precautions. (7-1-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. PERSONNEL.**

01. **Policies.** The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents; ~~and training, supervision, and quality assurance for affiliated providers.~~ Written personnel policies must be on file and provided to employees ~~and affiliated residential habilitation providers~~ which describe the employee's ~~and affiliated residential habilitation provider's~~ rights, responsibilities, and agency's expectations. ~~(3-20-04)(8-5-11)T~~

02. **Work Schedules.** Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules must be kept in writing. The agency must specify provisions and procedures to assure back-up coverage for those work schedules. (3-20-04)

03. **Personnel Records.** A record for each employee ~~and affiliated residential habilitation provider~~ must be maintained from date of hire ~~or affiliation~~ for not less than one (1) year after the employee ~~or affiliated residential habilitation provider~~ is no longer employed by the agency, and must include at least the following: ~~(3-20-04)(8-5-11)T~~

- a. Name, current address and phone number of the employee; and (7-1-95)
- b. Social Security number; and (7-1-95)
- c. Education and experience; and (7-1-95)
- d. Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e. Date of employment ~~or affiliation~~; and ~~(7-1-95)(8-5-11)T~~
- f. Position in the agency; and (7-1-95)
- g. Date of termination of employment ~~or affiliation~~ and reason for termination, if applicable; and ~~(7-1-95)(8-5-11)T~~

- h. Documentation of initial orientation and required training; and (7-1-95)
- i. Evidence of current CPR and First Aid certifications; and (7-1-95)
- j. Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- k. Evidence that the employee ~~or affiliated residential habilitation provider~~ has received a job description and understands his duties. (~~7-1-95~~)(8-5-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. PARTICIPANT RIGHTS.**

**01. Responsibilities.** Each residential habilitation agency must develop and implement a written policy outlining the personal, civil, and human rights of all participants. The policy protects and promotes the rights of each participant and includes the following: (3-20-04)

- a. Inform each participant, or legal guardian, of the participant's rights and the rules of the agency; (3-20-04)
- b. Allow and encourage individual participants to exercise their rights as participants of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; (3-20-04)
- c. Inform each participant, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; (3-20-04)
- d. Provide each participant with the opportunity for personal privacy and ensure privacy during provision of services; (3-20-04)
- e. Ensure that participants are not compelled to perform services for the agency, its employees, ~~affiliated residential habilitation providers~~ or contractors and ensure that participants who do work for the agency, its employees, ~~affiliated residential habilitation providers~~ or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; (~~3-20-04~~)(8-5-11)T
- f. Ensure that participants have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their plans of service; and (3-20-04)
- g. Ensure that participants have the opportunity to participate in social, religious, and community group activities. (3-20-04)

**403. PARTICIPANT FINANCES.**

When the residential habilitation agency or its employees, ~~affiliated residential habilitation providers~~ or contractors are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that: (~~3-20-04~~)(8-5-11)T

**01. Participant's Personal Finance Records.** Assures a full and complete accounting of participants' personal funds entrusted to the agency, ~~or~~ its employees, ~~affiliated residential habilitation providers~~ or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. (~~3-20-04~~)(8-5-11)T

- 02. No Commingling of Funds.** Precludes any commingling of participant funds with agency funds. (3-20-04)
- 03. Availability of Funds.** Ensures that the participant's financial records must be available on request to the participant, participant's legal guardian or advocate. (3-20-04)
- 404. COMMUNICATION WITH PARTICIPANTS, PARENTS, LEGAL GUARDIANS, AND OTHERS.**  
The residential habilitation agency must promote participation of participants, legal guardians, relatives and friends in the process of providing services to a participant unless their participation is unobtainable or inappropriate as prescribed by the plan of service; and (3-20-04)
- 01. Reciprocal Communication.** Answer communications from participant's families and friends promptly and appropriately; and (3-20-04)
- 02. Promotion of Visits and Activities.** Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)
- 03. Notification of Guardian of Participant's Condition.** Notify *promptly* the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. ~~(3-20-04)~~(8-5-11)T
- 04. Notification to Department of a Participant's Condition.** Through a Department approved process, the agency must notify the Department within twenty-four (24) hours of any significant incidents affecting health and safety or changes in a participant's condition, including serious illness, accident, death, emergency medical care, hospitalization, adult protective services contact and investigation, or if the participant is arrested, contacted by, or under investigation by law enforcement, or involved in any legal proceedings. The events and the agency response to the events must be documented in the participant file. (8-5-11)T
- 405. TREATMENT OF PARTICIPANTS.**  
The residential habilitation agency must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the participant to include at least the following: (3-20-04)
- 01. Interventions.** Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. (3-20-04)
- 02. No Abuse.** Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not use physical, verbal, sexual, or psychological abuse or punishment. ~~(3-20-04)~~(8-5-11)T
- 03. No Punishment.** Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. ~~(3-20-04)~~(8-5-11)T
- 04. Reporting Violations.** Any agency employee, ~~affiliated residential habilitation provider~~ or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing Ombudsman for the Elderly Program," or the designated state protection and advocacy system for persons with developmental disabilities when applicable. ~~(3-20-04)~~(8-5-11)T
- 05. Providing Evidence of Violation.** Agencies must provide evidence that all alleged violations are thoroughly investigated and must protect the participant from the possibility of abuse while the investigation is in progress. (3-20-04)
- 06. Reporting Results of Investigations.** Results of all investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken. (3-20-04)
- 07. Proper Treatment of Participants.** Participants must be treated with dignity and respect and their

personal choices and preferences are respected and honored whenever possible and consistent with their well being and their plan of service. (3-20-04)

**08. Use of Restraint on Participants.** No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: (3-20-04)

**a.** Chemical restraint. Employees, ~~affiliated residential habilitation providers~~ or contractors of the agency must not use chemical restraint unless authorized by an attending physician. ~~(3-20-04)~~(8-5-11)T

**b.** Mechanical restraint. (7-1-95)

**i.** Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)

**ii.** Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

**c.** Physical restraint. (7-1-95)

**i.** Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented in the participant's record. (3-20-04)

**ii.** Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.0310, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

**d.** Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant, his service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. ENFORCEMENT PROCESS.**

The Department may impose a remedy or remedies when it determines a residential habilitation agency is not in compliance with these rules. (8-5-11)T

**01. Determination of Remedy.** In determining which remedy or remedies to impose, the Department will consider the residential habilitation agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 501.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (8-5-11)T

**02. Enforcement Remedies.** If the Department determines that a residential habilitation agency is out of compliance with these rules, it may impose any of the following remedies according to Section 501.01 of this rule. (8-5-11)T

**a.** Require the residential habilitation agency to submit a plan of correction that must be approved in writing by the Department; (8-5-11)T

- b.** Issue a provisional certificate with a specific date for correcting deficient practices; (8-5-11)T
- c.** Ban enrollment of all participants with specified diagnoses; (8-5-11)T
- d.** Ban any new enrollment of participants; (8-5-11)T
- e.** Revoke the residential habilitation agency's certificate; or (8-5-11)T
- f.** Summarily suspend the certificate and transfer participants. (8-5-11)T

**03. Immediate Jeopardy.** If the Department finds a residential habilitation agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the residential habilitation agency's certificate. (8-5-11)T

**04. No Immediate Jeopardy.** If the Department finds that the residential habilitation agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 501.02.a. through 501.02.e. of this rule. (8-5-11)T

**05. Repeat Deficiencies.** If the Department finds a repeat deficiency in a residential habilitation agency, it may impose any of the remedies listed in Subsection 501.02 of this rule as warranted. The Department may monitor the residential habilitation agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. (8-5-11)T

**06. Failure to Comply.** The Department may impose one (1) or more of the remedies specified in Subsection 501.02 of this rule if: (8-5-11)T

**a.** The residential habilitation agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or (8-5-11)T

**b.** The residential habilitation agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. (8-5-11)T

## **502. REVOCATION OF CERTIFICATE.**

**01. Revocation of the Residential Habilitation Agency's Certificate.** The Department may revoke a residential habilitation agency's certificate when persuaded by the preponderance of the evidence that the agency is not in substantial compliance with the requirements in this chapter of rules. (8-5-11)T

**02. Causes for Revocation of the Certificate.** The Department may revoke any residential habilitation agency's certificate for any of the following causes: (8-5-11)T

**a.** The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; (8-5-11)T

**b.** The agency is not in substantial compliance with these rules; (8-5-11)T

**c.** When persuaded by preponderance of the evidence that conditions exist in the agency that endanger the health or safety of any participant; (8-5-11)T

**d.** Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (8-5-11)T

**e.** The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; (8-5-11)T

- f.** The agency has failed to comply with any of the conditions of a provisional certificate: (8-5-11)T
- g.** The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant: (8-5-11)T
- h.** An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules: (8-5-11)T
- i.** Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code: (8-5-11)T
- j.** The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency: (8-5-11)T
- k.** The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 402 of these rules: (8-5-11)T
- l.** The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. (8-5-11)T

**503. NOTICE OF ENFORCEMENT REMEDY.**

The Department will notify the following of the imposition of any enforcement remedy on a residential habilitation agency: (8-5-11)T

**01. Notice to the Residential Habilitation Agency.** The Department will notify the residential habilitation agency in writing, transmitted in a manner that will reasonably ensure timely receipt. (8-5-11)T

**02. Notice to Public.** The Department will notify the public by sending the residential habilitation agency printed notices to post. The residential habilitation agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. (8-5-11)T

**03. Notice to the Professional Licensing Boards.** The Department will notify professional licensing boards, as appropriate. (8-5-11)T

**504. -- 509. (RESERVED)**

**510. EMERGENCY POWERS OF THE DIRECTOR.**

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. (8-5-11)T

**511. INJUNCTION TO PREVENT OPERATION WITHOUT CERTIFICATE.**

Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (8-5-11)T

**5012. -- 999. (RESERVED)**



# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-1101

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-242, 39-5403, 56-221, 56-222, 56- 1003, and 56-1004, Idaho Code; and 42 USC Section 5106a Child Abuse Prevention and Treatment and Adoption Reform (CAPTA).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

The Department is updating these rules to meet federal requirements for the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA). Current rule requires law enforcement to have a court order before the Department is allowed to release information to them. In Idaho, law enforcement, not the Department, has the ability to remove a child from his or her home when the child is in "imminent danger." The Department is amending these rules to assist in that process by allowing the Department to share information with law enforcement without a court order. This will alleviate delays in law enforcement's investigation of child abuse and neglect.

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

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

There is no anticipated fiscal impact due to this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align these rules with federal statute (CAPTA).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tamara Prisock at (208) 334-5719.

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 September 28, 2011.

DATED this 8th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NUMBER 16-0501-1101**

**100. EXCEPTIONS TO REQUIREMENT FOR AUTHORIZATION.**

Confidential information will be released without an authorization to individuals and entities in compliance with a court order, or if they are legally authorized to receive it. The following are exceptions to the requirement for an authorization: (3-20-04)

**01. Advocates and Guardians.** Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for: (3-20-04)

**a.** Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332; (3-20-04)

**b.** Claims under laws administered by the VA as required by 38 USC Section 3301; and (3-20-04)

**c.** Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3. (3-20-04)

**02. Licensure.** In compliance with Section 9-340C(9), Idaho Code, records will be released if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. (4-2-08)

**03. Fugitives and Missing Persons.** (3-20-04)

**a.** A state or local law enforcement officer may receive the current address of any cash assistance recipient who is a fugitive felon, in compliance with Section 56-221, Idaho Code. (3-20-04)

**b.** The following health information may be disclosed to a law enforcement officer for the purpose of identifying or locating a suspect, fugitive, material witness or missing person: (3-20-04)

**i.** Name and address; (3-20-04)

**ii.** Date and place of birth; (3-20-04)

**iii.** Social security number; (3-20-04)

**iv.** Blood type and rh factor; (3-20-04)

**v.** Type of injury; (3-20-04)

**vi.** Date and time of treatment or death, if applicable; and (3-20-04)

**vii.** Distinguishing physical characteristics. (3-20-04)

**c.** DNA, dental records, or typing, samples or analysis of body fluids or tissue must not be disclosed. (3-20-04)

**04. Duty to Warn or Report.** Confidential information may be released without an authorization if necessary under a legal duty to warn or to report. (3-20-04)

**05. Department Business, Monitoring and Legal Functions.** Department employees and contractors may use and disclose records as necessary to perform normal business functions, including health treatment, audit

and quality improvement, investigation of fraud and abuse, establishment of overpayments and recoupment, public health, or other functions authorized by law. Information will be made available to state and federal auditors and compliance monitors. Confidential information will be provided to counsel as needed to evaluate, prepare for and represent the Department in legal actions. (3-20-04)

**06. Emergencies.** Confidential information may be disclosed to qualified medical personnel to the extent necessary to respond to a medical emergency that requires immediate attention. (3-20-04)

**07. Multidisciplinary Staffing.** Confidential information may be disclosed to employees of the Department, law enforcement, and other appropriate individuals to participate in a multidisciplinary team evaluation of child protection cases under Section 16-1609A, Idaho Code, or interdisciplinary Department staffing of services for an individual. All individuals who participate in such staffing must not redisclose the information and must comply with any other pertinent statute, rule or regulation. (3-20-04)

**08. Collaborative Staffing.** Confidential information may be disclosed in staffing by the Department and other individuals or entities if all participants are involved with the same or similar populations and have an equal obligation or promise to maintain confidentiality. Disclosure of information in inter-agency staffing must be necessary to coordinate benefits or services, or to improve administration and management of the services. Confidential information may be disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the staffing. All individuals who participate in such staffing must not redisclose the information except in compliance with any other pertinent statute, rule or regulation. (3-20-04)

**09. Elected State Official.** As provided by Section 16-1629(6), Idaho Code, any duly elected state official carrying out his official functions may have access to child protection records of the Department, and must not redisclose the information. (3-20-04)

**10. Child Protection Agency.** A legally mandated child protection agency may provide information necessary to investigate a report of known or suspected child abuse or neglect, or to treat a child and family who are the subjects of the record. (3-20-04)

**11. Legally Authorized Agency.** An agency will be provided appropriate information if the agency is legally responsible for or authorized to care for, treat or supervise a child who is the subject of the record. (3-20-04)

**12. Informal Representatives.** Informal representatives may be permitted to receive and deliver information on behalf of an individual, and may be given health information if the informal representative is directly involved with the individual's care. Confidential information may be withheld in whole or part if professional staff determines that disclosure is not in the best interest of the individual, based on the circumstances and their professional judgement. The Department will not disclose information that is prohibited from being disclosed by these rules or any other legal requirement. (3-20-04)

**13. Law Enforcement.** Any federal, state, or local law enforcement agency, or any agent of such agency, may be permitted access to information as needed in order to carry out its responsibilities under law to protect children from abuse and neglect. ( )

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

**16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS**

**DOCKET NO. 16-0506-1101**

**NOTICE OF RULEMAKING - PROPOSED RULE**

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

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

<b>Monday, September 19, 2011 2:00 p.m. (Local)</b>	<b>Wednesday, September 21, 2011 2:00 p.m. (Local)</b>	<b>Friday, September 23, 2011 1:00 p.m. (Local)</b>
<b>DHW Region II 1118 "F" Street, 2nd Floor Conf. Rm. Lewiston, ID</b>	<b>DHW Region V 1070 Hiline Rd. Suite 230 Pocatello, ID</b>	<b>DHW Region IV 1720 Westgate Dr. Suite A, Rm. 131 Boise, ID</b>

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

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

These rules are being amended to clarify the process for receiving and accessing an applicant's criminal history check (CHC) records. Changes to these rules include the following:

1. Definitions are being amended to clarify that an agency and employer are synonymous terms;
2. Citations to other Department rule chapters are being updated;
3. The application time frames are being clarified to help alleviate confusion by the applicant and employers on when an individual's application and fingerprints must be done to be in compliance with these rules;
4. The list of disqualifying crimes resulting in unconditional denials are being updated for the different types of manslaughter in Section 18-4006, Idaho Code, and for any substantially conforming foreign criminal violations; and
5. Clarify that an individual sanctioned by Department programs will receive an unconditional denial.

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

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

There is no anticipated fiscal impact due to these rule changes.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is clarifying its rules.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 8th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 16-0506-1101**

**010. DEFINITIONS AND ABBREVIATIONS.**

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

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

**02. Application.** An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

**03. Clearance.** A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. (3-26-08)

**04. Conviction.** An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

**a.** When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

**b.** When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

**c.** When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

**d.** When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

**i.** When the individual has entered into participation in a drug court; or (3-26-08)

**ii.** When the individual has entered into participation in a mental health court. (3-26-08)

**05. Criminal History and Background Check.** A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. (3-4-11)

**06. Criminal History Unit.** The Department's Unit responsible for processing fingerprint-based

criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

**067. Denial.** A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)

**a.** Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

**b.** Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. (3-4-11)

**078. Department.** The Idaho Department of Health and Welfare or its designee. (3-26-08)

**089. Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

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

**0911. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

**102. Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

**113. Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)

**124. Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

**135. Relevant Record.** A relevant record is a record that is ~~from~~ found in a search of criminal records or ~~from~~ registries checked by the Department as provided in Section 56-1004A, Idaho Code. (~~3-4-11~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. EMPLOYER REGISTRATION.**

Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. (~~3-26-08~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. (3-4-11)

**01. Adoptive Parent Applicants.** Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

**02. Alcohol or Substance Use Disorders Treatment Facilities and Programs.** Individuals who must comply with IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services"

Facilities and Programs,” and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

**03. Certified Family Homes.** Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, “Rules Governing Certified Family Homes,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

**04. Children's Residential Care Facilities.** Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

**05. Children's Therapeutic Outdoor Programs.** Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

**06. Contracted Non-Emergency Medical Transportation Providers.** Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

**07. Designated Examiners and Designated Dispositioners.** Individuals who must comply with IDAPA 16.07.39, “Appointment of Designated Examiners and Designated Dispositioners.” (3-4-11)

**08. Developmental Disabilities Agencies.** Individuals who must comply with IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

**09. Emergency Medical Services (EMS).** Individuals who must comply with IDAPA 16.02.03, “Rules Governing Emergency Medical Services,” and IDAPA 16.01.07, “Emergency Medical Services (EMS) -- Personnel Licensing Requirements.” (3-4-11)( )

**10. Home and Community-Based Services (HCBS).** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies.” (3-4-11)( )

**11. Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.” (3-4-11)

**12. Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)

**13. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** Individuals who must comply with IDAPA 16.03.11, “Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).” (3-4-11)

**14. Licensed Foster Care.** Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

**15. Licensed Day Care.** Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (3-4-11)

**16. Mental Health Clinics.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (3-4-11)

**17. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Individuals who must comply with IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.” (3-4-11)

**18. Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

**19. Personal Care Service Providers.** Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

**20. Psychosocial Rehabilitation Providers.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

**21. Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-4-11)

**22. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill.** Individuals who must comply with IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." (3-4-11)

**23. Service Coordinators and Para professional Providers.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

**24. Skilled Nursing and Intermediate Care Facilities.** Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." (3-4-11)

**25. Support Brokers and Community Support Workers.** Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." (3-4-11)

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

The following Department employees, *and* contractors, *and volunteers* are subject to criminal history and background checks. (~~3-26-08~~)(      )

**01. Employees, Contractors, and Volunteers.** Employees, contractors, and volunteers, providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. (3-29-10)

**02. Employees of Bureau of Audits and Investigations.** (3-26-08)

**a.** Fraud Investigators; (3-26-08)

**b.** Utilization Review Analysts; and (3-26-08)

**c.** Criminal History Staff. (3-26-08)

**03. Employees at State Institutions.** All employees of the following state funded institutions; (3-26-08)

**a.** Southwest Idaho Treatment Center, Nampa, Idaho; (3-26-08)

**b.** State Hospital North, Orofino, Idaho; and (3-26-08)

**c.** State Hospital South, Blackfoot, Idaho. (3-26-08)

**04. Emergency Medical Services (EMS) Employees.** EMS communication specialists and managers. (3-26-08)

**05. Other Employees.** Other Department employees as determined by the Director. (3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. SUBMISSION OF APPLICATION.**

An application for a criminal history and background check must be submitted and received by the Department



before a criminal history and background check can be initiated. ~~Once the Department has received the notarized application and signed fingerprint card, the~~ application is pending until the Department issues a clearance or denial, or the individual withdraws the application. ~~An application must be submitted and received by the Department within twenty-one (21) days of it being completed and notarized.~~ (3-26-08)( )

**01. Submitting an Application On-Line.** An application may be submitted through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature. (3-26-08)

**02. Submitting an Application by Mail.** An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to ~~the nearest fingerprint location as found on the Department's website or contact the Criminal History Unit as described in Section 005 of these rules.~~ Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501. (3-26-08)( )

**131. -- 139. (RESERVED)**

**140. SUBMISSION OF FINGERPRINTS.**

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department must obtain fingerprints electronically at one of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (3-26-08)( )

**01. Department Fingerprinting Locations.** A fingerprint appointment may be scheduled at designated Department locations where the Department will collect the individual's fingerprints. The locations are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these rules. (3-26-08)

**02. Submitting Fingerprints by Mail.** An individual may elect to have fingerprints collected by a local law enforcement agency or by the applicant's employer. The fingerprint card must be signed and mailed with the completed notarized application and applicable fee to ~~the nearest fingerprinting location.~~ Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501. (3-26-08)( )

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

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

The completed notarized application and fingerprints must be submitted and received by the Department within twenty-one (21) days from the date of notarization. ( )

**01. Availability to Provide Services.** The applicant is not available to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been rolled ~~for an on-line application~~ within this time frame. ( )

**02. Incomplete Application.** The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (3-26-08)( )

**03. No Extension of Time Frame.** The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual ~~or his employer~~ may print copies of the clearance. The employer must print out the clearance and maintain a copy readily available for inspection. (3-26-08)(    )

**191. -- 199. (RESERVED)**

**200. UNCONDITIONAL DENIAL.**

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

**01. Reasons for an Unconditional Denial.** Unconditional denials are issued for: (3-4-11)

**a.** Disqualifying crimes described in Section 210 of these rules; (3-4-11)

**b.** A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; ~~or~~ (3-4-11)(    )

**c.** A relevant record on the Nurse Aide Registry; ~~or~~ (3-4-11)(    )

**d.** A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules. (    )

**02. Issuance of an Unconditional Denial.** The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

**03. Challenge of Department's Unconditional Denial.** An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (3-4-11)

**a.** If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**b.** If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**04. No Exemption Review.** No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

**05. Final Order.** The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. (3-26-08)

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

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

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

**01. Disqualifying Crimes.** The disqualifying crimes, described in Subsections 210.01.a. through 210.01.v. of ~~these~~ this rules, or any substantially conforming foreign criminal violation, will result in an

unconditional denial being issued.

~~(3-26-08)~~( )

- a. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)
- b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- c. Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- d. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- e. Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- f. Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- g. Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- h. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- i. Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- ~~j.~~ Manslaughter: ( )
- ~~i.~~ Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; ( )
- ~~ii.~~ Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; ( )
- ~~iii.~~ Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; ( )
- ~~jk.~~ Murder in any degree, ~~voluntary manslaughter, or~~ assault, ~~or battery~~ with intent to commit a ~~serious felony~~ murder, as defined in Sections 18-4001, 18-4003, ~~18-4006~~, and 18-4015, Idaho Code; ~~(3-26-08)~~( )
- ~~kl.~~ Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- ~~lm.~~ Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- ~~mn.~~ Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- ~~no.~~ Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- ~~op.~~ Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- ~~pq.~~ Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- ~~qr.~~ Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- ~~rs.~~ Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- ~~st.~~ Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- ~~tu.~~ Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)

- ~~#y.~~ Any felony punishable by death or life imprisonment; or (3-26-08)
- ~~#w.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

**02. Disqualifying Five-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~hi.~~ of this rule, or any substantially conforming foreign criminal violation: ~~(3-4-11)( )~~

- a. Any felony not described in Subsection 210.01, of this rule; (3-4-11)
- b. Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
- c. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)
- d. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
- e. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
- f. Misdemeanor public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; ~~or~~ ~~(3-4-11)( )~~
- g. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; ~~;~~ ~~(3-4-11)( )~~
- h. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; or ( )
- ~~hi.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)

**03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a. A withheld judgment; (3-26-08)
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**240. MEDICAID EXCLUSION.**

Individuals subject to these rules, who are excluded by the Office of the Inspector General, Department of Health and Human Services; or, are listed in the State of Idaho Medicaid Exclusion list, cannot provide Department funded services within the scope of these rules. At the expiration of the exclusion, the individual may reapply for a criminal history and background check. ~~(3-26-08)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

**02. Availability to Provide Services.** The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. ( )

**03. Reconsideration of Action Pending. In the case of an inability to proceed status,** ~~the~~ applicant can submit documentation that the matter has been resolved to the Department for reconsideration. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. ~~(3-26-08)~~( )

**271. -- 299. (RESERVED)**

**300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. ~~(3-26-08)~~( )

**01. New Criminal History and Background Check.** Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

**a.** Accepting employment with a new employer; or (3-26-08)

**b.** Applying for licensure or certification with the Department; and (3-26-08)

**c.** His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

**02. Use of Criminal History Check Within Three Years of Completion.** Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

**a.** The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; and (3-26-08)

**b.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

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

**ii.** The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.b. of this rule. ( )

**03. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (3-26-08)

**04. Department Discretion.** The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. (3-26-08)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1101

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; and 25 U.S.C. Sections 1901-1963 (Indian Child Welfare Act).

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

This rule change is needed to streamline the "Notice of Pending Proceedings" to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA). This rule change removes errors, inconsistencies, and redundancies from the current chapter of rules in Sections regarding compliance with ICWA.

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

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

Relative to the state general fund, this rulemaking is budget neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rule changes are being made simply to clarify and streamline rules related to the Indian Child Welfare Act (ICWA).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 September 28, 2011.

DATED this 9th day of August, 2011.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 16-0601-1101

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

**02. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

**03. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

**04. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

**05. Family Services Worker.** Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

**06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)

**07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)

**08. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)

**09. Independent Living.** Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)

**10. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

**11. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe; or ~~(3-18-99)~~( )

b. Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. ~~(3-18-99)~~( )

**12. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

**13. Indian Child's Tribe.** (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

**b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

**14. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

**15. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

**16. Interethnic Adoption Provisions of 1996 (IEP).** IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)

**17. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

**18. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

**012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Legal Guardianship.** A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative. (4-7-11)

**02. Licensed.** Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)

**03. Licensing.** See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)

**04. Medicaid.** See "Title XIX." (3-30-01)

**05. Multiethnic Placement Act of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

**06. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (5-8-09)

**07. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**08. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**09. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)



10. **P.L. 105-89.** Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

11. **Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

12. **Qualified Expert Witness--ICWA.** ~~A person who is most likely to be a qualified expert witness in the placement of an Indian child is:~~ An individual who is an expert regarding tribal customs pertaining to family organization and child rearing practice, and is qualified to render an opinion as to whether continued custody of the child by the parent(s), or Indian custodian(s), is likely to result in serious emotional or physical damage to the child. (3-18-99)(      )

~~a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices;~~ (3-18-99)

~~b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe;~~ (3-18-99)

~~c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community;~~ or (3-18-99)

~~d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs.~~ (3-18-99)

13. **Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)

14. **Relative Guardian.** A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. (4-7-11)

15. **Reservation.** ~~Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation.~~ A reservation is an area of land “reserved” by or for an Indian band, village, or tribe(s) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations. (3-18-99)(      )

16. **Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

17. **Responsible Party.** A Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. CORE CHILD AND FAMILY SERVICES.**

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

**01. Crisis Services.** Crisis Services are an immediate response to ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

**02. Screening Services.** Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

**03. Assessment and Safety/Service Planning Services.** Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

**04. Preventative Services.** Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

**05. Court-Ordered Services.** These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

**06. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed ~~or~~ approved ~~or~~ *specified* by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. ~~(5-8-09)~~ ( )

**07. Community Support Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

**08. Interstate Compact on Out-of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

**09. Independent Living.** Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

**a. Eligibility Requirements for Current Foster Youth.** To be eligible for independent living services, a current foster youth must: (5-8-09)

**i.** Be fifteen (15) to nineteen (19) years of age; (5-8-09)

**ii.** Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is

between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

**b.** Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

**c.** Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

**10. Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

**11. Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

**a.** Child care licensing; (3-30-01)

**b.** Daycare licensing; (3-30-01)

**c.** Community development; and (5-8-09)

**d.** Contract development and monitoring. (5-8-09)

**031. -- 049. (RESERVED)**

**050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.**

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ensure timely permanency for children and to protect the rights of children, their families and their tribes. (4-7-11)

**01. Reasonable Efforts.** Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with his family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (4-7-11)

**a.** Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)

**b.** Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. **Active Efforts.** ~~For an Indian child, a description of the active~~ The efforts made required under ICWA to provide remedial services and rehabilitative programs designed to prevent the breakup of the an Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child, or to reunify an Indian family. Active efforts must include contacts and work with an Indian child's tribe. (5-3-03)( )

03. **ICWA Placement Preferences.** ~~If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences.~~ (3-18-99)( )

a. When the Indian child's permanency goal is reunification, the preferences are described in Section 402 of these rules. ( )

b. When the Indian child's permanency goal is adoption or guardianship, the preferences are described in Subsection 800.01 of these rules. ( )

c. When the placement preferences are not followed, the court must determine that good cause exists for not following the preferences. ( )

04. **Least Restrictive Setting.** Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. ~~For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.~~ (4-7-11)( )

05. **Legal Requirements for Indian Children.** ~~In the case of~~ When there is reason to believe that a child is an Indian child, notice of the pending proceeding must be sent ~~by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe,~~ according to the notice provisions specified in Section 051 of these rules. Notice must also include ~~ge~~ notice of their ~~tribe's~~ right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; and the right to examine all documents filed with the court upon which placement may be based; ~~and the right to withdraw consent to a voluntary foster placement.~~ (3-30-07)( )

06. **Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

07. **Notification of Change in Placement.** Written notification ~~to the child's parent(s) or legal guardian(s) must be made~~ within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, ~~or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA.~~ Notification must be sent to the child's parent(s) or legal guardian(s). When the child is an Indian child, written notification must also be sent to the child's Indian custodian(s), if applicable, and to the child's tribe. (5-3-03)( )

08. **Notification of C hange in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. **Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

**10. Qualified Expert Witness--ICWA--Placement Preferences.** ~~Compliance with the foster care placement preferences of the Indian Child Welfare Act. The testimony of an expert witness is required at the hearing in which a child is placed in state custody, typically the adjudicatory, and at the hearing for termination of parental rights. A person who is most likely to be a qualified expert witness in the placement of an Indian child is:~~ (3-18-99)( )

**a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; ( )

**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or ( )

**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. ( )

**11. Compliance with Requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996.** (4-7-11)

**a.** The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. (4-7-11)

**b.** The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; (4-7-11)

**c.** To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; (4-7-11)

**d.** A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; (4-7-11)

**e.** Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and (4-7-11)

**f.** Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. (4-7-11)

**12. Family Decision-Making and Plan Development.** (3-30-01)

**a.** A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

**b.** Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

**c.** Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. **Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. **ASFA Placement Preferences.** The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

- a. Return home if safe to do so; (3-30-01)
- b. Adoption or legal guardianship by a relative or kin; (5-8-09)
- c. Adoption or legal guardianship by non-relative; (3-30-01)
- d. Another planned permanent living arrangement such as long-term foster care. (5-8-09)

**051. NOTICE REQUIREMENTS FOR ICWA.**

~~Wherever these rules require notice to the parent(s) or custodian(s) and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310 SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent(s) or Indian custodian(s) and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who must provide notice to the parent(s) or Indian custodian(s) and tribe. (5-8-09)~~

**01. Notice of Pending Proceedings -- Who Must be Notified.** When there is reason to believe that a child is an Indian child, the initial and any subsequent Notice of Pending Proceedings must be sent to the Indian child's parent(s), custodian(s), and tribe. Notices of Pending Proceedings must be sent to the ICWA Designated Agent for the child's tribe via Certified Mail, Return Receipt Requested. All Notices of Pending Proceedings must be received by the child's parent(s), Indian custodian(s) and tribe at least 10 (ten) days before the proceeding is scheduled to occur. Returned receipts are to be kept in the child's file and made available for review by the court. ( )

**02. Rights Under a Notice of Pending Proceedings.** Notices of Pending Proceedings must also include notice of the tribe's right to intervene; their right to twenty (20) additional days to prepare for the proceedings; the right to appointment of counsel if the parent(s) or Indian custodian(s) are indigent; and the right to examine all documents filed with the court upon which placement may be based. ( )

**03. Notice of Pending Proceedings--When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown.** If the identity or location of the parent(s) or Indian custodian(s) or the tribe is unknown, the Notice of Pending Proceedings must be sent to the Secretary of the Interior by certified mail with a return receipt requested at the following address: Department of the Interior, Bureau of Indian Services, Division of Human Services, Code 450, Mail Stop, 1849 C Street N.W., Washington, D.C. 20240. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. PERMANENCY HEARINGS.**

By the provision of Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than every twelve (12) months after the date of the child's placement in alternate care

and no later than every twelve (12) months thereafter as long as the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. (5-8-09)

**01. Attendance at Permanency Hearings.** The permanency hearing includes, at a minimum, the child's parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (*if there is one*), must also be ~~included~~ encouraged to participate in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis the receipt of such notice. (5-8-09)( )

**02. Judicial Determinations.** (3-30-01)

**a.** The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanent plan for the child and issue an order specifying the permanent plan. (5-8-09)

**b.** In cases where the Department has documented, in the alternate care plan component of the family's service plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. AUTHORITY FOR ALTERNATE CARE SERVICES.**

Upon approval of the regional Child and Family Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: (5-8-09)

**01. Department Custody.** When the child is in the legal custody or guardianship of the Department; or (3-18-99)

**02. Voluntary Placement.** Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s) and the child must be returned to the parent or legal guardian upon their request. A contract between the Department and the service provider, if applicable, must also be in effect. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. (5-8-09)( )

**401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATE CARE.**

The Department will make meaningful reasonable attempts, both verbally and in writing, to inform in priority order, individuals identified below of the potential imminent placement and the requirements for consideration as a placement resource. The Department will place children in a safe and trusted environment consistent with the best interest and special needs of the children as required by P.L.96-272, Section 475(5). Ideally, placement priority will be given in the following order: (a) Immediate family; (b) Extended family members; (c) Non-family members with a significant established relationship with the child; (d) other licensed foster parent(s). Upon immediate contact with persons in categories a) through d) above, and after preliminary screening, within seventy-two (72) hours of decision to place, Departmental staff will make reasonable attempts to inform immediate family members of the way to

become a placement resource. Alternate care placement will in all cases include consideration of: (5-8-09)

**01. Family Assessment.** The family assessment conducted in accordance with the provisions of the ~~FACS CFS Practice Manual Standards.~~ (3-30-07)( )

**02. Ability of Providers.** The ability of potential alternate care providers to address and be sensitive to the unique and individual needs of the child and ability to comply and support the plan for the child and their family. (3-18-99)

**03. Family Involvement.** The involvement of the family in planning and selecting the placement. The Department will use a family unity meeting concept making reasonable efforts to gather immediate and extended family members and other significant supporters to identify family strengths relevant to creating a safe environment for the child. This process will be fully reported to the court along with resulting plans and commitments. (5-8-09)

**402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.**

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. ~~Foster care placement must be in the least restrictive setting that most approximates a family and in which any special needs may be met.~~ In the absence of good cause to the contrary, a preference must be given to placement with: (5-8-09)( )

**01. Extended Family.** A member of the Indian child's extended family; (3-18-99)

**02. Foster Home Approved by Tribe.** A foster home licensed; ~~or approved, or specified~~ by the Indian child's tribe; (3-18-99)( )

**03. Licensed Indian Foster Home.** An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (3-18-99)

**04. Indian Institution.** An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~435. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA). RESERVED~~  
~~Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care.~~ (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**480. ALTERNATE CARE LICENSURE.**

All private homes and facilities providing care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed; ~~or approved or specified~~ by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (3-30-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**556. REPORTS INVOLVING INDIAN CHILDREN.**

Possible abuse, neglect, or abandonment of a child who is known or ~~suspected~~ **believed** to be Indian will be reported



to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the Department will perform the investigation. The Department will also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response will be maintained in the case record and written documentation will be provided to the appropriate tribal authorities. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**559. CHILD PROTECTION SAFETY AND COMPREHENSIVE ASSESSMENTS.**

The Department's safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) involved and the immediate family and a records check for history with respect to child protection issues. (4-7-11)

**01. Interview of a Child.** The interview of a child concerning a child protection report must be conducted: (3-30-07)

**a.** In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

**b.** By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

**c.** In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

**02. Interview of Family.** Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview must: (3-30-07)

**a.** Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

**b.** ~~Determine~~ **Inquire** if the family is ~~of~~ Indian, or has Indian heritage, for the purposes of ICWA; (3-18-99)( )

**c.** Interview siblings who are identified as being at risk; and (3-18-99)

**d.** Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

**03. Collateral Interviews.** Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

**04. Completion of a Comprehensive Assessment.** A Safety Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When safety threats are identified in the safety assessment and the case remains open for services, a comprehensive assessment must be completed. (4-7-11)

**05. Role of Law Enforcement.** Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

- a. Interviewing the alleged perpetrator; (3-18-99)
  - b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)
  - c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)
- 06. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral when the safety assessment has been completed. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. FAMILY HISTORY.**

If the family case plan is termination of parental rights and adoption is considered a part of the total planning for the child, the following information will be obtained and placed in the child's permanent adoption record: (5-8-09)

- 01. Informational Forms.** Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)
- 02. Hospital Records.** Hospital birth records on child. (3-18-99)
- 03. Evaluations/Assessments.** Evaluations/Assessments previously completed on child. (3-18-99)
- 04. Current Picture.** Current picture of child. (3-18-99)
- 05. Narrative Social History.** Child and family's narrative social history that addresses: (5-8-09)
  - a. Family dynamics and history; (3-18-99)
  - b. Child's current functioning and behaviors; (3-18-99)
  - c. Interests, talents, abilities, strengths; (3-18-99)
  - d. Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)
  - e. Life story, moves, reasons, key people; (3-18-99)
  - f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)
  - g. Medical, developmental and educational needs; (3-18-99)
  - h. Child's history, past experiences, and previous trauma; (3-18-99)
  - ~~i. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)~~
  - ~~ji. Membership or eligibility for membership in, and social and cultural contacts with, parent's tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s); (3-18-99)( )~~
  - ~~kj. Indian child's contacts with tribe(s) Indian ancestry; (3-18-99)( )~~

- ~~k.~~ Individualized recommendations regarding each child's need for permanency; and (3-18-99)
- ~~m.~~ Reasons for requesting termination of parental rights. (3-18-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.**

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family, or what active efforts to prevent the breakup of the Indian family have been made. ~~(3-30-01)~~ ( )
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
- a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
- b.** The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, and requires individualized documentation regarding the child's needs in permanent placement. (4-7-11)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)
- a.** Notification of the pending proceedings ~~by registered mail with return receipt requested,~~ to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location ~~cannot be determined~~ is unknown according to Section 051 of these rules; ~~(5-3-03)~~ ( )
- b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)
- c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the

right to court-appointed counsel;

(5-8-09)

**d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

**e09. Termination of Parent-Child Relationship.** ( )

**a.** A recommendation and the reasons ~~therefor as to~~ whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)( )

**b.** Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)( )

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

### **16.06.01 - CHILD AND FAMILY SERVICES**

#### **DOCKET NO. 16-0601-1102 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code, and Section 16-1506(3), Idaho Code, regarding certified adoption professionals.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

Section 16-1506(3), Idaho Code, mandates Department oversight of the certified adoption professional program and specifies the fees charged for review of the program's work product. During the 2011 legislative session, the Department proposed statute changes to eliminate the certified adoption professional program. The Senate Health and Welfare Committee declined to proceed with the legislation and asked the Department to consider changes to the current program to increase the quality of services it provides. In response, a stakeholder meeting was held in June 2011, at which time significant changes in this chapter of rules were identified as necessary to increase certification and practice requirements for certified adoption professionals.

This docket makes the identified rule changes to this chapter. In addition to addressing issues regarding certified adoption professionals, the proposed changes will positively impact the Department's child welfare program by bringing adoption home study and placement rules into alignment with the Department's rules regarding requirements for foster care licensing, as well as describe the Department's process for selecting adoptive placements for children in foster care.

Summary of proposed changes:

1. Outline the specific information needed from an applicant interested in becoming an adoptive parent (through the Department or a certified adoption professional), condense the information currently found elsewhere in adoption rules and document requirements that bring the process into alignment with foster care licensing rules as well as clarify the re-application process.
2. Clarify the responsibilities of the Department or certified adoption professional and the adoptive applicant during the completion of the adoption home study and specify mandatory elements of the home study. These changes bring home study requirements into alignment with foster care home study requirements.
3. Clarify the length of time an adoption home study is valid for use by an adoptive family, and the process for updating the home study.
4. Update the Department's process for selecting adoptive placements for children in foster care so that the rule will be consistent with practice.
5. Make wording changes consistent with the Department's shift in oversight responsibilities for the certified adoption professional program from regional offices to the Department's Division of Family and Community Services.
6. Add additional requirements for Department approval of a certified adoption professional.

7. Give the Department the ability to limit a certified adoption professional's scope of work, and increase the Department's ability to make changes to an individual's certification, based on his compliance with the rules.
8. Clarify the minimum standards of practice required of certified adoption professionals.
9. Specify the responsibility of the Department in providing oversight services to certified adoption professionals; and
10. Make other minor, non-substantive clerical corrections to this chapter of rules, as needed.

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

Under the proposed rule, Certified Adoption Professionals must apply for renewal of their certificate every two (2) years at a cost of \$100. If the application is denied, the applicant will be reimbursed \$75, and a \$25 processing fee will be charged.

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

The proposed rule changes are projected to result in a total increase of approximately \$1500 (per year) in fees collected through the certified adoption professional program, once fully implemented. Full implementation will take three (3) years since there is currently a three-year relicensing cycle. Income received through fee increases will help offset the costs incurred by Department oversight of the program.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted in June of 2011 with interested stakeholders, including certified adoption professionals. A "Notice of Intent to Promulgate Rules - Negotiated Rulemaking" was not published in the Bulletin.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stephanie Miller at (208) 334-5697.

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 September 28, 2011.

DATED this 9th day of August, 2011.

Tamara Prisock  
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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR FEE DOCKET NO. 16-0601-1102**

**750. APPLICATION TO BE ADOPTIVE PARENT(S).**

Each field office is responsible for compiling the names and addresses of adoptive applicant(s), along with the dates of inquiry and membership in an Indian tribe, if any. A database or register must be maintained in order to assure the orderly completion of home studies. (5-8-09)

~~01. **Interviews with Potential Applicant(s).** Initial interviews with groups of applicants or with individual families will be scheduled promptly and will be used to explain Department policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study.~~ **Initial Application.**  
Each adoptive applicant must: (5-8-09)( )

a. Cooperate with and allow the Department, or certified adoption professional, to determine compliance with these rules to conduct an adoption home study; ( )

b. Inform the Department, or certified adoption professional, if the applicant has previously applied to become a foster or adoptive parent, is currently licensed as a foster parent, or has been involved in the care and supervision of children or adults; ( )

c. Provide a medical statement for each applicant, signed by a qualified medical professional, within the twelve (12) months period prior to application for adoption, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child; ( )

d. Provide the name of, and a signed release to obtain the following information about, each member of the household: ( )

i. Admission to, or release from, a facility, hospital, or institution for the treatment of an emotional, intellectual, or substance abuse issue; ( )

ii. Outpatient counseling, treatment, or therapy for an emotional, intellectual, or substance abuse issue. ( )

e. Provide three (3) satisfactory references, one (1) of which may be from a person related to the applicant. Each applicant must provide additional references upon the request of the Department or certified adoption professional; ( )

f. All applicants for adoption and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks" and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 404. ( )

~~02. **Screening of Adoptive Applicants.** Screening of the adoptive applicants will assist the agency or family services worker in assessing, on an individualized basis, the prospective adoptive parent(s)' suitability to care for a specific child, or general description of children through:~~ **Psychological Evaluation.** An evaluation by a psychologist or a psychiatrist can be required by the family services worker or certified adoption professional when an applicant has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker, or certified adoption professional, in consultation with his supervisor, determines that there appear to be emotional problems in the family that merit further evaluation. (5-3-03)( )

~~a. The family's ability to form relationships and to bond with a specific child, or general description of children;~~ (3-18-99)

~~b. The family's ability to help the child integrate into the family;~~ (3-18-99)

~~c. The family's ability to accept the child's background and help the child cope with his or her past;~~ (3-18-99)

~~d. The family's ability to accept the behavior and personality of a specific child or general description of children;~~ (3-18-99)

~~e. The family's ability to nurture and validate a child's particular cultural, racial, and ethnic background; and (3-18-99)~~

~~f. The family's ability to meet the child's particular educational, developmental or psychological needs. (3-18-99)~~

**03. Orientation of Potential Applicants.** Initial meetings with groups of applicants, or with individual families, must be scheduled promptly by the Department or the certified adoption professional, whichever received the inquiry and initial application from the family. These initial meetings must be used to explain policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study. ( )

**04. Denial of Application.** Following an initial interview, an applicant who does not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family will be advised why they were ineligible for a full home study and notice provided to the applicant of his right to appeal this decision. Upon resolution of the factors leading to the denial, the applicant may again file an application and receive a home study. ( )

**05. Application for Subsequent Adoptions.** Following the finalization of an adoption, a family may apply to be considered for another placement. ( )

**a. Adoptive parents who have experienced a successful adoption and wish to reapply must complete an adoption application and financial statement, complete a Criminal History and Background Check, and submit medical reports and three (3) personal references. One (1) reference may be from a person related to the applicant. When requested by the Department, an applicant must provide additional references.** ( )

**b. The prospective adoptive family will assist in amending the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home and their request for another placement.** ( )

**c. Prospective adoptive parent(s) applying for subsequent adoption with an agency with whom they have maintained a foster care license since their previous adoption may have the requirement for a new Criminal History and Background Check, medical reports and personal references waived by the agency.** ( )

**751. -- 75961. (RESERVED)**

**~~760. PSYCHOLOGICAL EVALUATION.~~**

~~An evaluation by a psychologist or a psychiatrist can be required by the family services worker when an applicant has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker, in consultation with his supervisor, determines that there appear to be emotional problems in the family that merit further evaluation. (3-20-04)~~

**~~761. DENIAL OF APPLICATION.~~**

~~Following an initial interview, an applicant who does not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family will be advised why they were ineligible for a full home study and provide notice to the applicant of their right to appeal this decision. Upon resolution of the factors leading to the denial, the applicant may again file an application and receive a home study. (5-8-09)~~

**762. COMPLETING THE ADOPTION HOME STUDY.**

~~Following the initial interview, the application, medical forms, list of items to be verified and other pertinent information needed to complete the adoptive home study will be given to the prospective adoptive parent(s). Upon application by a potential adoptive family, the family services worker or certified adoption professional will conduct the pre-placement adoptive home study and issue a recommendation. The home study must be completed prior to placement of any child for adoption in that home. (5-8-09)( )~~

**01. Interviews.** Family assessment interviews as well as individual interviews must be held with the prospective adoptive parent(s). (3-20-04)



02. ~~Home Study of Applicant. A full home study must then be made to determine the ability of the applicant to meet the needs of children available for adoption, and the specific characteristics of children the applicant indicates would be most suitably placed in the home. For an Indian child, the study will also determine the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides or maintains social and cultural ties.~~ **Content.** Adoption home studies for foster care, special needs, independent, relative, and step-parent adoptions must include an assessment of the following: (5-8-09)( )

- a. Names, including maiden or other names used by the applicant(s): ( )
- b. Legal verification that the person(s) adopting is at least fifteen (15) years older than the child, or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, must be accomplished by: ( )
  - i. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or ( )
  - ii. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as: armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards, or naturalization papers. ( )
  - iii. If verifying documentation is not available, the report must indicate the date and place of birth and reason for lack of verification. ( )
- c. Verification that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition; ( )
- d. Adequacy of the family's house, property, and neighborhood for the purpose of providing adoptive care as determined by on-site observations; ( )
- e. Educational background of the applicant(s); ( )
- f. A statement of employment, family income, and financial resources, including access to health and life insurance and the family's management of these resources; ( )
- g. Current and historical mental illness, drug or alcohol abuse, and medical conditions and how they may impact the adoptive parent(s) ability to care for an adopted child; ( )
- h. Previous criminal convictions and history of child abuse and neglect; ( )
- i. Family history, including childhood experience and the applicant(s) parents' methods of discipline and problem-solving; ( )
- j. Verification of marriages and divorces; ( )
- k. Decision-making, communication, and roles within the marital relationship, if applicable; ( )
- l. The names, ages, and addresses of all biological and adopted children currently residing inside or outside the home. Information regarding the current adjustment and special needs of the applicant(s) children; ( )
- m. The religious and cultural practices of the family, including their ability to nurture and validate a child's particular cultural, racial, religious, and ethnic background; ( )
- n. For an Indian child, the study will also determine the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides or maintains social and cultural ties. ( )
- o. Individual and family functioning including inter-relationships with each member of the household and the family's ability to help a child integrate into the family; ( )

- p. Activities, interests, and hobbies; ( )
- q. Child care and parenting skills, including historical and current methods of discipline used in the home; ( )
- r. Reasons for applying for adoption; ( )
- s. The family's prior and current experiences with adoption, understanding of adoption, and ability to form relationships and bond with a specific child or general description of children; ( )
- t. The attitudes toward adoption by immediate and extended members of the family and other persons who reside in the home; ( )
- u. Specifications of the child preferred by the family that include the number of children, age, gender, race, ethnic background, social, emotional, and educational characteristics. The family's ability to accept the behavior and personality of a specific child (if known) or general description of children and their ability to meet the child's particular educational, developmental, and psychological needs; ( )
- v. Emotional stability and maturity in dealing with the needs, challenges, and related issues associated with the placement of a child into the applicant(s) home; ( )
- w. The family's attitude about an adopted child's birth family including; ( )
- i. Their ability to accept a child's background and help the child cope with his or her past; and ( )
- ii. Their willingness to work with the child's family or tribe; ( )
- x. Training needs of the applicant(s); and ( )
- y. A recommendation regarding the family's ability to provide adoptive care to a specific child (if known) or general description of children. ( )

~~03. Timeframes for a Completed Home Study. Once the adoptive home study has been initiated, the completion of the home study must occur within three (3) months. (5-8-09)~~

**763. APPLICANT PRE-ADOPTIVE PARENT RESPONSIBILITIES.**

The pre-adoptive applicant parent is responsible to keep the agency or Certified Adoption Professional that completed the home study informed of any changes in the family's circumstances, or of any subsequent decision against adoption. (5-8-09)( )

**764. PRE-PLACEMENT ADOPTIVE HOME STUDY.**

~~Upon application by a potential adoptive family, the family services worker will conduct the pre-placement adoptive home study and issue the verification of positive recommendation where appropriate. The home study must be completed prior to placement of any child for adoption in that home. An adoption home study is valid for the purposes of new adoptive placement for a period of one (1) year following the date of completion. Upon completion of an adoptive placement agreement, an adoption home study remains valid for a period of two (2) years from the date of completion for the purpose of finalizing the adoption of the child(ren) for whom the adoptive placement agreement was written.~~ (5-8-09)( )

765. -- 769. (RESERVED)

**770. CLOSURE OF ADOPTIVE HOME STUDIES.**

~~Pre-placement home studies for Department adoptions, independent, relative and step-parent adoptions must document the following: Upon pre-adoptive placement of a child or children in the home of a pre-adoptive parent, the parent's adoption home study closes for the placement of an additional child or children for the purpose of adoption until a home study update is completed.~~ (3-30-07)( )

~~01. **Residence.** References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (3-18-99)~~

~~02. **Verification of Ages of Adopting Parent(s).** Legal verification that the person(s) adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, must be accomplished by: (3-30-07)~~

~~a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)~~

~~b. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. (3-30-07)~~

~~c. If verifying documentation is not available, the report must indicate the date and place of birth and reason for lack of verification. (3-30-07)~~

~~03. **Medical Statement.** A medical statement for each applicant, signed by a qualified medical professional, within the twelve (12) month period prior to application to be an adoptive parent, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child. (3-30-07)~~

~~04. **References.** The applicant must provide at least three (3) satisfactory references, one (1) of which may be from a person related to the applicant. An applicant must provide additional references upon the request of the children's agency. (5-8-09)~~

**771. ANNUAL HOME STUDY UPDATE.**

An adoptive home study must be updated on an annual basis. A current home study is defined as a home study completed within the previous twelve (12) months. Home study updates must include the following: (5-8-09)( )

01. All Changes to the Information Contained in the Initial Adoption Home Study and Subsequent Home Study Updates. ( )

02. All Information on any Changes in Family Functioning and Inter-Relationships. ( )

03. Any Information Regarding Circumstances Within the Family that may Adversely Impact a Child Placed for Adoption. ( )

04. A Home Study Update Completed for the Purpose of Adoptive Placement of an Additional Child or Children in the Home. A home study update completed for the purpose of adoptive placement of an additional child or children in the home where a child or children are already placed for adoption and that adoption has not yet finalized must include agreement for the placement of the additional child or children by the individual or agency responsible for the placement of the initial child or children, and the individual or agency responsible for the additional child or children. ( )

~~772. -- 779. (RESERVED)~~

~~780. **FACTORS TO BE CONSIDERED IN DETERMINING SUITABILITY OF ADOPTIVE PARENTS.**~~

~~01. **Indian Child.** For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act must be followed: (5-8-09)~~

~~a. Extended family; (3-18-99)~~

~~b. Other members of the child's tribe; or (3-18-99)~~

~~e. Other Indian families. (3-18-99)~~

~~02. Needs of Adoptive Child. The primary factor in the review of a prospective adoptive family's eligibility is the ability to protect and promote the best interests of a child to be placed in their home. (3-20-04)~~

~~03. Availability of Prospective Adoptive Families. The Department will not delay or deny the placement of a child with an approved family that is located outside of the jurisdiction responsible for the care and planning for the child. (3-20-04)~~

~~781. — 789. (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. PLACEMENT OF THE CHILD.**

~~The field office must provide full confidential background information and discuss the child's history fully with the prospective adoptive parent(s) prior to the placement. The disclosure of background information must be confirmed at the time of placement by a written statement from the family services worker to the prospective adoptive family which they will be asked to acknowledge and sign. A copy of this statement must be provided to the adoptive family and one (1) copy will be kept in the child's permanent record. The child's record will be reviewed by the placing region's Program Manager or designee prior to being forwarded to the supervising family services worker. The child's case record must be complete and transferred to the supervising family services worker at the time of placement. Adoptive placement of a child in the custody or guardianship of the Department will be determined as follows: (5-8-09)( )~~

~~**01. Factors to be Considered in Determining Suitability of Adoptive Placements. ( )**~~

~~**a.** For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act must be followed: ( )~~

~~i. Extended family: ( )~~

~~ii. Other members of the child's tribe; or ( )~~

~~iii. Other Indian families. ( )~~

~~**b.** The primary factor in the review of a prospective adoptive family's eligibility is the ability to protect and promote the best interests of a child to be placed in their home. ( )~~

~~**c.** The Department will not delay or deny the placement of a child with an approved family that is located outside of the jurisdiction responsible for the care and planning for the child. ( )~~

~~**02. Selection of Adoptive Placemen t.** The adoptive placement of a child in the custody or legal guardianship of the Department will be selected using a committee process of no less than three (3) individuals and be approved by a field program manager as described by the practice standards of the Department. ( )~~

~~**03. Disclosure.** The field office must provide full confidential background information and discuss the child's history fully with the prospective adoptive parent(s) prior to the placement. The disclosure of background information must be confirmed at the time of placement by a written statement from the family services worker to the prospective adoptive family, which they will be asked to acknowledge and sign. A copy of this statement must be provided to the adoptive family and one (1) copy will be kept in the child's permanent record. ( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**861. PROGRESS REPORTS.**

Progress reports will be prepared regularly and will be based on the family services worker's or certified adoption professional's findings. ~~(3-30-07)~~( )

**01. Initial and Subsequent Reports.** Progress reports must be made at intervals not to exceed thirty (30) days. These reports will include the family services worker's or certified adoption professional's observation of each child and the prospective adopting parent(s), with emphasis on: ~~(3-29-10)~~( )

- a. Special needs, special circumstances, or both, of each child at time of placement; (3-29-10)
  - b. Services provided to each child and the family during the report period; (3-29-10)
  - c. Services to be provided to each child and the family; (3-29-10)
  - d. General appearance and adjustment of each child during the report period (may include eating, sleep patterns, responsiveness, bonding); (3-29-10)
  - e. Adjustment of each child to all of the following that apply: school, daycare, and day treatment program; (3-29-10)
  - f. Health and developmental progress, and medical practitioner information for each child; (3-29-10)
  - g. Whether each child has been accepted for coverage on the family's medical insurance, when coverage begins, and whether there will be any limitations, exclusions, or both; (3-29-10)
  - h. Family's adjustment to adoptive placement; (3-18-99)
  - i. Adoption assistance negotiation; (3-29-10)
  - j. Changes in family situation or circumstances; (3-18-99)
  - k. Areas of concern during the report period as addressed by each child and the adoptive parent(s); (3-29-10)
- and
- l. The date of the next required six (6) month review or twelve (12) month permanency hearing. (3-29-10)

**02. Monthly Foster Care Payments -- Pre-Adoptive Placement.** To receive Title IV-E monthly foster care payments during the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**863. INVESTIGATION OF PETITION TO ADOPT AND REPORT TO THE COURT.**

According to Section 16-1506, Idaho Code, an investigation regarding the allegations stated in the petition and subsequent written report of findings must be filed with the court unless the investigation is waived by order of the court. The prospective adoptive family's pre-placement home study will be filed at the same time as the written report of investigation. If the family services worker, licensed child placing agency staff, or certified adoption professional is unable to complete the study within thirty (30) days, an extension of time must be requested in writing of the court, stating the reasons for the request. If the worker suspects has reason to believe that the child is-of may be an Indian heritage child and the child's tribe or the Secretary of the Interior has not been-notified received written Notice of Pending Proceedings, the worker must inform the court and the petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act. This adoption report to the court must address the following: ~~(5-8-09)~~( )

**01. Legal Availability of the Child.** It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identity, birthdate, and parentage of the child are as represented in the petition. The family services worker or certified adoption professional will interview the family and any other person(s) having knowledge in the matter, review all documentary evidence presented by the petitioner(s), record the information and source of the information, noting any discrepancies. Such documentary evidence must include the following: ~~(5-8-09)~~(\_\_\_\_)

- a. The birth certificate of the child; (3-20-04)
- b. The consent(s) of the child's parent(s) to terminate their parental rights, termination decrees for any parent(s) whose parental rights have been terminated involuntarily by the court, and documentation of marriage and divorce; (3-20-04)
- c. If the child is an Indian child, a copy of the Notice of Pending Proceedings for Termination of Parental Rights, and the return receipts showing that the notice was received by the Indian child's parent(s) or Indian custodian(s), and the child's tribe ~~have received notice of their right to intervene; and~~ ~~(5-3-03)~~(\_\_\_\_)
- d. Consent to adoption has been secured for all persons from whom it is required, including a legal guardian(s), to make the child legally available for adoption; ~~(3-20-04)~~(\_\_\_\_)
- e. The death certificate of a deceased parent; (3-20-04)
- f. Verification from the Bureau of Vital Statistics of the registry of any putative father; and (3-20-04)
- g. The Interstate Compact on the Placement of Children Form 100-A, for a child born outside of the state of Idaho, to determine if required state authorizations have been given, or if the Compact does not apply. (3-20-04)

**02. Needs of the Child.** The report to the court must address the needs of the child, including but: (5-8-09)

- a. The history of the child and the child's birth family; (3-18-99)
- b. The family history for a child who has been previously adopted, should include information about the child's previous adoptive family and the circumstances of the disruption; (3-20-04)
- c. A detailed description of the circumstances that brought about the placement with the prospective adoptive family; (3-20-04)
- d. The state of Idaho Social, Medical, and Genetic History forms must be completed and submitted to the court, showing reasonably known or available medical and genetic information regarding both birth parents and the child, as well as reasonably known or available providers of medical care and services to birth parents and child; and (5-8-09)
- e. The appropriateness of the prospective adoptive family for the particular child or children who are the subject of the petition. (3-20-04)

**03. Degree of Relationship of the Child to Petitioners.** In those cases where the court has ordered an investigation of petitions to adopt by relatives or step parents, the study must record such alleged relationship and specify the documentary evidence the petitioners have of that relationship. (5-8-09)

**04. Evaluation and Recommendation.** The family services worker or certified adoption professional must provide a brief summary of data presented in prior sections and the pre-placement home study, supporting the recommendation regarding the adoption. ~~(5-8-09)~~(\_\_\_\_)

**05. Medical Information.** A copy of medical and genetic information compiled in the investigation

must be made available to the prospective adoptive family by the family services worker or certified adoption professional prior to the final order of adoption. (5-8-09)

**06. Confidentiality of Information.** The family services worker must exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study. (5-8-09)

**07. Financial Accounting.** A financial accounting must be approved by the court, of any financial assistance given to the birth parent(s) which exceeds five hundred dollars (\$500), in accordance with Section 18-1511, Idaho Code. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~872. PREFERENCES FOR TEMPORARY PLACEMENT—INDIAN CHILD.~~

~~Preferences for placement of an Indian child must be observed in the temporary and permanent placement unless the child is being returned to the parent(s) or Indian custodian(s) from whose custody the child was originally removed. (5-8-09)~~

~~873.~~ -- ~~879~~**80.** (RESERVED)

~~880. APPLICATIONS FOR SUBSEQUENT ADOPTIONS.~~

~~When adoptive applicants on the Department's list of families waiting to adopt receive a child, either through the Department or as an independent placement, their home study will be closed. Following the finalization of the adoption, the family may again apply to be considered for another placement. (3-30-01)~~

~~**01. Reapplication Process.** Adoptive parent(s) who have experienced a successful adoption and wish to reapply must complete an adoption application and financial statement, and submit medical reports and three (3) references. One (1) reference may be from a person related to the applicant. When requested by the Department, an applicant must provide additional references. (5-8-09)~~

~~**02. Update of Adoption Study.** The prospective adoptive family will assist in amending the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home and their request for another placement. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**889. CERTIFIED ADOPTION PROFESSIONAL REQUIREMENTS.**

An applicant requesting to become a Certified Adoption Professional must meet the following criteria: (3-20-04)

**01. College Degree.** A minimum of a bachelor's degree in a field deemed related to adoptions by the Department's Child and Family Services Program, such as social work, psychology, family counseling or other related behavioral science; (5-8-09)

**02. Adoption Training.** Must have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years; ~~and (5-8-09)( )~~

**03. Department Criminal History and Background Clearance.** Must complete a Department criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," and receive a clearance; (5-8-09)

**04. Designee of a Tribe.** ~~Individuals designated by the Indian child's tribe to perform these duties are not subject to the provisions in Subsections 889.01 and 889.03 of this rule.~~ **License. A current license to practice**

social work in the state of Idaho: ~~(5-8-09)~~( )

**05. Experience.** A minimum of two (2) years experience as a paid full-time employee providing adoption services with a licensed private or public children's agency: ( )

**06. References.** Three (3) satisfactory references, one (1) of which must be from a previous employer for whom the applicant worked providing adoption services: ( )

**07. Insurance.** Verification of malpractice insurance that will provide coverage for the applicant's work as a certified adoption professional; and ( )

**08. Application Fee.** An application fee of one hundred dollars (\$100) to be reimbursed, less a twenty-five dollar (\$25) processing fee, in the event the application is denied. ( )

**890. TERMS OF CERTIFICATION FOR ADOPTION PROFESSIONALS.**

**01. Certification.** Certification for adoption professionals will be completed through the ~~regional Child and Family Services office~~ Division of Family and Community Services and will be effective for a period of ~~four~~ two (2) years. ~~(5-8-09)~~( )

**02. Types of Certification.** Certified adoption professionals may be certified for any, some, or all of the following services: ( )

**a.** Adoption home studies for families seeking domestic infant adoption. ( )

**b.** Adoption home studies for families seeking domestic special needs adoption. ( )

**c.** Adoption home studies for families seeking step-parent or relative adoption. ( )

**d.** Court ordered investigations for termination of parental rights for domestic private or independent adoptions. ( )

**e.** Court reports for domestic private or independent adoptions. ( )

**f.** Supervision of adoptive placements for domestic private or independent adoptions. ( )

**03. Limits of Certification.** Certified adoption professionals may not provide the following services: ( )

**a.** Birth parent education or counseling. ( )

**b.** Services related to international adoption. ( )

**024. Recertification.** Certified adoption professionals must apply for renewal of their certificate every ~~four~~ two (2) years and must provide ~~documentation of twenty (20) hours of adoption training taken during that period.~~ the following: ~~(5-8-09)~~( )

**a.** Documentation of ten (10) hours of adoption training taken during the previous two (2) years; ( )

**b.** Verification of malpractice insurance; ( )

**c.** A satisfactory recommendation from the Division of Family and Community Services designee responsible for the review of the certified adoption professional's work; ( )

**d.** Satisfactory recommendations from a minimum of two (2) families for whom the certified adoption professional has provided adoption services during the previous two (2) years; and ( )



e. A certification fee of one hundred dollars (\$100) to be reimbursed, less a twenty-five dollar (\$25) processing fee, in the event the recertification is denied. ( )

**035. Lapse of Certification.** If a certified adoption professional does not apply for recertification within ~~four~~ two (~~4~~) years in accordance with Subsection 890.024 of this rule, this will result in a lapse of certification. Any lapse in certification will require completion of a new certified adoption professional application, documentation of ~~twenty~~ ten (~~2~~) hours of adoption training during the ~~four~~ two (~~4~~) years previous to this new application, and a new criminal history and background check. (~~5-8-09~~)( )

a. If the individual applying for certification has received a Department criminal history and background check clearance within three (3) years of the date of this application and has not lived outside the state of Idaho since his last criminal history and background check, all of the following must be conducted and no disqualifying crimes or appearance on a registry found: (5-8-09)

- i. A name-based background check by the Idaho State Police; (5-8-09)
- ii. A check of the Idaho Child Protection Central Registry; (5-8-09)
- iii. A check of the Idaho Adult Protection Registry; and (5-8-09)
- iv. A check of the Idaho Sexual Offender Registry. (5-8-09)

b. If the individual has lived outside the state of Idaho for any amount of time during the three (3) years since the previous Department criminal history and background check clearance was completed, he must get a new Department criminal history and background check clearance. (5-8-09)

**046. Denial of Recertification.** The Department may choose not to recertify a certified adoption professional. Notification of denial will be made by the Department by certified mail. The notice will state the specific grounds for denial of recertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." Grounds for denial of recertification are one (1) or more of the following: (5-8-09)

- a. Substandard quality of work following the development of a quality improvement plan; (3-30-01)
- b. Failure to gain ~~twenty~~ ten (~~2~~) additional hours of adoption continuing education required for recertification; or (~~3-30-01~~)( )
- c. A demonstrated pattern of negligence or incompetence in performing the duties of a certified adoption professional. (3-20-04)

d. Failure to maintain malpractice insurance; ( )

e. Failure to maintain a license to practice social work in the state of Idaho. This requirement does not apply to a certified adoption professional who has maintained his initial certification that occurred prior to July 1, 2012. ( )

**057. Decertification.** A certified adoption professional can be decertified by the Department at any time during a ~~four~~ two (~~4~~) year period of certification. Notification of decertification will be made by the Department by certified mail. The notice will state the specific grounds for decertification. This decision may be appealed within twenty-eight (28) days of receipt of notification under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." Grounds for decertification are one (1) or more of the following: (~~5-8-09~~)( )

- a. Conviction for a felony; (3-30-01)
- b. Negligence in carrying out the duties of a certified adoption professional; (3-20-04)

c. Misrepresentation of facts regarding their qualifications and/or the qualifications of a prospective adoptive family to adopt; ~~and~~ (3-20-04)( )

d. ~~A demonstrated pattern of~~ Failure to obtain Departmental review and approval of pre-placement homestudies; ~~and~~ court reports ~~and~~ or placement supervision reports; or both, on more than one (1) occasion; (5-8-09)( )

e. Failure to maintain malpractice insurance; ( )

f. Suspension or loss of a license to practice social work in Idaho; or ( )

g. Practice as a certified adoption professional outside the scope of the certification. ( )

**891. CERTIFIED ADOPTION PROFESSIONAL'S CLIENT RELATIONSHIP.**

A certified adoption professional may not assume a legal relationship with any child for whom they have been contracted to perform services and may not provide services for anyone with whom they have had a personal or professional relationship during the previous two (2) years. (5-8-09)( )

**892. MINIMUM STANDARDS FOR SERVICE.**

~~Standards for pre-placement home studies, home study updates, court reports, and supervisory reports must, at a minimum, meet the standards for adoption services established by the Department in these rules. A certified adoption professional must meet the following service requirements:~~ (3-30-01)( )

**01. Description of Services Available.** A written description of services will be provided to families by the certified adoption professional before any work is completed. The description of services must include information regarding Department oversight of the certified adoption professional and any limitations related to the use of the completed home study; ( )

**02. Education.** Provision of, or referral to, educational resources to adoptive applicants requesting non-relative adoption; ( )

**03. Content.** Standards for pre-placement home studies, home study updates, court reports, and supervisory reports must, at a minimum, meet the standards for adoption services established by the Department in these rules; ( )

**04. Release of Information.** A written release of information that gives consent to the exchange of information between the certified adoption professional and Child and Family Services must be obtained from a family that receives services from a certified adoption professional; and ( )

**05. Disclosure of Non-Identifying Information.** When providing adoption supervision or adoption finalization court report services, the certified adoption professional must provide disclosure of all known non-identifying information about the child, the child's birth parents, and the circumstances leading to the decision to place the child for adoption. ( )

**893. RECORDS OF THE CERTIFIED ADOPTION PROFESSIONAL.**

Records of the pre-placement home studies, court reports, and supervisory reports provided by the certified adoption professional must be made available to the ~~regional Child and Family Services program manager or~~ Division of Family and Community Services designee ~~one two (+2)~~ weeks prior to the required court filing date. The ~~regional~~ designee will be responsible for monitoring of quality of the services provided. (5-8-09)( )

**894. FEES CHARGED BY THE DEPARTMENT.**

Monitoring fees will accompany the submission of each report and be paid directly to the Department through the ~~Child and Family Services regional office~~ Division of Family and Community Services as follows:

Table 894 - Qualified Individuals	
Home Study or Court Report	\$50
Supervision Report or Home Study Update	\$30

~~(5-8-09)~~( )

**895. DEPARTMENT RESPONSIBILITY TO CERTIFIED ADOPTION PROFESSIONAL.**

~~The regional Child and Family Services designee will review the reports provided within a timely manner to insure filing of documentation by required court date by the certified adoption professional. The region will initiate corrective action plans when the documentation of any certified adoption professional is determined to be incorrect or substandard. The Division of Family and Community Services is responsible for:~~ ~~(5-8-09)~~( )

- ~~a. Reviewing and responding to submitted reports within five (5) business days; ( )~~
- ~~b. Initiation of corrective action plans when the documentation of a certified adoption professional is determined to be incorrect or substandard; and ( )~~
- ~~c. Dissemination of information to certified adoption professionals that may impact provided services. ( )~~

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.05 - HEALTH CARRIER EXTERNAL REVIEW

DOCKET NO. 18-0105-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 41-211, 41-5905, 41-5906, 41-5908, 41-5909, 41-5911, and 41-5916, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 28, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 implements House Bills 131 and 299, amending the Idaho Health Carrier External Review Act to more closely conform to the model external review law developed by the National Association of Insurance Commissioners (NAIC). The changes expand the types of claims eligible for external review to include denials based on appropriateness, health care setting, level of care and effectiveness. The changes also clarify the definition of an "urgent care request," and permit a person to simultaneously file for internal and external review of an urgent care request in certain circumstances. In addition, self-funded ERISA health plans may opt into the state external review process if they do not wish to use the federal external review process. The rulemaking also includes changes to notices to be given by health carriers to covered persons.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that the temporary adoption of the rule is appropriate for the following reason: The rule is necessary to implement changes to the governing law effective July 1, 2011.

**FEE SUMMARY:** The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is required by a change to the governing law. A draft of the rule was circulated to interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Eileen Mundorff, 208-334-4326 or [Eileen.Mundorff@doi.idaho.gov](mailto:Eileen.Mundorff@doi.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 4th day of August, 2011.

William W. Deal, Director  
Idaho Department of Insurance  
700 West State Street, 3rd Floor

Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 18-0105-1101

020. NOTICE OF RIGHT TO EXTERNAL REVIEW.

01. **Disclosure to Covered Persons.** Each health carrier must provide a summary description of external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage or other evidence of coverage the health carrier provides to covered persons. Health carriers must use the summary description in Appendix A or one that in the discretion of the Director is substantially identical. This ~~form~~ summary description in Appendix A has been approved by the Director as meeting the requirements of Section 41-5916, Idaho Code, and this rule. Health carriers must submit summary description forms to the Director for review.

~~(4-7-11)~~(7-1-11)T

02. **Notice to Covered Person.** When a health carrier sends written notice to a covered person of a final adverse benefit determination ~~for medical necessity or as investigational~~, the health carrier must send written notice at the same time of the covered person's right to request an external review.

~~(4-7-11)~~(7-1-11)T

a. The written notice of the covered person's right to request an external review must use the form set forth in Appendix B or one that in the discretion of the Director is substantially identical. The notice form in Appendix B has been approved by the Director as meeting the requirements of Section 41-5905, Idaho Code, and this rule. Health carriers must submit notice forms to the Director for review.

~~(4-7-11)~~(7-1-11)T

b. The written notice sent by the health carrier as required by this subsection must include an authorization form to disclose protected health information in compliance with the federal regulation 45 CFR section 164.508. The authorization forms in Appendix C-1 and C-2 ~~has~~ have been approved by the Director as meeting the requirements of Section 41-5905, Idaho Code, and this rule and health carriers must use these forms or ones that in the discretion of the Director are substantially identical. Health carriers must submit authorization forms to the Director for review.

~~(4-7-11)~~(7-1-11)T

021. REQUEST FOR EXTERNAL REVIEW.

01. **Request Form.** The form for a covered person to request an external review will be available from the department and will be posted on the department's web site.

(4-7-11)

02. **Authorization Form.** The covered person's request for an external review must include ~~the~~ an authorization form to disclose protected health information required in Subsection Paragraph 020.032.b. The department will not act on an external review request until the department receives ~~this~~ the applicable form completed by the covered person or the covered person's authorized representative.

~~(4-7-11)~~(7-1-11)T

03. **Appointment of an Authorized Representative.** A covered person may name another person, including the treating health care provider, to act as the covered person's authorized representative for an external review request.

(4-7-11)

022. HEALTH CARRIER NOTICE OF INITIAL DETERMINATION OF AN EXTERNAL REVIEW REQUEST.

Health carriers must use the form set forth in Appendix D or one that in the discretion of the Director is substantially identical for notice of initial determination by a health carrier for a standard external review required by Section 41-5908, Idaho Code, and for an expedited external review required by Section 41-5909, Idaho Code. Health carriers must submit notice forms to the Director for review.

~~(4-7-11)~~(7-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

024. ~~ANNUAL REPORTING REQUIREMENTS~~ VOLUNTARY ELECTION BY ERISA PLAN ADMINISTRATOR.

~~All independent review organizations and health carriers must file with the Director, on or before March 1st of each year, an annual statement on the form available from the Department of Insurance and posted on the department's web site. An annual report is required regardless of whether any external review requests were sent to the independent review organization or health carrier during the year.~~ (4-7-11)

**01. Written Notice and Compliance.** If a single employer self-funded ERISA employee benefit plan administrator or designee voluntarily elects to comply with Title 41, Chapter 59, Idaho Code, the administrator or designee must: (7-1-11)T

**a.** Provide timely and appropriate written notice to the Director of such election. The written notice must include the name of the administrator or designee, the contact name and title of the person to receive correspondence for the administrator or designee, that person's email address, voice and facsimile numbers, and the name of the employer or plan; (7-1-11)T

**b.** Provide written notice to the plan beneficiary of any final adverse benefit determination and of the beneficiary's right to an external review pursuant to Title 41, Chapter 59, Idaho Code, as required by Subsection 020.02 of this rule; and (7-1-11)T

**c.** Comply with all other provisions of Title 41, Chapter 59, Idaho Code, and this rule, as if it were a health carrier, except the administrator or designee is not required to submit for the Director's review the forms attached to this rule as appendices. (7-1-11)T

**02. Single Plan Beneficiary.** The written notice to the Director required in Subsection 024.01 of this rule for a single plan beneficiary must be included with the notice of initial determination of an external review request in Section 022. The notice must include the plan beneficiary's name and identification number. The administrator or designee may not request the Director terminate an external review for a single plan beneficiary while the review is in progress unless the administrator or designee has reversed the final adverse benefit determination and has notified the beneficiary it will pay benefits for the disputed service or supply. (7-1-11)T

**03. Specific Period of Time.** The written notice to the Director required in Subsection 024.01 for a specific period of time must include the start date and end date for that period of time. The notice must be received by the Director at least thirty (30) days in advance of the date the specific period of time will begin. Any change in the start or end date for a specific period of time on file with the Director must be received in writing at least thirty (30) days in advance of the date the change will take effect. The termination of the specific period of time will not terminate an external review in progress unless the administrator or designee has reversed the final adverse benefit determination and has notified the beneficiary it will pay benefits for the disputed service or supply. (7-1-11)T

**04. Effect of Election.** Any single employer self-funded ERISA employee benefit plan administrator or designee that voluntarily elects to comply with Title 41, Chapter 59, Idaho Code, and this chapter of rules, does not, solely by such election and/or compliance, waive any rights, remedies, duties, causes of action, or defenses it otherwise has under ERISA or other applicable law. (7-1-11)T

**025. -- 029. (RESERVED)**

**030. EFFECTIVE DATE -- EXISTING HEALTH BENEFIT PLANS -- GROUNDS FOR DISAPPROVAL.**

**01. Effective Date of Rule.** This rule is applicable to every health benefit plan issued or renewed on and after January 1, 2010. (4-7-11)

**02. Health Benefit Plan Compliance.** A health benefit plan issued before the effective date of this rule must be brought into compliance with this rule by the anniversary date or renewal date of the plan following the effective date of this rule. (4-7-11)

**03. Grounds for Disapproval.** ~~Any health benefit plan containing terms inconsistent with the provisions of this rule is misleading, inequitable and unfairly prejudicial to the covered person and the insurance-buying public.~~ In addition to any other sanction or remedy afforded by Title 41, Idaho Code, the use of provisions

inconsistent with this rule in a health benefit plan will be grounds for the Director to disapprove the health benefit plan in accordance with Section 41-1813, Idaho Code, on the basis that the terms are deemed to be misleading and unfairly prejudicial. ~~(4-7-11)~~(7-1-11)T

031. -- 999. (RESERVED)

#### APPENDICES:

- A Health Carrier Disclosures - "Your Right to an Independent External Review
- B Health Carrier Notice - "Notice of Your Right to an Independent External Review"
- C-1 Authorization for Release of Medical Records
- C-2 Authorization for Release of Drug or Alcohol Abuse Records and Psychotherapy Notes
- D Health Carrier's Notice of Initial Determination

#### Appendix A

The summary description below provides an acceptable format approved by the director as meeting the requirements of Idaho Code Section 41-5916. A health carrier may change the terms "you, your" to "covered person" and "we, our" to the health carrier's name, or similar references consistent with the health carrier's typical terminology.

#### YOUR RIGHT TO AN INDEPENDENT EXTERNAL REVIEW

**Please read this notice carefully. It describes a procedure for review of a disputed health claim by a qualified professional who has no affiliation with your health plan. If you request an independent external review of your claim, the decision made by the independent reviewer will be binding and final on the health carrier. ~~Except in limited circumstances,~~ ~~you~~ You will have ~~no further~~ the right to have further review of your claim reviewed by a court, arbitrator, mediator or other dispute resolution entity only if your plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA), as more fully explained below under "Binding Nature of the External Review Decision."**

If we issue a final adverse benefit determination of your request to provide or pay for a health care service or supply, you may have the right to have our decision reviewed by health care professionals who have no association with us. You have this right only if our denial decision involved:

- The medical necessity, appropriateness, health care setting, level of care, or effectiveness of your health care service or supply, or
- Our determination your health care service or supply was investigational.

You must first exhaust our internal grievance and appeal process. Exhaustion of that process includes completing all levels of appeal, or unless you requested or agreed to a delay, our failure to respond to a standard appeal within 35 days in writing or to an urgent appeal within three business days of the date you filed your appeal. We may also agree to waive the exhaustion requirement for an external review request. You may file for an internal urgent appeal with us and for an expedited external review with the Idaho Department of Insurance at the same time if your request qualifies as an "urgent care request" defined below.

You may submit a written request for an external review to:

Idaho Department of Insurance  
ATTN: External Review  
700 W State St., 3<sup>rd</sup> Floor  
Boise ID 83720-0043

For more information and for an external review request form:

- See the department's website at <http://www.doi.idaho.gov>, or
- Call the department's telephone number, (208) 334-4250, or toll-free in Idaho, 1-800-721-3272.

You may represent yourself in your request or you may name another person, including your treating health care provider, to act as your authorized representative for your request. If you want someone else to represent you, you must include a signed "Appointment of an Authorized Representative" form with your request.

Your written external review request to the Department of Insurance must include a completed form authorizing the release of any of your medical records the independent review organization may require to reach a decision on the external review, including any judicial review of the external review decision pursuant to ERISA, if applicable. The department will not act on an external review request without your completed authorization form.

If your request qualifies for external review, our final adverse benefit determination will be reviewed by an independent review organization selected by the department. We will pay the costs of the review.

**Standard External Review Request:** You must file your written external review request with the department within four months after the date we issue a final notice of denial.

1. Within seven days after the department receives your request, the department will send a copy to us.
2. Within 14 days after we receive your request from the department, we will review your request for eligibility. Within five business days after we complete that review, we will notify you and the department in writing if your request is eligible or what additional information is needed. If we deny your eligibility for review, you may appeal that determination to the department.
3. If your request is eligible for review, the department will assign an independent review organization to your review within seven days of receipt of our notice. The department will also notify you in writing.
4. Within seven days of the date you receive the department's notice of assignment to an independent review organization, you may submit any additional information in writing to the independent review organization that you want the organization to consider in its review.
5. The independent review organization must provide written notice of its decision to you, to us and to the department within 42 days after receipt of an external review request.

**Expedited External Review Request:** You may file a written "urgent care request" with the department for an expedited external review of a pre-service or concurrent service denial. [You may file for an internal urgent appeal with us and for an expedited external review with the department at the same time.](#)

"Urgent care request" means [a claim relating to an admission, availability of care, continued stay or health care service for which the covered person received emergency services but has not been discharged from a facility, or any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:](#)

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
2. In the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
3. The treatment would be significantly less effective if not promptly initiated.

The department will send your request to us. We will determine, no later than the second full business day, if your request is eligible for review. We will notify you and the department no later than one business day after our decision if your request is eligible. If we deny your eligibility for review, you may appeal that determination to the department.

If your request is eligible for review, the department will assign an independent review organization to your review upon receipt of our notice. The department will also notify you. The independent review organization must provide notice of its decision to you, to us and to the department within 72 hours after the date of receipt of the external review request. The independent review organization must provide written confirmation of its decision within 48 hours of notice of its decision. If the decision reverses our denial, we will notify you and the department of ~~the approval of coverage~~ [our intent to pay the covered benefit](#) as soon as reasonably practicable, but not later than one business day after ~~making the determination~~ [receiving notice of the decision](#).



**Binding Nature of the External Review Decision:** If your plan is subject to federal ERISA laws (generally, any plan offered through an employer to its employees), the external review decision by the independent review organization will be final and binding on us. You may have additional review rights provided under federal ERISA laws.

If your plan is not subject to ERISA requirements, the external review decision by the independent review organization will be final and binding on both you and us. **This means that if you elect to request external review, you will be bound by the decision of the independent review organization. You will not have any further opportunity for review of our denial after the independent review organization issues its final decision.** If you choose not to use the external review process, other options for resolving a disputed claim may include mediation, arbitration or filing an action in court.

Under Idaho law, the independent review organization is immune from any claim relating to its opinion rendered or acts or omissions performed within the scope of its duties unless performed in bad faith or involving gross negligence.

### Appendix B

The notice below provides an acceptable format approved by the director as meeting the requirements of Idaho Code Section 41-5905. A health carrier may change the terms “you, your” to “covered person” and “we, our” to the health carrier’s name, or similar references consistent with the health carrier’s typical terminology.

#### NOTICE OF YOUR RIGHT TO AN INDEPENDENT EXTERNAL REVIEW

Please read this notice carefully. It describes a procedure for review of a disputed health claim by a qualified professional who has no affiliation with your health plan. If you request an independent external review of your claim, the decision made by the independent reviewer will be binding and final on the health carrier. ~~Except in limited circumstances, you~~ You will have ~~no further~~ the right to ~~have~~ further review of your claim reviewed by a court, arbitrator, mediator or other dispute resolution entity only if your plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA) -- see below under “Binding Nature of the External Review Decision” for more information.

We have denied your request to provide or pay for a health care service or supply. You may have the right to have our decision reviewed by health care professionals who have no association with us. You have this right only if our denial decision involved:

- The medical necessity, appropriateness, health care setting, level of care, or effectiveness of your health care service or supply, or
- Our determination your health care service or supply was investigational.

**No later than four months from the date of this denial,** you may submit a written request for an external review to:

Idaho Department of Insurance  
ATTN: External Review  
700 W State St., 3<sup>rd</sup> Floor  
Boise ID 83720-0043

For more information and for an external review request form:

- See the department’s website at <http://www.doi.idaho.gov>, or
- Call the department’s telephone number, (208) 334-4250, or toll-free in Idaho, 1-800-721-3272.

You may represent yourself in your request or you may name another person, including your treating health care provider, to act as your authorized representative for your request. If you want someone else to represent you, you must include a signed “Appointment of an Authorized Representative” form with your request.

Your written external review request to the Department of Insurance must include a completed form authorizing the release of any of your medical records the independent review organization may require for review to reach a decision on the external review. The department will not act on an external review request without your completed authorization form.

If your request qualifies for external review, our decision will be reviewed by an independent review organization selected by the department. We will pay the costs of the review.

**Standard External Review Request:** You must file your written external review request with the department **within four months** after the date we issued this notice of denial.

1. Within seven days after the department receives your request, the department will send a copy to us.
2. Within 14 days after we receive your request from the department, we will review your request for eligibility. Within five business days after we complete that review, we will notify you and the department in writing if your request is eligible or what additional information is needed. If we deny your eligibility for review, you may appeal that determination to the department.
3. If your request is eligible for review, the department will assign an independent review organization to your review within seven days of receipt of our notice. The department will also notify you in writing.
4. Within seven days of the date you receive the department's notice of assignment to an independent review organization, you may submit any additional information in writing to the independent review organization that you want the organization to consider in its review.
5. The independent review organization must provide written notice of its decision to you, to us and to the department within 42 days after receipt of an external review request.

**Expedited External Review Request:** You may file a written "urgent care request" with the department for an expedited external review of a pre-service or concurrent service denial. [You may file for an internal urgent appeal with us and for an expedited external review with the department at the same time.](#)

"Urgent care request" means [a claim relating to an admission, availability of care, continued stay or health care service for which the covered person received emergency services but has not been discharged from a facility, or](#) any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
2. In the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
3. The treatment would be significantly less effective if not promptly initiated.

The department will send your request to us. We will determine, no later than the second full business day, if your request is eligible for review. We will notify you and the department no later than one business day after our decision if your request is eligible. If we deny your eligibility for review, you may appeal that determination to the department.

If your request is eligible for review, the department will assign an independent review organization to your review upon receipt of our notice. The department will also notify you. The independent review organization must provide notice of its decision to you, to us and to the department within 72 hours after the date of receipt of the external review request. The independent review organization must provide written confirmation of its decision within 48 hours of notice of its decision. If the decision reverses our denial, we will notify you and the department of ~~the approval of coverage~~ [our intent to pay the covered benefit](#) as soon as reasonably practicable, but not later than one business day after ~~making the determination~~ [receiving notice of the decision](#).

**Binding Nature of the External Review Decision:** *[NOTE TO HEALTH CARRIERS: The carrier must include one of the applicable paragraphs below for the covered person's health benefit plan.]*

*[Your plan is subject to federal ERISA laws (generally, any plan offered through an employer to its employees). The external review decision by the independent review organization will be final and binding on the health insurer, but you may have additional review rights provided under federal ERISA laws.]*

[The external review decision by the independent review organization will be final and binding on both you and us. **This means that if you elect to request external review of your claim, you will be bound by the decision of the independent review organization. You will not have any further opportunity for review of your claim after the independent review organization issues its final decision.** If you choose not to use the external review process, other options for resolving a disputed claim may include mediation, arbitration or filing an action in court.]

Under Idaho law, the independent review organization is immune from any claim relating to its opinion rendered or acts or omissions performed within the scope of its duties unless performed in bad faith or involving gross negligence.

**Appendix C-1**



**AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS**

I have requested an external review pursuant to Idaho Code Section 41-5906. In order to obtain that review, I understand that I must sign below to authorize my health carrier, whose decision is the subject of this request, and its subcontractors and all applicable medical providers, to release all information relating to the decision to be reviewed including, but not limited to, my files and medical record information, which may include mental health information to the Idaho Department of Insurance (DOI). I authorize the DOI to provide or to instruct the health carrier and/or its subcontractors and providers to provide such information to the independent review organization (IRO) assigned by the DOI to perform the external review.

I, \_\_\_\_\_, hereby reaffirm my request for an external review. I attest that the information provided in this request is true and accurate to the best of my knowledge. I authorize my health carrier, its subcontractors and agents, and my health care providers to release all relevant medical or treatment records to the independent review organization (IRO) and the Idaho Department of Insurance (DOI). I understand the IRO will use this information to make a determination on my external review and the information will be kept confidential and not be released to anyone else. This release is valid for one year unless it expires sooner upon the IRO rendering a final decision or upon revocation. I understand that the decision of the IRO may be binding and that neither the DOI nor the IRO may authorize services in excess of those covered by my health plan.

I acknowledge that I may revoke this authorization at any time. My revocation will be effective upon receipt, but will not affect actions already taken on the basis of the authorization. In any event, this authorization expires upon the IRO rendering a final decision regarding this external review.

\_\_\_\_\_  
Signature of Covered Person (or authorized representative)\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
\*(Parent, Guardian, Conservator or Other - Please Specify)

\_\_\_\_\_  
Printed Name of Authorized Representative

Complete the following form only if applicable:

**Appendix C-2**



**AUTHORIZATION FOR RELEASE OF DRUG OR ALCOHOL ABUSE RECORDS  
AND PSYCHOTHERAPY NOTES**

I have requested an external review pursuant to Idaho Code Section 41-5906. In order to obtain that review, I understand that I must sign below to authorize my health carrier, whose decision is the subject of this request, and its subcontractors and all applicable medical providers, to release all information relating to the decision to be reviewed including, but not limited to, my files and medical record information, which may include mental health information to the Idaho Department of Insurance (DOI). I authorize the DOI to provide or to instruct the health carrier and/or its subcontractors and providers to provide such information to the independent review organization (IRO) assigned by the DOI to perform the external review. I acknowledge that information to be used or disclosed as a result of this authorization may include records that are protected by federal and/or state laws applicable to substance abuse and psychotherapy. I SPECIFICALLY AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION RELATING TO PSYCHOTHERAPY, DRUG AND/OR ALCOHOL ABUSE. The recipient of drug and/or alcohol abuse and psychotherapy information disclosed as a result of this authorization will need my further written authorization to re-disclose this information.

I, \_\_\_\_\_, hereby reaffirm my request for an external review. I attest that the information provided in this request is true and accurate to the best of my knowledge. I authorize my health carrier, its subcontractors and agents, and my health care providers to release all relevant medical or treatment records to the independent review organization (IRO) and the Idaho Department of Insurance (DOI). I SPECIFICALLY AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION RELATING TO PSYCHOTHERAPY, DRUG AND/OR ALCOHOL ABUSE. I understand the IRO will use this information to make a determination on my external review and the information will be kept confidential and not be released to anyone else. This release is valid for one year unless it expires sooner upon the IRO rendering a final decision or upon revocation. I understand that the decision of the IRO may be binding and that neither the DOI nor the IRO may authorize services in excess of those covered by my health plan.

I acknowledge that I may revoke this authorization at any time. My revocation will be effective upon receipt, but will not affect actions already taken on the basis of the authorization. In any event, this authorization expires upon the IRO rendering a final decision regarding this external review.

\_\_\_\_\_  
Signature of Covered Person (or authorized representative)\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
\*(Parent, Guardian, Conservator or Other - Please Specify)

\_\_\_\_\_  
Printed Name of Authorized Representative

\*Parent (if patient is under 18 years old), guardian (if other than patient), conservator, attorney or other. If other than parent of minor, attach a written authorization to represent patient.

Return to:  
**Idaho Dept of Insurance**  
**PO Box 83720**  
**Boise, ID 83720-0043**

**Appendix D**

**HEALTH CARRIER'S NOTICE OF INITIAL DETERMINATION**

[Date]

[Covered Person/Authorized Representative]

[Address]

RE: Initial Determination of Your Request for an External Review

We completed our preliminary review of your request for an external review sent to us by the Idaho Department of Insurance. As part of our review, we considered:

1. Eligibility of the covered person under the health benefit plan at the time the health care service was requested, or, for a post-service review, the health care service was performed;
2. If the health care service is a covered service under the health benefit plan, except for our determination the health care service does not meet our requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, or the service or supply is investigational;
3. If the covered person has exhausted our internal grievance process, or if we failed to provide a timely determination ~~to~~ for a grievance under that process; or if we waived the exhaustion requirement under that process; or if we failed to strictly follow our duties in affording a timely, full and fair opportunity for you to take advantage of that grievance process; or if the request qualifies as an urgent care request and you've simultaneously applied for an expedited internal review; and
4. All information and forms required to process an external review, including your signed authorization to disclose protected health information.

[If the request is complete and eligible for review:

We determined your request is complete and eligible for external review. We sent a copy of this notice to the Idaho Department of Insurance. The Department of Insurance will assign an independent review organization to perform the review and will notify you of the name of that organization.]

[OR if the request is not complete:

We have determined your request is not complete. In order to complete your request, you must provide the following: (Provide details of what information or materials are needed to make the request complete.)]

[OR if the request is not eligible for external review:

We have determined your request is not eligible for external review. Your request is ineligible for the following reasons: (Provide details of the reasons for denial.)

If you disagree with our initial determination that your request is ineligible, you may file a written appeal with the Director of the Idaho Department of Insurance within 30 days of the date of this notice. Your appeal must include adequate detail and documentation to show proof of your eligibility. The Director may determine a request is eligible based on the terms and conditions of the covered person's health benefit plan and the applicable provision of Idaho Code, Title 41, Chapter 59.]

[Include the following for all notices:]

For further information, please contact the Idaho Department of Insurance, (208) 334-4250, or toll-free, 1-800-721-3272. The department's fax number is (208) 334-4398. The department's website ~~is~~ is <http://www.doi.idaho.gov>.

Sincerely,

[Health Carrier]

C: Idaho Department of Insurance/External Review

# IDAPA 35 - STATE TAX COMMISSION

## 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1103

### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code, and Section 63-802, Idaho Code.

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

Temporary Property Tax Rule 995 provides that the change in the Consumer Price Index (CPI) will be computed based on the U.S. city average July index and that the amount of the adjustment will be distributed based on population. The date of the base CPI adjustment as well as the distribution of the amount of the adjustment for fiscal year 2012 need to be clarified in reference to Section 63-3638(8), Idaho Code, which explains the distribution of sales tax revenue to the county election funds. The sales tax revenues need to be distributed in October 2011, therefore, temporary Property Tax Rule 995 needs to be in place immediately.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(2)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Alan Dornfest at (208) 334-7544.

DATED this 5th day of August, 2011.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7544

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#### THE FOLLOWING IS THE TEMPORARY RULE TEXT OF DOCKET NUMBER 35-0103-1103

**995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).**

Section 63-3638, Idaho Code.

(5-3-03)

**01. Most Current Census.** Population shall be from the most current population census or estimate available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. (3-24-94)

**02. Market Value for Assessment Purposes.** Market value for assessment purposes shall mean the

market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall include homeowner's exemptions, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(15), Idaho Code, for the calendar year immediately preceding the current fiscal year. (5-3-03)

**03. Current Fiscal Year.** For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September. (3-30-01)

**04. Incorporated City.** Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council, and be recognized by the Bureau of the Census, U.S. Department of Commerce, for the distribution of federal general revenue sharing monies. (3-24-94)

**05. Population and Valuation Estimates.** Population and valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution. (3-24-94)

**06. Determination Date and Eligibility.** The eligibility of each city for revenue sharing monies pursuant to Section 63-3638(10)(a), Idaho Code, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(10)(c), Idaho Code. (4-6-05)

**07. Quarterly Certification.** The State Tax Commission shall certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(10)(c) and 63-3638(10)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(10)(a) and 63-3638(10)(b), Idaho Code. Each county clerk shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission. (4-6-05)

**a. City and County Base Shares.** For cities and counties, the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share. (3-30-01)

**b. Special Purpose Taxing District Base Shares.** For special purpose taxing districts the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed. (3-30-01)

**c. Excess Shares.** Excess shares shall be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(10)(c) or 63-3638(10)(d), Idaho Code. These amounts shall not be subject to redistribution provisions of Section 40-801, Idaho Code. (4-6-05)

**d. Shares Pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code.** Shares to be distributed pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code, shall be termed "revenue sharing." Such shares shall be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(10)(b)(i), Idaho Code, shall be considered an annual amount and shall be divided into four (4) equal shares. (4-6-05)

**08. Notification of Value.** The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

**09. Corrections.** (3-30-01)

**a.** When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections

shall be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions for the last quarter of the current fiscal year shall be corrected as soon as practicable in distributions made for the following fiscal year. (4-6-05)

b. The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

c. The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

**10. Special Election Fund.** The special election fund established by Section 63-3638(8), Idaho Code, shall be adjusted for fiscal year 2012 based on the annual change reflected in the July 2012 consumer price index for all urban consumers (CPI-U), U.S. city average as published by the U.S. department of labor, bureau of labor statistics. The 2012 adjustment shall be computed by applying the change in this consumer price index to four million one hundred thousand dollars (\$4,100,000). Of the amount computed, two million two hundred thousand dollars (\$2,200,000), originally established to be distributed to each of the forty-four (44) counties in equal amounts, shall not change. The total amount of the adjustment shall be applied to the amount to be distributed based on population, originally established at one million nine hundred thousand dollars (\$1,900,000). The adjusted amount shall then be distributed based on population. (7-1-11)T



## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1104**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, 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 September 22, 2011.

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

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

Rule 004 is being amended to provide an explanation of the documents that are confidential and not open to the public as provided in HB 239, and to clarify that the exchange of information between the county and the Tax Commission is not limited.

Rule 006 is being amended to update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity.

Rule 115 is being amended to add the requirement that the values be listed by category value on the abstract for any taxing district with a restriction providing that such district does not levy property taxes on all otherwise taxable property in accordance with Section 63-509, Idaho Code.

Rule 219 is being amended to delete the requirement to assign separate parcel numbers if the parcel is located entirely within one county and one tax code area.

Rule 225 is being amended to reflect the provisions of newly enacted HB 095 changing the life of an urban renewal agency from 24 to 20 years and to restrict revenue allocation areas urban to one annexation after July 1, 2011, and to require the Tax Commission to give notices of dissolution nineteen years after formation for those agencies created after July 1, 2011. Instructions are also given to disallow a proposed second expansion of a Revenue Allocation Area after July 1, 2011.

Rule 312 is being amended to exclude federal and state of Idaho property from inclusion in Section 63-602Y, Idaho Code, and to affirm that the real or personal property that has a change of status as described in Section 63-602Y, Idaho Code, does not include federal or state of Idaho property and, therefore, the proration of property tax to these properties is not appropriate unless specially authorized by the government entity.

Rule 314 is being amended to establish standards for maintaining parcel record information, list the basic information that should be included in the assessor's office parcel records, and to reference the International Association of Assessing Officer's standards on mass appraisal and digital mapping.

Rule 400 is being stricken. Information currently in Rule 400 will be included in new Rule 004.

Rule 509 is being amended to require that the urban renewal increment value and the value of certain exemptions be reported and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property.

Rule 701 is being amended to conform to HB 113 which designates the Tax Commission as the approving authority for the property tax reduction application. The amendment to this rule maintains the assessors' responsibility to verify the claimants' presence in the United States and deletes the reference to the assessors' approval of the claimants' participation in the property tax reduction program.

Rule 717 is being amended to conform to HB 113 which designates the Tax Commission as the property tax reduction approving authority and changes some program process dates, deletes references to the county board of equalization approving claims for property tax reduction (PTR), and changes the date when the preliminary PTR roll will be sent to the Tax Commission from the fourth Monday in June to June 1.

Rule 802 is being amended to conform to HB 124 which provides a five-year look back limit both for new construction (NC) that was missed in the year it should have been placed on the NC roll so will be placed on the next roll and for deductions that must be included on the NC roll. The amendment also explains and adds this five-year look back limit applicable to these situations. In respect to HB 95 [50-2903(4)], there is also the need to explain that the NC addition to the urban renewal base assessment roll due to the increase in land value caused by agricultural land in a revenue allocation area losing the agricultural exemption does not get included on any NC roll. The rule is amended to explain that certain adjustments to the NC roll are limited to the event that triggers the adjustments occurring within the past five years. The rule is also amended to explain that a certain event causing an increase to the base assessment roll does not get added to any NC roll.

Rule 804 is being amended to provide information for assessors to adjust the urban renewal base assessment roll for changes in the taxable amount of a property due to the annual changes in maximum homeowner's exemption (HOE). The amendment to the rule explains and gives examples to demonstrate that if the taxable value of a parcel decreases, due to a decrease in value of the property or an increase in the maximum amount of the HOE, or any combination thereof, to a taxable value that is less than the current base, then the base is adjusted to the amount that is less than the current base. Otherwise the base is not adjusted for change in partial exemption due to the change in the HOE maximum amount.

Rule 808 provides direction on how to compute levies for certain districts that may not levy against all taxable property in the district and requires that each relevant county, as well as the Tax Commission, be given documentation of the election or ordinance which determined the category of property to be taxed.

Rule 988 is being amended to provide the taxpayers' options should the QIE election be denied by the assessor and that the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. The assessor's notification cancels the election with respect to those items denied the QIE. Upon receiving this notification, the taxpayer is then free to pursue income tax relief under Section 63-3029B, Idaho Code, for those items denied the QIE by the assessor.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

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

To update material to reflect current editions referenced by the Tax Commission.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7544.

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 September 28, 2011.

DATED this 9th day of August, 2011.

Alan Dornfest, Tax Policy Supervisor  
State Tax Commission  
PO Box 36, Boise, ID 83722-0410  
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1104

**004. PUBLIC RECORDS (RULE 004).**

Sections 9-337 through 350, 63-302, 63-313, 63-602Y, 63-3076 and 63-3077, Idaho Code. ( )

**01. Records Open to the Public.** ~~The records associated with this chapter are subject to the provisions of the Idaho~~ Public Records ~~under the Public Records~~ Act, Chapter 3, Title 9, Idaho Code, are presumed to be open to the public to the extent that these ~~documents~~ records are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. ~~(3-15-02)~~( )

**02. Records Not Presumed Open to the Public.** The following public records are not presumed open to the public, are confidential, and may not be disclosed without the written consent, including by electronic means, of the taxpayer except as described in Section 9-340D (24), Idaho Code: ( )

**a.** The lists of personal property required to be filed by Sections 63-302 and 63-602Y; ( )

**b.** The lists of transient personal property required to be filed by Section 63-313; ( )

**c.** The operator's statement required to be filed by Section 63-404; and ( )

**d.** Confidential, commercial, or financial information including trade secrets, provided the taxpayer gives notice of a claim to exempt the specific documents from disclosure. The notice of a claim to exemption shall be accomplished by stamping or marking each page or the first page of each portion of the document so claimed. ( )

**03. County Assessor -- Officer of the State.** The county assessor is included in the group of any officer, employee or authorized representative of the state as stated in Section 9-340(24), Idaho Code, and therefore may be given documents without the permission of the taxpayer for purposes of carrying out the provisions of state law including the proceedings of the county board of equalization. Exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law are not limited by any provision of this Rule. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** “Standard on Ratio Studies” published in 2010, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2009, and “Standard on Mass Appraisal of Real Property published in 2011. “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. ~~This~~ These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on July ~~22~~18, 20101. (4-7-11)( )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 20101 for the September through December period by the National Appraisal Guides Incorporated. (4-7-11)( )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 20101 for the September through December period by the National Appraisal Guides Incorporated. (4-7-11)( )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 20101 and the first quarter in 20112 by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (4-7-11)( )

**e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

**f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

**g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

**h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

**i.** “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**115. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 115).** Sections 63-105A and 63-509, Idaho Code. (3-30-07)

**01. Requirement to Submit Abstracts.** The county auditor must submit to the State Tax Commission abstracts for the county, the cities or the portion of each city located in the county, the Boise School District, and any taxing district or unit of government with a restriction providing that such district does not levy property taxes on all otherwise taxable property as described in Rule 808 of these rules. ( )

**012. City Values by Secondary Category.** For each of the abstracts required in Subsection 115.01 of this rule, ~~To~~ provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will report to the county auditor the market value and exempted value of all property ~~within any city or the portion of any city within the county~~ by secondary categories, described in Rules 510, 511, and 512 of these rules, in the same manner as the abstracts required for each county ~~and each school district~~ under Section 63-509, Idaho Code, and Rule 509 of

these rules.

(3-30-07)( )

**023.** ~~City~~ **Additional Abstracts to Accompany County Abstracts.** Each county auditor will include ~~the~~ city and any required additional abstracts described in Subsection 115.01 of this rule, when submitting to the State Tax Commission the abstracts required under Section 63-509, Idaho Code, and Rule 509 of these rules.

(3-30-07)( )

**034.** **Cross Reference.** For the descriptions of secondary categories and clarification of responsibilities relating to listing and reporting values by secondary categories, see Rules 509, 510, 511, and 512 of these rules. For a description of levy criteria requiring submittal of additional abstracts, see Rule 808 of these rules.

(3-30-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**219. UNIFORM PARCEL NUMBERING SYSTEM (RULE 219).**

Sections 63-209, 63-210, and 63-219, Idaho Code.

(5-8-09)

**01. Definitions.** The following definitions apply to this rule.

(5-8-09)

**a.** Parent parcel. A parcel of land in its original state prior to being segregated. The parcel may be described by a metes and bounds description, lot and block, aliquot part, or government lot.

(5-8-09)

**b.** Child parcel. A parcel of land which has been segregated from the parent parcel. At the time a parent parcel is segregated into one or more parts, the parcels being segregated from the parent parcel shall be known as child parcels. The child parcel may be described by a metes and bounds description, a portion of a lot and block, a portion of an aliquot part, or a portion of a government lot.

(5-8-09)

**02. Parcel Number Functions.** The uniform parcel numbering system shall be used for mapping and record keeping. Each parcel shall be assigned a parcel number that shall appear on the plat map and on a companion sheet. This assigned parcel number may also be the tax number.

(5-8-09)

**03. Parcel Number Cancellation or Retention Upon Property Transfers.** As long as the property boundary does not change, the new owner's name shall be assigned to the same parcel number on the companion sheet. A parcel number that exists at the time a property is divided or added to may be canceled and a new number(s) assigned. If the parent parcel number is not canceled, it shall be assigned to the child parcel complying with the directions in this rule relating to assigning parcel numbers based on geographic location.

(5-8-09)

**04. Property Split by County Line, Section Line, or Tax Code Area Boundary.** Properties contiguous under common ownership but split by county line, ~~section line~~, or tax code area boundary shall require separate parcel numbers. Properties contiguous under common ownership but split by section line(s) and entirely located within the same county and tax code area will not require separate parcel numbers and the lowest section number will be included in the parcel number as explained in Paragraph 219.05.c. of this rule.

(5-8-09)( )

**05. Rural Land not Subdivided.** Assign parcel numbers to rural land that is not subdivided as follows:

(5-8-09)

**a.** Positions 1, 2, and 3 shall be the township descriptor minus the "T."

(5-8-09)

**b.** Positions 4, 5, and 6 shall be the range descriptor minus the "R."

(5-8-09)

**c.** Positions 7 and 8 shall be the section number. For properties contiguous under common ownership and split by section line(s) so that the parcel is located in multiple sections, the lowest section number shall be used. If the section number is less than ten (10), the section number is in position 8, preceded by a zero ("0") in position 7.

(5-8-09)( )

d. Positions 9, 10, 11, and 12 shall be the quarter section numbers. To assign the quarter section number, begin numbering in the northeast quarter (NE1/4) of the northeast quarter (NE1/4) and proceed counterclockwise. Starting in the NE1/4 of the section the numbers used range from zero to two thousand three hundred ninety nine (0000 to 2399). Continuing counterclockwise, beginning in the NE1/4 of the northwest quarter (NW1/4), the numbers continue from two thousand four hundred to four thousand seven hundred ninety nine (2400 to 4799), thence, starting in the NE1/4 of the southwest quarter (SW1/4), assign numbers from four thousand eight hundred to seven thousand one hundred ninety nine (4800 to 7199), and beginning in the NE1/4 of the southeast quarter (SE1/4), assign quarter section numbers from seven thousand two hundred to nine thousand nine hundred ninety nine (7200 to 9999). The following quarter section breakdown key shows the sequence for assigning quarter section numbers for land not subdivided. (5-8-09)

North ↑  
Standard Section

3000	2400	600	0
3599	2999	1199	599
3600	4200	1200	1800
4199	4799	1799	2399
5400	4800	7800	7200
5999	5399	8399	7799
6000	6600	8400	9000
6599	7199	8999	9999

Note: The northern quarters of sections 1, 2, 3, 4, 5, and 6 may be government lots and the western quarters of Sections 6, 7, 18, 19, 30 and 31 may be government lots. For the purpose of parcel numbering, these government lots shall be treated as if each was the respective quarter-quarter of the section. (5-8-09)

e. The following parcel number example denotes Township 10 North, Range 5 East, Section 4 with the parcel being in the NE1/4, NE1/4: 10N05E040235. (5-8-09)

f. The following table is an example of a companion sheet with parcel numbers for rural land not subdivided.

Township & Range	Sec.	Parcel No.	Grantor	Grantee	Remarks	Deed Type	Date	Instrument Number
23N11E	29	7985	Public, John	Citizen, Fred	See Parcel # 7832	WD	1/10/93	492183
23N11E	29	7990	Citizen, Fred		Split from #7985			
23N11E	29	8000	Citizen, Fred	Voter, Sue	Split from #7985	WD	3/9/99	644809
23N11E	29	8010	Citizen, Fred		Split from #7990			
23N11E	29	8250	Citizen, Fred	Anyone, Jim	Split from #7990	WD	4/9/01	652186

(5-8-09)

06. **Urban Land not Subdivided.** Assign parcel numbers to urban land that is not subdivided as follows: (5-8-09)
- a. Position 1 shall be the city letter. Each city shall have a unique letter. (5-8-09)
  - b. Positions 2, 3, 4, 5, and 6 shall each be the number zero (“0”). (5-8-09)
  - c. Positions 7 and 8 shall be the section number. Number these positions as directed in Paragraph ~~218.04.c.~~ 219.05.c. of this rule. (~~5-8-09~~)(    )
  - d. Positions 9, 10, 11, and 12 shall be the quarter section number. Number these positions as directed in Paragraph ~~218.04.d.~~ 219.05.d. of this rule. (~~5-8-09~~)(    )
  - e. When a metes and bounds parcel inside city limits is being numbered, positions 9, 10, 11, and 12 locate the parcel to the nearest quarter section. (5-8-09)
  - f. If a government lot is within a section, or an extended government lot is an extension of a section, the quarter section numbering shall be assigned as rural land not subdivided. For a government lot within a quarter section, the assigned number shall be a number within the sequence of numbers for the quarter section. For an extended section, the assigned number shall be within the sequence from the extended quarter section. (5-8-09)
  - g. The following parcel number example denotes a parcel in the NE1/4 of section 29 in the city identified by the letter “A”: A00000292163. (5-8-09)
07. **Subdivided Rural Land.** Assign parcel numbers to subdivided rural land as follows: (5-8-09)
- a. Position 1 shall be the number zero (“0”). (5-8-09)
  - b. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or new subdivision, shall be assigned a four (4) digit number. (5-8-09)
  - c. Positions 6, 7, and 8 shall be the block number. (5-8-09)
  - d. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat or an assigned number if characters on the subdivision plat are not acceptable as a parcel number. (5-8-09)
  - e. Position 12 shall be the number zero (“0”) if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter “A.” If split a second time, the letter becomes a “B,” etceteras. These splits or combinations shall be listed on the companion sheet. (5-8-09)
  - f. The following parcel number example denotes a subdivided parcel not in any city, identified by the number zero (“0”), subdivision number 62, block number 200, and lot number 29: 000622000290. (5-8-09)
08. **Subdivided Urban Land.** Assign parcel numbers to subdivided urban land as follows: (5-8-09)
- a. Position 1 shall be the city letter. Each city shall have a unique letter. (5-8-09)
  - b. Positions 2, 3, 4, and 5 shall be the subdivision number. The subdivision number shall not contain alphabetic characters. Each subdivision, whether the original townsite or a new subdivision, shall be assigned a four (4) digit number. (5-8-09)
  - c. Positions 6, 7, and 8 shall be the block number. (5-8-09)
  - d. Positions 9, 10, and 11 shall be the lot number designated on the subdivision plat. An assigned subdivision plat number may be used if numbers comply with the parcel numbering system. (5-8-09)

e. Position 12 shall be the number zero (“0”) if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter “A.” If split a second time, the letter becomes a “B,” etceteras. These splits or combinations shall be listed on the companion sheet. (5-8-09)

f. When one (1) whole lot and part of another adjoining lot are under common ownership, one (1) parcel number may be assigned. That parcel number shall be written using the whole lot's number and position 12 shall be a letter. (5-8-09)

g. The following parcel number example denotes a parcel in the city identified by the letter “A,” in subdivision with number 0062, block number 200, lot number 029, and has been modified once: A0062200029A. (5-8-09)

h. The following table is an example of a companion sheet with parcel numbers for subdivided land within a city.

City No.	Sub. No.	Blk. No.	Lot & Split Number	Grantor	Grantee	Remarks	Deed Type	Date	Instrument Number
A	0054	001	0090	Owner, Sid	Pat Voter		WD	1/11/92	190624
A	0054	001	009A	Voter, Pat		Retaining N1/2 Lot 9			
A	0054	001	009B	Voter, Pat	Public, Joe	S1/2 Lot 9	WD	2/12/99	299486
A	0054	001	009B	Public, Joe	Owns, Tim	S1/2 Lot 9	WD	6/9/01	299999

(5-8-09)

**09. Patented Mines and Patented Mining Claims.** Assign parcel numbers to patented mines and mining claims as follows: (5-8-09)

a. The number nine (“9”) shall be in positions 1 and 2. (5-8-09)

b. Positions 3 through 8 shall denote the township and range, as in the land not subdivided format. (5-8-09)

c. Positions 9 through 12 shall be a county assigned sequential account number for individual mines. (5-8-09)

d. The following parcel number example denotes a parcel that is a patented mine in township 10 North, Range 36 East, with county assigned number 58: 9910N36E0058. (5-8-09)

**10. Condominiums.** Assign parcel numbers to condominiums as follows: (5-8-09)

a. Condominiums in a city shall have a letter in position 1 of the parcel number. The letter shall be unique for each city. For condominiums not in any city, position 1 is the number zero (“0”). (5-8-09)

b. Positions 2, 3, 4, and 5 shall be the condominium number and shall be four numbers. To differentiate between condominiums and subdivisions, numbers 0001 through 8999 are to be used for subdivisions, and numbers 9000 through 9999 for condominiums. Fill positions preceding the number with zeros to occupy all four (4) positions (“0000”). (5-8-09)

c. Positions 6, 7, and 8 shall be the block or building number. Position 6 may be a “C” to differentiate between a typical block or building number and a condominium common area. (5-8-09)



**d.** Positions 9, 10, and 11 shall be the lot or unit number designated on the condominium plat or an assigned number. An assigned condominium plat number may be used if numbers comply with the parcel numbering system. (5-8-09)

**e.** Position 12 shall be the number zero ("0") if the parcel has not been modified since originally platted. If it has been split once or combined once, then this character becomes an "A." If split a second time, the character becomes a "B," etceteras. These splits or combinations shall be listed on the companion sheet. (5-8-09)

**f.** The following parcel number example denotes a parcel that is in the city identified by the letter "A," with condominium number 9062, block or building number 007, lot or unit number 029, and has not been modified since originally platted: A90620070290. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).**

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. (3-30-07)

**01. Definitions.** The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

**a.** Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

**b.** Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

**c.** Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

**d.** Deannex. Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (4-6-05)

**e.** Disincorporate. Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (4-6-05)

**f.** Dissolve. Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (4-6-05)

**g.** Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

**i.** Section, township, range and meridian. (3-15-02)

**ii.** An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

**iii.** A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

**iv.** Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the

State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)

or (2) References to cardinal directions, government survey distances, and section or aliquot part corners; (3-15-02)

(3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)

**h.** Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)

i. Section, township, range, and meridian identifications. (3-15-02)

ii. North arrow, bar scale, and title block. (3-15-02)

iii. District name and ordinance number or order date. (3-15-02)

iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)

v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)

vi. Variations from the requirements of Paragraph 225.01.h. of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)

**i.** Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. (5-8-09)

**02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.** The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

**a.** A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)

**b.** A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)

**c.** A copy of the ordinance or order effecting the formation or alteration. (4-5-00)

**d.** For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. (3-30-07)

e. In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a., through 225.02.c., of this rule. (5-8-09)

**03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.** (3-15-02)

a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order. (4-6-05)

b. Upon receipt of the ordinance or order without an accompanying map of the boundaries from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) and send a copy of a map showing the affected tax code area(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list and map shall be sent by the fourth Friday of January. (3-15-02)

c. After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

d. For RAAs formed prior to July 1, 2011, ~~W~~within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve. (~~3-29-10~~)( )

e. For RAAs formed beginning July 1, 2011, the notification procedures in Paragraph 225.03.d. of this rule shall be initiated within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty (20) years. ( )

**04. Digital Map Information.** Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

**05. Deadline for Completion.** December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

**06. Approval of Property Tax Levy or Revenue Allocation.** For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

a. Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

b. Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

c. Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

d. Has had one (1) previous annexation on or after July 1, 2011 and is requesting to annex additional area. In this case, the annexation request will be denied, and the area of the RAA established prior to the new annexation will be considered to comprise the entire RAA. ( )

**07. Notification of Approval or Disapproval.** The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year. (4-6-05)

**08. One Uniform System.** The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

**09. Tax Code Areas.** The State Tax Commission shall create a separate, unique number for each tax code area. If any area annexed to an existing RAA includes a taxing district with any fund levying prior to January 1, 2008, and continuing to levy but which is not to be used to generate funds to be distributed to an urban renewal agency, the boundaries of the area added to the existing RAA shall constitute a separate tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (5-8-09)

**10. Furnished By The State Tax Commission.** ( )

a. Annually, The State Tax Commission will furnish annually, without charge, one (1) set of post the following documents on the State Tax Commission's website: ( )

i. Updated tax code area maps; ( )

ii. a listing of cities, Updated taxing districts maps; ( )

iii. or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries Updated urban renewal revenue allocation area maps; and ( )

iv. Documentation of changes related to the above maps. ( )

b. This information is available to all parties. Upon specific request, the State Tax Commission will furnish without charge, one (1) hardcopy set of the above documents to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other ~~tax~~ code area hardcopy maps. (3-15-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**312. PARTIAL YEAR ASSESSMENT OF REAL AND PERSONAL PROPERTY (RULE 312).** Sections 63-311 and 63-602Y, Idaho Code. (5-3-03)

**01. Quarterly Assessment.** For each partial year assessment of any non-transient personal property, the assessment shall comply with the quarterly schedules provided in Sections 63-311 and 63-602Y, Idaho Code. (5-3-03)

02. Change of Status. The real or personal property that has a change of status as described in Section 63-602Y, Idaho Code, does not include federal or state of Idaho property. The property of the United States, except when taxation thereof is authorized by the Congress of the United States, the state, counties, cities, school districts, and other taxing districts that is transferred to a private owner continues to maintain a non-taxable status until January 1 of the year immediately after transfer. However, property owned by an urban renewal agency that is transferred to a private owner is subject to property tax according to the proration as described in Section 63-602Y, Idaho Code.

**023. Cross Reference.** The partial year assessment of any non-transient personal property shall comply with the Idaho Supreme Court decision in Xerox Corporation v. Ada County Assessor, 101 Idaho 138, 609 P.2d 1129 (1980). When assessing all non-transient personal property, each assessor should be aware of the following quotation from this decision: "Where the county undertakes to update its initial (personal property) declarations during the course of the tax year, it cannot increase a taxpayer's tax burden to reflect the taxpayer's acquisition of non-exempt property without decreasing that tax burden to reflect the fact that property reported by the taxpayer in an earlier declaration was no longer subject to the county's ad valorem tax." (Clarification added.) (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR (RULE 314).** Sections 63-314 and 63-316, Idaho Code. (3-30-01)

**01. Definitions.** (7-1-99)

**a.** Continuing Program of Valuation. "Continuing program of valuation" means the program by which each assessor completes the assessment of all taxable properties each year. (7-1-99)

**b.** Field Inspection. The "field inspection" shall include an observation of the physical attributes of all structures which significantly contribute to the property value, the visible land amenities, and a notation of any other factors which may influence the market value of any improvements. (7-1-99)

**c.** Index. "Index" refers to any annual adjustment or trending factor applied to existing assessed values to reflect current market value. Ratio studies or other market analyses can be used to develop indexes based on property type, location, size, age or other characteristics. (7-1-99)

**d.** Prediction of Market Value. As used in Section 63-314, Idaho Code, "prediction of market value" means an estimate of market value. (7-1-99)

**e.** Category to be Assessed at Current Market Value. The level of assessment of each category will be considered to be current market value unless there is reasonable statistical certainty that the category is not equalized pursuant to Section 63-109, Idaho Code, and Rule 131. (3-30-01)

**02. Plan for Continuing Program of Valuation.** The plan for continuing program of valuation shall include: (7-1-99)

**a.** General Contents. A parcel count by category, the number of parcels to be appraised each year, maps that show each of the market areas, an analysis of staff requirements, a budget analysis that provides adequate funding for labor costs, capital and supply costs, travel and education costs and the method of program evaluation. (3-30-01)

**b.** Market Data Bank. A market data bank including collection, verification and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. To mail assessment notices by the first Monday in June as required by Section 63-308, Idaho Code, assessors should include income and expense data submitted by property owners by the first Monday in April. Income and expense data for low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code includes

actual rents, the monetary benefit of income tax credits, and expenses. (4-2-08)

c. Maps. Maps prepared in accordance with Section 63-209, Idaho Code, which identify characteristics of each geographic area. (7-1-99)

d. Property Record. A property record for each parcel, complete with the assigned secondary category and property characteristics necessary for an estimate of the current market value. Such characteristics may include data elements as described in the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal of Real Property and the IAAO Standard on Digital Cadastral Maps and Parcel Identifiers. Common elements identified in these standards include: (7-1-99)( )

i. Date of most current physical review. ( )

ii. Significant improvements, buildings and structures. ( )

iii. Photographs of significant improvements. ( )

iv. Sketches and/or blue prints of significant improvements. ( )

v. Location data, such as market area, neighborhood, site amenities and external nuisances. ( )

vi. Year built, effective age and/or condition of significant improvements. ( )

vii. Land size or diagram of all taxable parcels within the county. ( )

**03. Date Plan Is Submitted.** The plan must be submitted to the State Tax Commission on or before the first Monday of February in 1997, and every fifth year thereafter. (7-1-99)

**04. Request for Extension.** As provided in Section 63-314, Idaho Code, a county may request an extension to the current five (5) year county valuation plan. (3-30-01)

a. Amended Plan. Any request for an extension must include an amended plan incorporating an inventory of the parcels to be appraised during the period of the approved extension. This inventory shall constitute the schedule of required appraisals for the initial year or years of the subsequent five (5) year valuation program. Parcels appraised during the extension will be considered appraised during both the current and subsequent five (5) year plan valuation program periods, maintaining the same five (5) year cycle for all counties. (3-30-01)

b. Approval of the Extension and Amended Plan. A county shall be notified of the State Tax Commission's decision regarding the granting of an extension as provided in Section 63-314, Idaho Code, within thirty (30) days of receipt of the written request for the extension when accompanied by an amended plan. (3-30-01)

c. Approval of the Amended Plan. The State Tax Commission's approval of any extension shall specify timing and nature of progress reports. (3-30-01)

d. Voiding of the Extension. The State Tax Commission can void an extension unilaterally. (3-30-01)

**05. Testing for Current Market Value.** Assessed values shall be tested annually by the State Tax Commission as described in Section 63-109, Idaho Code, and Rule 131 of these rules to determine whether the level of assessment reflects "current market value." (3-30-01)

**06. Cross Reference.** For clarification on tax credits when valuing low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code, see the case of Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

318. -- ~~399.~~     ~~(RESERVED)~~

~~400.     ACCESS TO INFORMATION ON VALUATION (RULE 400).~~

~~01.     Public Records and Qualifying Disclosure Exemption. Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses may be exempt from disclosure. See Sections 9-337 and 9-340(D), Idaho Code. (7-1-99)~~

~~02.     Designation of Information as Confidential. The taxpayer, whose operating property is assessed by the State Tax Commission, or the operator of this property may designate all or part of the information in the operator's statement as confidential. Information submitted as a supplement or schedule to the operator's statement may also be designated in whole or in part as confidential. The request must be made in writing and attached to the operator's statement required by Rule 404 of these rules. (7-1-99)~~

~~03.     Treatment of Designated Information. The State Tax Commission shall treat the designated confidential information and the portions of the appraisal reports, incorporating such information, as exempt from disclosure under Section 9-340(D), Idaho Code. (7-1-99)~~

~~04.     Assessor's Access to Designated Information. The assessor of a county in which the value of an operating property is apportioned may, in the offices of the State Tax Commission, examine the information designated as confidential for the operating property in question. An assessor cannot disclose this information. The assessor cannot obtain or make copies of this information. (7-1-99)~~

~~401. — 403.     (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**509.     CITY, COUNTY, AND SCHOOL DISTRICT, AND SPECIAL DISTRICT OR UNIT OF GOVERNMENT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES (RULE 509).**

Sections 63-105A and 63-509, Idaho Code. (3-30-07)

**01.     Definitions.** The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. (3-30-07)

**a.**     Increment Value. Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. (3-30-07)

**b.**     Primary Category. Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. (3-30-07)

**c.**     Secondary Category. Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and this Rule. Secondary categories may also be tested for equalization purposes, provided they meet the criteria in Subsection 131.05 of these rules. (3-30-07)(    )

~~02.     Appropriate County and Boise School District Abstracts to Balance. The taxable value of property in each secondary category as shown on the abstracts prepared and submitted under Section 63-509, Idaho~~

~~Code, shall equal the sum of the taxable value of property in each secondary category as shown on the Boise School District abstracts, required under Rule 315 of these rules, for the portion of the Boise School District located within Ada County and Boise County.~~ (4-2-08)

**032. Indicate Increment and Exemption Values.** In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections, 63-602GG, 63-602HH, 63-602II, 63-602KK, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each secondary category of property on each city and county abstract, and the Boise School District abstract. Increment value and the value of the exemptions found in this subsection shall also be indicated and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property. (5-8-09)(\_\_\_\_)

**043. Submittal of Corrections to Erroneous Abstracts or Related Documents.** When completing the procedures set forth in Section 63-810, Idaho Code, boards of county commissioners should submit the corrections to the taxable values submitted on the abstracts or related documents under provisions of Section 63-509, Idaho Code, and this rule, no later than when they submit the corrected levies under Section 63-810, Idaho Code. (4-2-08)

**054. Cross Reference.** See Rule 115 of these rules for requirements to submit city, Boise School District, and special district or unit of government abstracts. For the descriptions of the primary categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. For information relating to notification of corrections to erroneous levies, see Sections 63-809 and 63-810, Idaho Code, and Rule 809 of these rules. (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. HOW TO VERIFY THAT CLAIMANTS ARE LAWFULLY PRESENT IN THE UNITED STATES (RULE 701).**

Sections 63-701 through 710 and Sections 67-7901 through 7903, Idaho Code. (4-2-08)

**01. Lawful Presence in the United States.** The county assessor shall verify that any claimant for property tax reduction pursuant to Sections 63-701 through 710, Idaho Code, who is eighteen (18) years of age or older is lawfully present in the United States ~~before approving the claimant for property tax reduction pursuant to Sections 63-701 through 710, Idaho Code~~; by doing the following: (4-2-08)(\_\_\_\_)

**a.** Providing to the State Tax Commission electronically and by paper copies documentation verifying that the claimant's name, social security number, and date of birth used for social security records of the claimant and the claimant's spouse, if married, are correct. Examples of documentation that would verify that the information is correct include, but are not limited to the following: (4-2-08)

- i. Federal Form W-2; (4-2-08)
- ii. Federal Form 1099; (4-2-08)
- iii. Form 1099 received by the claimant from the Social Security Administration or the Railroad Retirement Board, or the federal Personnel Management System; (4-2-08)
- iv. Social Security Card; (4-2-08)
- v. Birth Certificate; or (4-2-08)
- vi. Documents listed under paragraph 701.01.b. of this rule. (4-2-08)



**b.** If the claimant or the claimant's spouse, if married, is not currently receiving benefits from the Social Security Administration, the Railroad Retirement Board, or the federal Personnel Management System, then requiring the claimant to submit the following, a copy of which shall be attached to the application for property tax reduction: (4-2-08)

i. An Idaho driver's license or an Idaho identification card issued pursuant to Section 49-2444, Idaho Code; or (4-2-08)

ii. A valid driver's license or similar document issued for the purpose of identification by another state or territory of the United States, if such license or document contains a photograph of the individual or the claimant's age, sex, race, height, weight, or other such personal identifying information relating to the individual sufficient to show that the individual is the person identified in the other state or territory of the United States driver's license or similar identification document; or (4-2-08)

iii. A United States military card or a military dependent's identification card; or (4-2-08)

iv. A United States coast guard merchant mariner card; or (4-2-08)

v. A Native American tribal document; or (4-2-08)

vi. A valid United States passport. (4-2-08)

**c.** Attestation of Lawful Presence. In addition to the documentation provided in Paragraphs 701.01.a. and 701.01.b. of this rule the claimant is also required to attest, under penalty of perjury and on a form designated by the State Tax Commission, that; (4-2-08)

i. The social security number(s) provided is/are valid; and (4-2-08)

ii. The claimant and the claimant's spouse, if married, are United States citizens or legal permanent residents; or (4-2-08)

iii. The claimant and the claimant's spouse, if married, are otherwise lawfully present in the United States pursuant to federal law. (4-2-08)

**d.** Audit. During audit the State Tax Commission shall: (4-2-08)

i. Verify the claimant's and the claimant's spouse's, if married, social security number(s) electronically with the Social Security Administration or through other appropriate governmental agencies or means. (4-2-08)

ii. Presume the attestation to be proof of lawful presence for purposes of this section until such verification of lawful presence is made. (4-2-08)

**e.** Successive Applications. Once a claimant and the claimant's spouse, if married, have been verified as lawfully present in the United States pursuant to this rule, a claimant and the claimant's spouse, if married, in successive years will be presumed to be lawfully present in the United States if the claimant and the claimant's spouse, if married, continue to attest in each successive application that no change has occurred in their status. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**717. PROCEDURE AFTER CLAIM APPROVAL (RULE 717).**  
Sections 63-115 and 63-707, Idaho Code.

(3-30-07)

**01. Formatting Requirements.** The property tax reduction roll shall be formatted as required by Section 63-707, Idaho Code. (3-30-01)

**02. Preliminary Property Tax Reduction Roll.** The roll, certified by the assessor to the county auditor and the State Tax Commission by ~~the fourth Monday in~~ June 1st of each year, shall be termed the preliminary property tax reduction roll. The preliminary property tax reduction roll shall list property tax reduction claimants in alphabetical order unless the State Tax Commission grants permission for claimants to be listed in an alternate order. Each original claim form shall be submitted to the State Tax Commission in the same order as shown on the preliminary property tax reduction roll. (~~3-30-01~~)(      )

**03. Final Property Tax Reduction Roll.** The completed property tax reduction roll, certified by each county clerk to the State Tax Commission by the fourth (4th) Monday in October, shall be termed the final property tax reduction roll. The final property tax reduction roll shall list property tax reduction claimants in the same order as shown on the preliminary property tax reduction roll, except that all fully disapproved claimants shall be deleted and not shown on the final property tax reduction roll. Erroneous claims which are partially disapproved by the State Tax Commission shall be shown on the final property tax reduction roll after the county clerk has made all adjustments or corrections listed on the notice sent to the county auditor pursuant to Section 63-707(6), Idaho Code, termed county change letter. (3-30-01)

**04. Certification of Electronic Property Tax Reduction Roll by County Assessor.** ~~After approval of the claims by the county board of equalization but no later than the fourth Monday in June, each~~ The county assessor will certify the property tax reduction roll to the county auditor and send a copy to the State Tax Commission by June 1st of each year. In addition, each county assessor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county assessor will contact the State Tax Commission to receive a password. This password protected electronic roll will contain the following information: (~~3-30-07~~)(      )

- a. Claimant's Social Security Number. List the claimant's social security number. (3-30-07)
- b. Claimant's Date of Birth. List the claimant's date of birth. (3-30-07)
- c. Claimant's Last Name. List the claimant's last name. (3-30-07)
- d. Claimant's First Name. List the claimant's first name. (3-30-07)
- e. Spouse's Social Security Number. List the social security number for the spouse of the claimant. (3-30-07)
- f. Spouse's Date of Birth. List the date of birth for the spouse of the claimant. (3-30-07)
- g. Spouse's Last Name. List the last name for the spouse of the claimant. (3-30-07)
- h. Spouse's First Name. List the first name for the spouse of the claimant. (3-30-07)
- i. Claimant's Telephone Number. List the claimant's telephone number. (3-30-07)
- j. Claimant's Address. List the claimant's address. (3-30-07)
- k. Claimant's City. List the city where the claimant lives. (3-30-07)
- l. Claimant's State. List the postal abbreviation for the state where the claimant lives. (3-30-07)
- m. Claimant's Zip Code. List the claimant's zip code. (3-30-07)
- n. Claimant's Parcel Number(s). List the parcel number for the property on which the claimant is receiving the homeowner's exemption. When more than one (1) parcel owned by the claimant is eligible, list all

- eligible parcel numbers. (3-30-07)
- o.** Year. List the current year. (3-30-07)
  - p.** Claimant's County Number. List the number of the county where the claimant lives. (3-30-07)
  - q.** Term of Direct Address. List the appropriate term of direct address; that is, "Mr.," "Ms.," or "Mr. & Mrs." (3-30-07)
  - r.** Income Data. List income data. (3-30-07)
  - s.** Identify New Applicants. Identify claimants who are applying for this benefit for the first time. (3-30-07)
  - t.** Value. List the best estimate for each secondary category of current market value and prorated net taxable value. (3-30-07)
  - u.** Maximum Benefit. The program will automatically show the maximum benefit for which the claimant is eligible based on income. (3-30-07)
  - v.** Qualifying Criteria. Identify all of the following criteria that the claimant meets. (3-30-07)
    - i.** Sixty-five (65) years old or older. (4-2-08)
    - ii.** Blind. (3-30-07)
    - iii.** Disability granted by the Social Security Administration, Railroad Retirement Board, or federal civil service. (3-30-07)
    - iv.** Orphan, under eighteen (18) years of age. (3-30-07)
    - v.** Prisoner of war or hostage, certified by Veteran's Affairs. (3-30-07)
    - vi.** Nonservice connected disability or service connected disability at ten percent (10%) to thirty percent (30%), certified by Veteran's Affairs. (3-30-07)
    - vii.** Service connected disability at forty percent (40%) or more, certified by Veteran's Affairs. (3-30-07)
    - viii.** Widow or widower, include date of spouse's death. (3-30-07)
    - ix.** Whether the claimant is lawfully present in the United States. (4-2-08)
- 05. Certification of Completed Electronic Property Tax Reduction Roll by County Auditor.** No later than the fourth Monday in October, each county auditor will certify the property tax reduction roll to the State Tax Commission. In addition, each county auditor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county auditor will contact the State Tax Commission to receive a password. In addition to the data files listed in Paragraphs 717.01.a. through 717.01.v. of this rule, this password protected electronic roll will contain the following information formatted as directed or approved by the State Tax Commission. (3-30-07)
- a.** Current Year's Levy. List the current year's levy for the tax code area where each claimant's property is located. (3-30-07)
  - b.** Current Year's Taxable Value. List the current year's taxable value for each claimant's qualifying property. (3-30-07)

c. Claimed Property Tax Reduction Amount. List for each claimant the amount of property tax reduction claimed based on the current year's levy and the current year's eligible taxable value. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

**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 secondary category change and in a change in taxable land value to be reflected on the current property roll. (4-7-11)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year. (4-7-11)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

**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, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. 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. (~~4-7-11~~)(    )

a. Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from ~~any~~ new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year's new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (~~4-7-11~~)(    )

b. Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (~~4-7-11~~)(    )

c. Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to

which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. ~~(4-7-11)~~( )

**03. Special Provisions for Value Increases and Decreases.** Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule. (4-7-11)

**a.** Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

i. Increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll provided, however, that no amount previously included shall be reported again. (4-7-11)

ii. The increase in taxable land value to be reported 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. (4-7-11)

**b.** Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. (4-7-11)

i. Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification during any one (1) of the immediately preceding five (5) years and for which an increase in value due to change of land use classification during the same five-year period had ~~previously~~ been added to ~~any~~ new construction roll. ~~(4-7-11)~~( )

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-7-11)

v. Only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-7-11)

**04. 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)

**05. Partial New Construction Values.** Except as provided in Subsection 802.06 of this rule, 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. Except as provided in Subsection 802.06 of this rule, 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, except as provided in Subsection 802.06 of this rule, 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, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

2010 Value	\$90,000
2009 Value Already Reported on New Construction Roll	<\$10,000>
2010 New Construction Roll Value (this improvement)	\$80,000

(4-7-11)

**06. Change in Status.**

(4-2-08)

**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, Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. (4-7-11)

**b.** Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the "incremental value as of December 31, 2006," shall be added to the appropriate year's new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year's new construction roll. (4-7-11)

**c.** When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006." (4-7-11)

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)

ii. Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area. (4-7-11)

iii. Step 3. Add any positive difference calculated in Step 2 to the current year's new construction roll value. (4-7-11)

iv. Step 4. Adjust the "incremental value as of December 31, 2006" for the RAA by subtracting the increment value determined in Step 1. (4-7-11)

v. The following table shows the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006" applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

Steps (as designated in Paragraph 802.06.c.)	Area	Value
	December 31, 2006, increment value of the original RAA	\$10,000,000
Step 1	December 31, 2006, increment value of the de-annexed area	\$1,000,000

<b>Steps (as designated in Paragraph 802.06.c.)</b>	<b>Area</b>	<b>Value</b>
	December 31, 2009, increment value of the de-annexed area	\$3,000,000
Steps 2 and 3	Amount related to the de-annexed area to be added to the 2010 new construction roll	\$2,000,000
Step 4	Adjustment amount to be deducted from the original RAA's "incremental value as of December 31, 2006"	<\$1,000,000>
	Adjusted "incremental value as of December 31, 2006" for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)	\$9,000,000

(4-7-11)

**07. Limitation on Annexation and New Construction Roll Value.** For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

**08. 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).**

Section 50-2908, 63-803, and 63-811, Idaho Code.

(5-8-09)

**01. Definitions.**

(4-5-00)

**a.** "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

**b.** "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

**c.** "Current base value." The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

**d.** "Initial base value." The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. (4-5-00)

**e.** "Increment value." The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel's current base value, provided such difference is a positive value. (4-5-00)

**02. Establishing and Adjusting Base and Increment Values.**

(4-5-00)

a. Establishing initial base value. If a parcel's legal description has changed prior to computing initial base year value, the value that best reflects the prior year's taxable value of the parcel's current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

b. Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

i. Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. (4-5-00)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels losing the speculative value exemption. When a partially exempt parcel with a speculative value exemption that applies to farmland within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the taxable value ~~that would have been assessed had~~



~~the parcel been fully taxable in the year the RAA was established~~ of the parcel for the year in which the exemption is lost and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that ~~if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars (\$1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as industrial land with a value of ten thousand dollars (\$10,000) a speculative value exemption of two thousand dollars (\$2,000) at that time. Two (2) years later the parcel is reclassified as industrial land, loses the speculative value exemption, and has a current taxable value of fifty thousand dollars (\$50,000).~~ The base value within the RAA would be adjusted upwards by ~~one~~ forty-nine thousand five hundred dollars (~~\$149,050~~), the difference between ~~fifteen hundred fifty thousand~~ dollars (~~\$150,000~~) and five hundred (\$500). ~~The preceding example applies only in cases of loss of the speculative value exemption that applies to land actively devoted to agriculture and does not apply to timberland. Site improvements, such as roads and utilities, that become taxable after the loss of the speculative value exemption are not to be added to the base value. For example, if, in addition to the fifty thousand dollars (\$50,000) current taxable value of the undeveloped land, site improvements valued at twenty-five thousand dollars (\$25,000) are added, the amount reflected in the base value remains fifty thousand dollars (\$50,000), and the additional twenty-five thousand dollars (\$25,000) is added to the increment value. In addition, this example applies only to land that loses the speculative value exemption as a result of changes occurring in 2010 or later and first affecting taxable values in 2011 or later. Parcels that lost speculative value exemptions prior to 2010 had base value adjustments as described in Subsection 804.02.d.iii. of this rule.~~ (4-5-00)( )

iii. ~~Partially exempt parcels other than those losing the speculative value exemption. When a partially exempt parcel, other than one subject to the speculative value exemption that applies to farmland, within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a residential parcel within an RAA had a market value of one hundred thousand dollars (\$100,000), a homeowner's exemption of fifty thousand dollars (\$50,000), and a taxable value of fifty thousand dollars (\$50,000) in the year the RAA base value was established. After five (5) years, this parcel is no longer used for owner-occupied residential purposes and loses its partial exemption. At that time the parcel has a taxable value of one hundred eighty thousand dollars (\$180,000). The base value within the RAA would be adjusted upwards by fifty thousand dollars (\$50,000) to one hundred thousand (\$100,000) to reflect the loss of the homeowner's exemption, but not any other value increases.~~ ( )

iv. ~~Partially exempt properties for which the amount of the partial exemption changes. For partially exempt properties that do not lose an exemption, but for which the amount of the exemption changes, there shall be no adjustment to the base value, unless the current taxable value is less than the most recent base value for the property. For example, assume a home has a market value of two hundred thousand dollars (\$200,000) and a homeowner's exemption of one hundred thousand dollars (\$100,000), leaving a taxable value of one hundred thousand dollars (\$100,000), all of which is base value. The following year the homeowner's exemption limit changes to ninety thousand dollars (\$90,000), so the property's taxable value increases to one hundred ten thousand dollars (\$110,000). The base value remains at one hundred thousand dollars (\$100,000). Alternatively, assume the property in the preceding example increases in market value to two hundred twenty thousand dollars (\$220,000) and the homeowner's exemption drops to ninety thousand dollars (\$90,000) because of the change in the maximum amount of this exemption. The base value remains at one hundred thousand dollars (\$100,000). Finally, assume the property decreases in value to one hundred eighty-eight thousand dollars (\$188,000) at the same time the homeowner's exemption limit changes to ninety thousand dollars (\$90,000). The property now has a taxable value of ninety-eight thousand dollars (\$98,000), requiring an adjustment in the base value to match this amount, since it is lower than the original base value of one hundred thousand dollars (\$100,000).~~ ( )

iv. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars (\$20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars

(\$20,000). (4-5-00)

**e.** Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

**i.** For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

**ii.** For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. (4-5-00)

**iii.** For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

**f.** Adjustments to increment values. Decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-5-00)

**g.** Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

**a.** For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

**b.** For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (5-8-09)

**04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

**a.** Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of

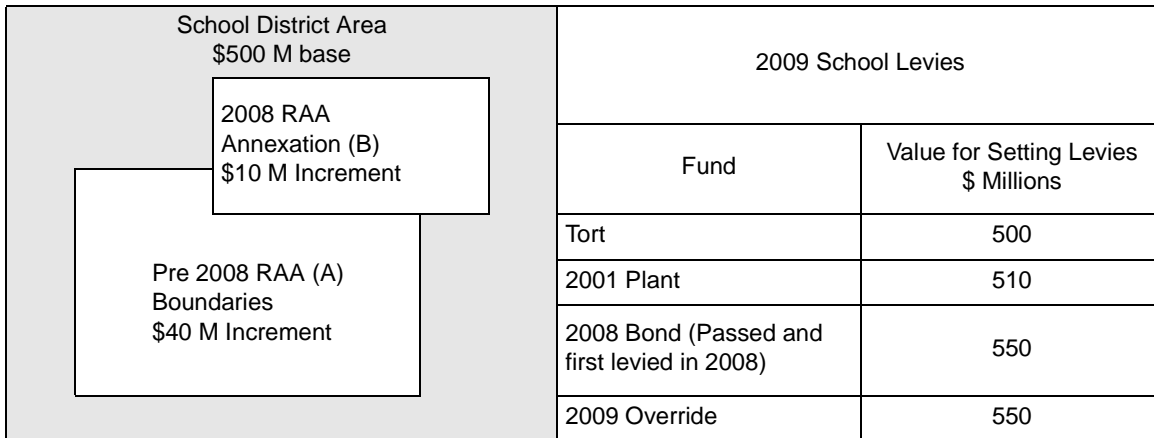
property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

**b.** Modification by annexation. (5-8-09)

**i.** If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

**ii.** For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$40 Million
	RAA annex (B) increment	\$10 Million



(5-8-09)

**05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

**a.** Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

**b.** Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

e. Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)

06. **Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

808. ~~(RESERVED)~~ **ADDITIONAL DOCUMENTATION BY TAXING DISTRICTS NOT LEVYING AGAINST ALL TAXABLE PROPERTY (RULE 808).**  
Sections 25-2401, 31-1425, 42-3115, 42-3708, 42-4116, 50-3113, 63-510 and 63-803, Idaho Code. ( )

**01. Tax Levy Rate Calculations and Documentation of Categories to be Taxed.** For any taxing district which does not levy property taxes against all taxable property within the district, the tax levy is to be calculated by dividing the taxing district's property tax budget by the taxable value of property against which the levy is to be applied. If the taxing district elects the property categories to be taxed, documentation of such election must be either: ( )

**a.** If initiated by the taxing district and not currently available to each county clerk, submitted by the taxing district to each county clerk, who shall then submit the documentation to the State Tax Commission by the first Monday in August in the first year in which the election takes place or in 2012, and in any year in which the categories elected to be taxed change; or ( )

**b.** If elected by an action of the Board of County Commissioners, submitted by the county clerk to the State Tax Commission by the first Monday in August in the first year in which the election takes place or in 2012, and in any year in which the categories elected to be taxed change. ( )

**02. Fire Districts.** Fire districts may levy against property of public utilities provided there is an agreement between the fire district and the public utility to do so. In addition, fire districts may exempt all or a portion of unimproved real property and taxable personal property. ( )

**a.** Public Utility Agreements. Written agreements with public utilities permitting property taxes to be levied for fire protection of all or a portion of the property of the public utility, pursuant to Section 31-1425(1), Idaho Code, must be submitted as documentation required in Subsection 808.01 of this rule. Such agreements need only be submitted once, provided there is no change and such agreements are on file with the county clerk and State Tax Commission in 2012. ( )

**b.** Exemption of all or a portion of unimproved real property and taxable personal property. Exemption of all or a portion of unimproved real property and taxable personal property must be documented in the fire district's formation ballot or other documents creating the fire district or by an ordinance enacted pursuant to Section 31-1425(2), Idaho Code, by the Board of County Commissioners, of each county in which the fire district is located. If the county does not have the necessary documentation, it must be submitted by the fire district by the third Monday in July, 2012 or, for fire districts created during or after 2012, by the third Monday in July of the first year in which the fire district intends to levy property taxes. If such documentation is not available, the fire district shall be

presumed to be levying against all otherwise taxable real and personal property. ( )

**03. Flood Control, Levee, Watershed Improvement, Community Infrastructure Districts, and Herd Districts.** Property tax may only be levied against real property. No special documentation is required. ( )

**04. Ambulance Districts.** Exemption of all or a portion of unimproved real property and taxable personal property must be documented by an ordinance enacted pursuant to Section 31-3908A, Idaho Code, by the county commissioners of the county in which the ambulance district is located. If such documentation is not available, the ambulance district shall be presumed to be levying against all otherwise taxable real and personal property. ( )

**05. Abstracts Showing Value of Property Against Which Levy is to be Applied.** For taxing districts not levying property tax against all otherwise taxable property, abstracts must be submitted as required in Rule 115 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**988. QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).** Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (4-6-05)

**01. Definitions.** The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. (3-20-04)

**a.** Year in which the investment is placed in service. “Year in which the investment is placed in service” means the calendar year the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. (4-6-05)

**b.** Operator’s Statement. The “operator’s statement” is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

**c.** Personal Property Declaration. A “personal property declaration” is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. (3-20-04)

**d.** Qualified Investment. “Qualified investment” means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator’s statement and is designated as exempt from property tax for two (2) years on Form 49E. (3-20-04)

**e.** Qualified Investment Exemption. The “qualified investment exemption” (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code. (3-20-04)

**f.** Assessor. The “assessor” is the representative of the county assessor’s office or the State Tax Commission who is responsible for the administration of the QIE. ( )

**02. Designation of Property for Which Exemption Is Elected.** The owner shall designate the property on which the QIE is elected. The owner shall make this designation on Form 49E and attach it to a timely filed personal property declaration or, for operating property, the timely filed operator’s statement. Owners who designate property on which the QIE is elected may not file the annual affidavit provided for in Section 63-602KK(6), Idaho Code, but must file the personal property declaration. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator’s statement, the owner must provide on

the personal property declaration or operator's statement the date the item elected for the QIE was placed in service. (3-29-10)

**03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration.** For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration. (3-20-04)

**04. Continuation of Listing.** For all property designated for QIE, even though that property is exempt for two (2) years, the owner must list that property on the personal property declaration or operator's statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code. (3-20-04)

**05. Period of QIE.** The QIE shall be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho. (3-20-04)

**06. Election Specificity.** The QIE election provided by Section 63-3029B, Idaho Code, shall be specific to each qualified item listed on the personal property declaration or operator's statement. An item that is a qualified investment, but for which there is no QIE election during the year after the "year in which the investment is placed in service" in Idaho, is not eligible for the QIE. (4-6-05)

**07. Notification by Assessor.** (4-6-05)

**a.** Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of this rule, the *county* assessor shall review the application and determine if the taxpayer qualifies for the property tax exemption under Section 63-3029B, Idaho Code. If the assessor determines that the property tax exemption should be granted, the assessor shall notify the taxpayer and, if applicable, send a copy of this form or listing to the State Tax Commission. (~~4-6-05~~)(    )

**b.** Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the five (5) year period beginning with the date the property was placed in service, the *county* assessor shall notify the State Tax Commission and the taxpayer immediately. The *county* assessor shall also provide this notification upon discovery that the owner first claiming the QIE failed to list the item on any personal property declaration or failed to file a personal property declaration in any year during this five (5) year period. This notice shall include: (~~4-6-05~~)(    )

i. Owner. Name of the owner receiving the QIE. (4-6-05)

ii. Property description. A description of the property that received the QIE. (4-6-05)

iii. New or used. State whether the individual item was purchased new or used. (4-6-05)

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. (4-6-05)

v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. (4-6-05)

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. (4-6-05)

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. (4-6-05)

**c.** Denial of the QIE. Upon review of the taxpayer's application, if the assessor determines that the property tax exemption should not be granted for all or part of the market value of any item or items, then the assessor

shall deny the exemption for those items. The assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. The assessor's notification cancels the election with respect to those items. Upon receiving this notification, the taxpayer is then free to pursue the income tax credit under Section 63-3029B, Idaho Code, for those items denied the QIE by the assessor. ( )

**08. Moved Personal Property.** In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: (3-20-04)

**a.** Is required of taxpayers moving locally assessed property between counties in Idaho during the five (5) year period beginning the date that property was placed in service; (4-6-05)

**i.** The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved. (4-6-05)

**ii.** The taxpayers must include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E. (4-6-05)

**b.** Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property. (4-6-05)

**09. Notification Regarding Transient Personal Property.** For transient personal property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor shall send a copy of this notice to the State Tax Commission. (3-20-04)

**10. Partial-Year Assessments.** Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. (3-20-04)

**11. Limitation on Amount of Exemption.** (3-20-04)

**a.** New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

**b.** Used Property. The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: (4-6-05)

**i.** QIE cost shall be determined for each item of used property upon which the QIE is claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars (\$150,000); provided, however, that the QIE cost for all elected used property shall not exceed one hundred fifty thousand dollars (\$150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars (\$150,000), QIE cost shall reflect the reduction necessary to stay within the one hundred fifty thousand dollar (\$150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719 for information on the selection of items of used property). (4-6-05)

**ii.** For each item purchased used, the QIE shall be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). (4-6-05)

**c.** Examples. In the following examples, all of the property is owned by the same taxpayer and is a qualified investment. (4-6-05)

**i.** Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption.

In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars (\$130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of January 1, 2006.

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	2004 Market Value	2004 Exempt Value	2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Computer 1	2003	\$20,000	Used	\$20,000	\$12,000	\$12,000	\$0	\$8,000	\$8,000	\$0
Assembly line	2003	\$160,000	Used	\$130,000	\$140,000	\$130,000	\$10,000	\$110,000	\$110,000	\$0
Computer 2	2003	\$50,000	New	N/A	\$40,000	\$40,000	\$0	\$30,000	\$30,000	\$0
Conveyor belt	2004	\$200,000	Used	\$150,000	N/A	N/A	N/A	\$200,000	\$150,000	\$50,000

(4-6-05)

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its market value.

Example B										
Property Description	Year Placed in Service	Cost	New or Used	QIE Cost	2006 Market Value	2006 Exempt Value	2006 Taxable Value	2007 Market Value	2007 Exempt Value	2007 Taxable Value
Construction Equipment	2005	\$20,000	Used	\$20,000	\$80,000	\$20,000	\$60,000	\$70,000	\$20,000	\$50,000

(4-6-05)

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars (\$300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars (\$300,000) or the (depreciated) market value of this used property. (4-6-05)

**12. Multi-County Taxpayers.** (3-20-04)

a. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. (3-20-04)

b. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. (3-20-04)

c. Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated operating property and purchased new or used must indicate on Form 49E each county where each property is located



and attach it to the operator's statement. (4-6-05)

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. (3-20-04)

**13. Special Provisions for Nonregulated Operating Property.** (4-6-05)

a. For nonregulated operating property, the market value of the QIE is calculated by multiplying the depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of these rules to the cost approach value determined under Subsection 405.02 of these rules. (4-6-05)

b. The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. (4-6-05)

i. Reduction in Idaho value. For nonregulated operating property except situs property, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. (4-6-05)

ii. Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. (4-6-05)

~~**14. Denial of QIE.** If the QIE is denied for all or part of the market value of any item for which the QIE had been claimed, the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. (3-20-04)~~

~~**15. Public Records and Exemption of Certain QIE Information from Disclosure.** Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses (such as trade secrets and other proprietary information) may be exempt from public disclosure (See Section 9-340D, Idaho Code) and may be protected from disclosure by the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, and other laws. A taxpayer who submits information to the State Tax Commission or to a county assessor or Board of Equalization in accordance with this rule may designate all or part of the information as confidential. The designation must be made in writing and clearly identify the particular information deemed confidential. In addition, the front page of the submission must prominently state that the document contains information designated as confidential. The State Tax Commission, the county assessor and Board of Equalization shall treat the designated information as confidential, exempt from disclosure under Section 9-340D, Idaho Code and as subject to the Idaho Trade Secrets Act (see Chapter 8, Title 48, Idaho Code). Nothing in this paragraph limits exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law. (3-20-04)~~

**164. Cross Reference.** For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. (4-6-05)

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.03.01 - RULES GOVERNING GROUP INSURANCE**

**DOCKET NO. 38-0301-1101**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**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 67-5701, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

To comply with Federal Law to raise State Employee and State Retirees dependent's eligibility age limits.

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

Compliance with deadline in amendments to governing law or federal programs.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of a need to do temporary rule making to comply with mandated federal law.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cynthia Ness 332-1865.

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 September 28, 2011.

DATED this July 6, 2011.

Cynthia Ness, Program Manager  
Department of Administration  
Office of Group Insurance  
304 N. 8th Street, Room 432  
P.O. Box 83720  
Boise, Idaho 83720-0035  
Phone: 332-1865; Fax: 332-1888

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 38-0301-1101

011. DEFINITIONS.

01. **Child.** Child includes a natural child, stepchild, adopted child or child in the process of adoption from the time placed with the eligible active employee or eligible retiree. The term also includes a child legally dependent upon the eligible active employee, the eligible active employee's spouse, the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee or eligible retiree will continue to rear that child to adulthood. The definition does not include a child where one or both of that child's natural parents live in the same household with the eligible active employee or eligible retiree, as a parent-child relationship is not deemed to exist even though the eligible active employee, eligible retiree or their spouses provide support. (3-29-10)

02. **Date of Hire.** The first day an individual begins work for the state or his employer. (3-29-10)

03. **Director.** The director of the Department of Administration. (3-29-10)

04. **Eligible Active Employee.** An officer or employee of a state agency, department or institution, including a state official, elected official or employee of another governmental entity which has contracted with the state of Idaho for group insurance coverage, who is working twenty (20) hours or more per week, and whose term of employment is expected to exceed five (5) consecutive months. (3-29-10)

05. **Eligible Dependent of an Eligible Active Employee.** An eligible dependent of an eligible active employee who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

a. The spouse of an eligible active employee. (3-29-10)

b. ~~An unmarried child under up to the age of twenty-one -six (216) of an eligible active employee or an eligible active employee's spouse, unless the dependent child is eligible to enroll in their own employer based group coverage.~~ (3-29-10)(7-1-11)T

~~e. An unmarried child under the age of twenty five (25) who is legally dependent upon the eligible active employee or the eligible active employee's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's most recent United States Individual Income Tax return.~~ (3-29-10)

06. **Eligible Dependent of an Eligible Retiree.** An eligible dependent of an eligible retiree who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

a. The non-Medicare-eligible spouse of an eligible retiree. (3-29-10)

b. ~~An unmarried child under up to the age of twenty-one -six (216) of an eligible retiree or an eligible retiree's spouse, unless the dependent child is eligible to enroll in their own employer based group coverage.~~ (3-29-10)(7-1-11)T

~~e. An unmarried child under the age of twenty five (25) who is legally dependent upon the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible retiree's most recent United States Individual Income Tax return.~~ (3-29-10)

07. **Eligible Retiree.** A person who is any of the following: (3-29-10)

a. An officer or employee of a state agency, department or institution, including state and elected

officials, who retired on or before June 30, 2009, and who is not Medicare eligible. (3-29-10)

**b.** An officer or employee of a state agency, department or institution, including state and elected officials, who meets all of the following: (3-29-10)

i. He retires after June 30, 2009, and retires directly from state employment. (3-29-10)

ii. He is not Medicare eligible. (3-29-10)

iii. He was hired on or before June 30, 2009, ~~or~~ **and** has at least twenty thousand eight hundred (20,800) credited state service hours on or before June 30, 2009, is reemployed, reelected or reappointed after June 30, 2009, and accrues an additional six thousand two hundred forty (6,240) continuous credited state service hours.

~~(3-29-10)~~(7-1-11)T

**c.** A person receiving benefits from a state of Idaho retirement system who has at least ~~ten (10) years~~ ~~or~~ twenty thousand eight hundred (20,800) credited state service hours in a state of Idaho retirement system, and who is not Medicare eligible. ~~(3-29-10)~~(7-1-11)T

**08. Group Insurance.** Medical, dental, vision, life, disability and other types of insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide such insurance to eligible active employees, eligible retirees and their dependents. (3-29-10)

**09. Health Care Coverage.** Medical insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide medical insurance to eligible active employees, eligible retirees and their dependents. (3-29-10)

**10. Medicare Coverage Gap.** Under a Medicare-supplement plan, there is a gap in coverage for prescription medications between the initial coverage limit (two thousand seven hundred dollars (\$2,700) in 2009) and the catastrophic coverage threshold (four thousand three hundred fifty dollars (\$4,350) in 2009). Within this gap, the Medicare recipient pays one hundred percent (100%) of the cost of prescription medications before catastrophic coverage begins. (3-29-10)

**11. Medicare Eligible.** A person who is age sixty-five (65) or older and qualifies to receive Medicare. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. LOSS OF ELIGIBILITY.**

**01. Eligible Active Employee Separation.** An eligible active employee and his dependents are no longer eligible for group insurance when the employee separates employment. An employee or former employee may be qualified to extend group insurance coverage after separation under provisions of federal and state law. (3-29-10)

**02. ~~Unmarried Eligible Dependents~~ ~~Child At or Over Age Twenty Five.~~ ~~An unmarried child under the age of twenty five (25) who is legally dependent upon the eligible active employee or eligible retiree for support where a normal parent-child relationship exists with the expectation that the eligible employee or eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's or eligible retiree's most recent United States Individual Income Tax return, is no longer eligible for group insurance at the end of the calendar month the child becomes twenty five (25) years old. An Eligible Dependent loses coverage when he no longer meets eligibility requirements in Subsection 011.05 of this rule. Group insurance coverage will terminate on the last day of the month in which the child turns 26.~~ ~~(3-29-10)~~(7-1-11)T**

**03. Retiree Becomes Medicare Eligible.** A retiree is no longer eligible for health care coverage when the retiree becomes Medicare eligible. A Medicare-eligible retiree's dependent spouse, who is not Medicare eligible,

and eligible dependent children, remain eligible for health care coverage until the spouse becomes Medicare eligible. (3-29-10)

**04. Retiree's Dependent Spouse Becomes Medicare Eligible.** A retiree's dependent spouse and ~~other dependents~~ children are no longer eligible for health care coverage when the retiree's dependent spouse becomes Medicare eligible. ~~(3-29-10)~~ (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. MEDICARE PRESCRIPTION MEDICATION REIMBURSEMENT PROGRAM.**

Effective January 1, 2010 through December 31, 201~~4~~<sup>3</sup>, any Medicare-eligible retiree or his Medicare-eligible dependent spouse, who is no longer eligible for health care coverage due to Medicare eligibility, may petition the director for reimbursement of prescription medications up to, but not to exceed, two thousand dollars (\$2,000) per calendar year, per Medicare-eligible retiree and per Medicare-eligible dependent spouse. ~~(3-29-10)~~ (7-1-11)T

**01. Eligibility for Medicare Prescription Medication Reimbursement.** If an eligible retiree or his eligible dependent spouse meet the following conditions, he can request reimbursement for his respective out-of-pocket expenses for prescription medications. Each individual must meet all criteria each calendar year: (3-29-10)

**a.** The Medicare-eligible retiree or his Medicare-eligible dependent spouse has met or exceeded the initial Medicare coverage limit for prescription medication expenses under his Medicare-supplement plan. (3-29-10)

**b.** The Medicare-eligible retiree or his Medicare-eligible dependent spouse is in the Medicare coverage gap, and has paid two thousand dollars (\$2,000) or more out of pocket for prescription medications. (3-29-10)

**c.** The Medicare-eligible retiree's or his Medicare-eligible dependent spouse's total out-of-pocket prescription medication expenses have not exceeded the Medicare catastrophic coverage threshold. (3-29-10)

**02. Deadline to Request Reimbursement from the Director.** A Medicare-eligible retiree or his Medicare-eligible dependent spouse must submit a petition and a request for reimbursement to the director on or before March 31 of each year for the petition and request to be considered timely. (3-29-10)

**a.** All reimbursement requests for ~~2010~~ out-of-pocket prescription medication expenses must be received on or before March 31, ~~2011, and requests for 2011 out-of-pocket prescription medication expenses must be received on or before March 31, 2012;~~ of the following calendar year to be considered. Petitions and reimbursement requests received after March 31, ~~2011 (for 2010 expenses), and March 31, 2012 (for 2011 expenses);~~ of the covered year will be denied for being untimely. ~~(3-29-10)~~ (7-1-11)T

**03. Contents of the Petition and Reimbursement Requests.** The Medicare-eligible retiree's or Medicare-eligible dependent spouse's petition and reimbursement request shall specifically state the reasons why the director should grant the Medicare-eligible retiree's or the Medicare-eligible dependent spouse's petition and reimbursement request, including but not limited to evidence that the petitioner has met all of the eligibility criteria above. (3-29-10)

**a.** Reimbursement requests must include all of the following information on an itemized receipt or statement: (3-29-10)

**i.** Date of service. (3-29-10)

**ii.** Description of prescription medication. (3-29-10)

**iii.** Total amount of expenses. (3-29-10)

- iv. Patient name. (3-29-10)
- v. Any amount covered by other insurance, if applicable. (3-29-10)

**04. Director's Review of the Petition and Reimbursement Request.** The director shall review the petition and reimbursement request, and may ask for additional information or documentation from the petitioner to assist the director in reaching a decision on the petition and reimbursement request. (3-29-10)

**05. Director's Decision of the Petition and Reimbursement Request.** The director shall approve or deny the petition and reimbursement request, and shall provide reasons for any denial within ten (10) business days after receipt of the petition or the receipt of requested information or documentation, whichever is later. (3-29-10)

**06. Appeal of Denial.** A petitioner may appeal the director's denial within thirty (30) days of the denial. The appeal shall state the reasons why the director's decision is in error. The appeal shall be reviewed by the Group Insurance Advisory Committee within thirty (30) calendar days of receipt of the appeal. (3-29-10)

**a.** The Group Insurance Advisory Committee may review the appeal and make a decision on the basis of the information and documentation provided by the Medicare-eligible retiree or his Medicare-eligible dependent spouse, may request additional information or documentation, and may take written or oral testimony. (3-29-10)

**b.** The Group Insurance Advisory Committee shall issue a written decision on the Medicare-eligible retiree's or his Medicare-eligible dependent spouse's appeal within ninety (90) days of the date of the appeal. (3-29-10)

**c.** The Group Insurance Advisory Committee shall deny any appeal for any of the following reasons: (3-29-10)

- i. The individual is not Medicare eligible. (3-29-10)
- ii. The individual has not yet retired from state employment. (3-29-10)
- iii. The Medicare-eligible retiree or the Medicare-eligible dependent spouse has not met all of the criteria described in Subsection 040.01 of these rules. (3-29-10)
- iv. The appeal is untimely or the original petition was submitted untimely. (3-29-10)

**07. Subsequent Reimbursement Requests After Approval of Petition.** A Medicare-eligible retiree or his Medicare-eligible dependent spouse, whose petition for prescription medication reimbursement has been approved by the director, may submit subsequent requests for reimbursement to the Office of Group Insurance, until the individual has received two thousand dollars (\$2000) for reimbursed prescription medication, per calendar year, under these rules. (3-29-10)

**08. Reimbursement Considered Taxable Income.** Any reimbursed prescription medication expenses by and through these rules are considered taxable income to the reimbursed party. (3-29-10)

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.06 - RULES GOVERNING PREQUALIFICATION OF CONTRACTORS ON CAPITOL BUILDING PROJECTS**

#### **DOCKET NO. 38-0406-1101 (CHAPTER REPEAL)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5507 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 chapter is being repealed because the restoration project on the State Capitol has been completed.

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

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

No impact to the General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code negotiated rulemaking was not conducted because the Restoration of the Capitol has been completed and the rules are no longer relevant.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tim Mason at 332-1911, Email: [tim.mason@adm.idaho.gov](mailto:tim.mason@adm.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this July 5, 2011.

Tim Mason, Administrator  
Department of Administration/Public Works  
502 N. Forth Street, PO Box 83720-0072  
Boise, Idaho 83720-0072  
Phone: 332-1900; Fax: 334-4031

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**IDAPA 38.04.06 IS BEING REPEALED IN ITS ENTIRETY.**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.21 - RULES GOVERNING OVERLEGAL PERMIT FEES

#### DOCKET NO. 39-0321-1101 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code, and governs the movement of vehicles or loads which are in excess of the sizes or weights allowed in Sections 49-1001, 49-1002, 49-1004, or 49-1010, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

The Idaho Legislature has provided clear direction to the Department in their approval of Section 100 of this rule, "Costs to be Borne by Permittee." This section states that administrative costs incurred in the processing, issuance and enforcement of overlegal permits will be borne by the permittees and not by the general traveling public through the expenditure of highway use funds. The permit program is currently experiencing a revenue shortfall and it is necessary to raise certain fees to cover administrative costs. New language also provides for reimbursement of actual costs incurred for extraordinary services associated with planning and/or movement of overlegal loads moving under the requirements of a traffic control plan.

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

A recent cost analysis was undertaken to determine if administrative fees are covering administrative costs. The FY10 cost analysis revealed that the permit program fell short by approximately \$643,000. This shortfall is currently subsidized by the State Highway Account. Individual increases were applied to seven permit types, commensurate with the level of complexity, staff involvement, and updates to required documents. The individual increases, ranging between \$18 and \$70, are expected to generate a total of \$643,136, which would just cover the shortfall. Such fees are authorized in Section 49-201, Idaho Code.

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

There is no fiscal impact to the state general fund.

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rule-making was not conducted because the basis for this rule change is intent language approved by the Legislature, stating that administrative costs associated with overlegal permits will be covered by the permittee. The fee increases on permits to cover administrative costs maintain revenue neutrality.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Reymundo Rodriguez, Commercial Motor Vehicle Services Manager, 334-8699.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 5th day of August, 2011.



Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State St, PO Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 39-0321-1101**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by 49-1001, 49-1002, ~~49-1004~~, or 49-1010, is adopted under the authority of Sections 40-312, ~~and~~ 49-201, ~~and 49-1004~~, Idaho Code. ~~(3-19-07)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Street And Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (3-19-07)

**02. Office Hours.** Daily office hours are ~~7:30~~ a.m. to 5 p.m. except Saturday, Sunday and state holidays. ~~(3-19-07)( )~~

**03. Telephone and Fax Numbers.** The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 208-334-8419. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. PAYMENT OF OVERLEGAL PERMIT FEES.**

**01. Payment of Fees.** The Idaho Constitution prohibits the state from extending credit to any individual, corporation, municipality or association. Permit fees are collectible at the time of issuance except that the permittee may guarantee payment of permit fees in advance by posting a bond in a minimum amount as specified in Section 300, Permit Fee Account Procedures of this rule. (8-25-94)

**02. Refund.** Permit fees are not refundable once they have been processed into the Department's accounting system, unless the permittee contacts the Overlegal Permit Office no more than two (2) working days (during office hours) following the start date of the overlegal permit or the Department issued the overlegal permit in error. (3-19-07)

**03. Permit Costs.** Overlegal (oversize and/or overweight) permit fees listed below are intended to cover cost of administration and are subject to periodic change depending on costs incurred in processing, issuance and enforcement of overlegal permit rules. (3-19-07)

- 04. Current Schedule of Fees.** Periodic changes to the fee schedule will be subject to legislative review and approval procedures in accordance with Chapter 52, Title 67, Idaho Code, Administrative Procedure Act. (3-19-07)
- a. Oversize only, single trip, twenty-eight dollars (\$28). (3-19-07)
  - b. Oversize only, two (2) trips, thirty-three dollars (\$33). (3-19-07)
  - c. Oversize single trip exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~fifty-three~~ **seventy-one** dollars (~~\$53~~**71**). (~~3-19-07~~)(    )
  - d. Oversize only, two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~seventy-one~~ **eighty-nine** dollars (~~\$71~~**89**). (~~3-19-07~~)(    )
  - e. Oversize only, annual, twelve (12) consecutive months: Extra length combinations exceeding the limits imposed in Section 49-1010, Idaho Code, on designated routes; Overlength only; Manufactured homes, modular building and office trailers; Recreation vehicles up to twelve (12) feet wide, legal length/height; Farm tractors exceeding nine (9) feet width on Interstate and implements of husbandry; Cylindrical hay bales, two (2) wide; Emergency removal of disabled vehicles; Multiple width loads of crane booms; Multiple width loads of conveyer units; Reducible loads, up to and including fourteen (14) feet nine (9) inches high; and exceeding sixty-five (65) feet overall combination length on magenta coded routes; forty-three dollars (\$43). (3-19-07)
  - f. Excess weight annual, twelve (12) consecutive months, authority to exceed eighty thousand (80,000) lbs. on reducible loads up to one hundred five thousand five hundred (105,500) pounds, forty-three dollars (\$43). (3-19-07)
  - g. Extra Length/Excess Weight (reducible) combination, annual, twelve (12) consecutive months, fifty-three dollars (\$53). (3-19-07)
  - h. Overweight/Oversize or Overweight only (non-reducible) single trip, ~~thirty-three~~ **seventy-one** dollars (~~\$33~~**71**). (~~3-19-07~~)(    )
  - i. Overweight/Oversize or Overweight only (non-reducible), two (2) trips, ~~forty-three~~ **eighty-one** dollars (~~\$43~~**81**). (~~3-19-07~~)(    )
  - j. Overweight/Oversize (non-reducible) single trip, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~fifty~~ **one hundred** three dollars (~~\$5~~**103**). (~~3-19-07~~)(    )
  - k. Overweight/Oversize (non-reducible) two (2) trips within seven (7) days, exceeding sixteen (16) feet wide, or sixteen (16) feet high or one hundred ten (110) feet long, ~~seventy-one~~ **hundred sixteen** dollars (~~\$71~~**16**). (~~3-19-07~~)(    )
  - l. Overweight/Oversize (non-reducible) annual permit fee for twelve (12) consecutive months, ~~fifty~~ **one hundred twenty**-eight dollars (~~\$5~~**128**). (~~3-19-07~~)(    )
  - m. Overlegal permit manual (plus current sales tax for Idaho residents), five dollars (\$5). (3-19-07)
  - n. Fee for reissuance or transfers, fifteen dollars (\$15). (3-19-07)
- 05. Additional Fees.** The department may require reimbursement of actual costs incurred for extraordinary services provided, incidental and necessary to the planning and/or movement of overlegal loads moving under the requirements of a traffic control plan. (    )

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 15, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rule-making procedures have been initiated. The action is authorized pursuant to Section 40-312, Idaho Code, to meet the provisions of Sections 40-312(1) and 40-313(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

As required in Section 49-201(3), Idaho Code, the Idaho Transportation Department adopts a manual and specifications for a uniform system of traffic-control devices consistent with the provisions in Title 49 for use on highways within the state. To meet that requirement, this rulemaking adopts and incorporates by reference, the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the Federal Highway Administration of the U.S. Department of Transportation, with an effective date of January 15, 2010, with conforming additions, as specified in the rulemaking, and approved by FHWA/Idaho.

**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:

Compliance with 23 CFR Part 655, Subpart F, National Standards for Traffic Control Devices, requiring implementation of the 2009 Manual on Uniform Traffic Control Devices within two years of the January 15, 2010 effective date established in the Final Rule. Failure to do so could jeopardize Federal Aid funding for transportation projects.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fee or charge imposed or increased by this rulemaking.

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

**NEGOTIATED RULE-MAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the MUTCD is the nationwide standard for traffic control devices and the department is required by statute to adopt such a standard with conforming additions to address needs and exceptions unique to Idaho.

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

The MUTCD is an extremely large publication, more than 2,400 pages in total. It would be impractical and very costly to include the actual text of this manual in the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Carl Main, Traffic Services Engineer, 334-8558.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 5th day of August, 2011.

Linda L. Emry  
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Idaho Transportation Department  
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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0341-1101**

**000. LEGAL AUTHORITY.**

The Idaho Transportation Board adopts this rule under the authority of Sections 40-313~~2~~<sup>2</sup>(1), Idaho Code, to meet the provisions of Sections 40-313(1) and 49-201(3), Idaho Code. ~~(5-1-10)~~(9-15-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

The "Manual on Uniform Traffic Control Devices for Streets and Highways" is published by the Federal Highway Administration of the U.S. Department of Transportation. The 200~~3~~<sup>9</sup> edition of the Manual ~~and all subsequent amendments, through and including revision number two (2) with an effective~~ dated ~~of December 21~~ January 15, 2007<sup>10</sup>, ~~are~~ is hereby incorporated by reference and made a part of the Rules of the Idaho Transportation Department. The following conforming additions to the Manual are adopted by the Idaho Transportation Board: ~~(5-1-10)~~(9-15-11)T

**01.** ~~Section 2H-04, General Design Requirements for Recreational and Cultural Interest Area Symbol Signs. On page 2H-1, modify the first sentence under Standard to read as follows: Recreational and cultural interest area symbol signs shall be square or rectangular in shape and shall have a white symbol or message and white border on a brown background, with the exception of Scenic Byway signs which shall be allowed to use a multi-colored format.~~ Section 1A.09, Engineering Study and Engineering Judgment, Page 4 - replace the section in its entirety with Section 1A.09, page 1A-3 as published in the 2003 MUTCD, to read as follows:

**"Standard:**

**This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation.**

Guidance:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment.

Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement. Jurisdictions with responsibility for traffic control that do not have engineers on their staffs should seek engineering assistance from others, such as the State transportation agency, their County, a nearby large City, or a traffic engineering consultant.”

(4-1-05)(9-15-11)T

02. **Section 1A.11, Relation to Other Documents.** On page ~~1A-7~~ - in the first paragraph under Standard, change the paragraph to read as follows: To the extent that they are incorporated by specific reference, the latest editions of the following publications, or those editions specifically noted, shall be a part of this Manual: “Standard Highway Signs and Markings” book, the Idaho Transportation Department (ITD) Sign Chart; and “Color Specifications for Retroreflective Sign and Pavement Marking Materials” (appendix to subpart F of Part 655 of Title 23 of the Code of Federal Regulations). ~~The “Standard Highway Signs” book (FHWA) shall be a part of this Manual as a supporting document and a~~ Add the following as the first sentence of the “Support” statement: Idaho Transportation Department Sign Chart includes all signs approved for use on a highway under the jurisdiction of the Idaho Transportation Department, their sign number designations and a cross reference index for comparison of all MUTCD approved signs and those included on the Idaho Transportation Department sign chart. (4-1-05)(9-15-11)T

03. ~~Section 2C.30, Speed Reduction Signs (W3-5, W3-5a) on page 2C-15, delete “W3-5” from the title of the section and from the first sentence of the Guidance Statement, and Figure 2C-5, Advisory Speed and Speed Reduction Signs, on page 2C-16, remove the W3-5 sign from the figure.~~ **Section 1A.13, Definitions of Words and Phrases in this Manual.**

On page 10, modify the definition of A. Standard to read as follows:

**Standard** - a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All Standard statements are labeled, and the text appears in bold type. The verb “shall” is typically used. The verbs “should” and “may” are not used in Standard statements. Standard statements are sometimes modified by Options.

On page 14, replace definition 64, Engineering Judgment, with the definition 25, Engineering Judgment, as published in the 2003 MUTCD on page 1A-11:

**Engineering Judgment** - the evaluation of available pertinent information, and the application of appropriate principles, Standards, Guidance, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.

On page 14, replace definition 65, Engineering Study, with the definition 26, Engineering Study, as published in the 2003 MUTCD on page 1A-11:

Engineering Study - the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, Standards, Guidance, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.

~~(4-1-05)~~(9-15-11)T

**04.** Section ~~2C.39~~**48**, Traffic Signal Signs (W25-1, W25-2). On page ~~2C-20~~ **128** - delete the section in its entirety, and Figure ~~2C-89~~. Intersection Warning Signs and Plaques, on page ~~2C-20~~ **127**, remove the W25-1 and W25-2 signs from the figure. ~~(4-1-05)~~(9-15-11)T

~~05.~~ Section ~~2D.15~~, Cardinal Direction Auxiliary Signs (M3-1 Through M3-4). On page ~~2D-6~~, change the first sentence under Standard to read as follows: *"To improve the readability, the first letter of the cardinal direction words shall be ten percent larger, rounded up to the nearest whole number size, except for those sign installations that were in existence prior to the adoption of this rule."* ~~(4-1-05)~~

**085.** Section ~~3C.01~~ **2C.63**, Object Marker Design and Placement Height. On page ~~3C-1~~ **134** - under "Standard:" add the following paragraphs as a second paragraph under Type 1, Type 2 and Type 3 Object Markers make the following changes to allow ~~an~~ alternate methods of marker construction and additional types of markers:

Support:

Type 1, 2, 3, 5 and 6 object markers are used to mark obstructions within or adjacent to the roadway. Type 4 object markers are used to mark the end of a roadway, Type 5 for Rail-grade Crossings and Type 6 for Truck Escape Ramps.

Standard:

When used, object markers (see Figure 2C-13) shall not have a border and shall consist of an arrangement of one (1) or more of the following types:

~~(5-1-10)~~(9-15-11)T

a. Type 1 - either a ~~marker consisting of a rigid substrate sheeted with yellow ASTM 4956D, TYPE IV retroreflective sheeting screen printed to display nine (9) yellow retroreflective circles, each with a minimum diameter of seventy five (75) millimeters (three (3) inches), arranged symmetrically on a black (OM1-2) diamond shaped panel four hundred fifty (450) millimeters (eighteen (18) inches) or more on a side; or an all-yellow ASTM 4956D, TYPE IV retroreflective diamond shaped panel (OM1-3) of the same size~~ diamond-shaped sign, at least eighteen (18) inches on a side, consisting of either a yellow (OM1-1) or black (OM1-2) sign with nine (9) yellow retroreflective devices, each with a minimum diameter of three (3) inches, mounted symmetrically on the sign, or an all-yellow retroreflective sign (OM1-3) or a marker consisting of a rigid substrate sheeted with yellow retroreflective sheeting screen printed to display nine (9) yellow retroreflective circles, each with a minimum diameter of three (3) inches, arranged symmetrically on a black (OM1-2) diamond shaped panel eighteen (18) inches or more on a side; or an all-yellow retroreflective diamond shaped panel (OM1-3) of the same size. ~~(5-1-10)~~(9-15-11)T

b. Type 2 - either a marker (OM2-1V or OM2-1H) consisting of ~~a rigid substrate sheeted with white ASTM 4956D, TYPE IV retroreflective sheeting and displaying three (3) yellow circles of ASTM 4956D, TYPE IV retroreflective sheeting, each with a minimum diameter of seventy five (75) millimeters (three (3) inches), arranged either horizontally or vertically on a white panel measuring at least one hundred fifty (150) millimeters by three hundred (300) millimeters (six (6) inches by twelve (12) inches); or on an all-yellow horizontal or vertical retroreflective panel (OM2-2V or OM2-2H), sheeted with ASTM 4956D, TYPE IV retroreflective sheeting measuring at least one hundred fifty (150) millimeters by three hundred (300) millimeters (six (6) inches by twelve (12) inches)~~ three (3) yellow retroreflective devices, each with a minimum diameter of three (3) inches, arranged either

horizontally or vertically on a white sign measuring at least six (6) inches by twelve (12) inches; or an all-yellow horizontal or vertical retroreflective sign (OM2-2V or OM2-2H), measuring at least six (6) inches by twelve (12) inches; or a marker (OM2-1V or OM2-1H) consisting of a rigid substrate sheeted with white retroreflective sheeting and displaying three (3) yellow circles of retroreflective sheeting, each with a minimum diameter of three (3) inches, arranged either horizontally or vertically on a white panel measuring at least six (6) inches by twelve (12) inches; or on an all-yellow horizontal or vertical retroreflective panel (OM2-2V or OM2-2H), sheeted with retroreflective sheeting measuring at least six (6) inches by twelve (12) inches. ~~(5-1-10)(9-15-11)T~~

c. Type 3 - a striped marker, ~~three hundred (300) millimeters by nine hundred (900) millimeters (twelve (12) inches by thirty-six (36) inches)~~, consisting of a rigid substrate sheeted with yellow ~~ASTM 4956D, TYPE IV~~ retroreflective sheeting screen printed to display a vertical rectangle with alternating black stripes and retroreflective yellow stripes sloping downward at an angle of forty-five (45) degrees toward the side of the obstruction on which traffic is to pass. The minimum width of the yellow and black stripes shall be ~~seventy-five (75) millimeters (three (3-in) inches)~~. ~~(5-1-10)(9-15-11)T~~

d. ~~Add a category for~~ Type 4 ~~object markers, to read as follows:~~ - a diamond-shaped sign, at least eighteen (18) inches on a side, consisting of either a red (OM4-1) or black (OM4-2) sign with nine (9) red retroreflective devices, each with a minimum diameter of three (3) inches, mounted symmetrically on the sign, or an all-red retroreflective sign (OM4-3). ~~(5-1-10)(9-15-11)T~~

e. Type ~~45~~ - ~~add a category for Type 5 object markers to read as follows:~~ a striped marker, ~~eight hundred thirty-eight (838) millimeters by nine hundred sixty-five (965) millimeters (to be used for marking of Highway-Rail Grade or Highway-Light Rail Transit Grade crossings ONLY. The marker is to be thirty-three (33) inches by thirty-eight (38) inches)~~, consisting of a vertical rectangle with two (2), ~~two hundred ninety-two (292) millimeter (eleven point five (11.5) inch)~~ side wings and an ~~two hundred sixteen (216) millimeter (eight point five (8.5) inch)~~ center section which are formed by bending the panel from top to bottom at a forty-five (45) degree angle away from approaching traffic. The rigid substrate panel is sheeted on both sides with white ~~ASTM 4956D, TYPE IX~~ diamond grade prismatic retroreflective sheeting and has reflective chrome stripes and red transparent ink stripes applied to the side wings sloping downward from the top outer corners at an angle of forty-five (45) degrees toward the center of the marker where they meet corresponding stripes which have been placed at a ninety (90) degree angle across the center section of the marker, except on the back of the marker which shall have the center section unsheeted and on the areas of the bends which shall have a ~~nineteen (19) millimeter (point seventy-five (.75) inch)~~ wide strip from top to bottom left unsheeted. The stripes shall meet the following dimensions: chrome stripes shall be ~~thirty-eight (38) millimeters (one point five (1.5) inches)~~ and red stripes shall be ~~one hundred forty (140) millimeters (five point five (5.5) inches)~~. ~~(5-1-10)(9-15-11)T~~

f. Type 6 - ~~add a category for Type 6 object markers to read as follows:~~ a striped marker, twelve (12) inches by thirty-six (36) inches, consisting of a vertical rectangle with alternating white and retroreflective red stripes sloping downward at an angle of forty-five (45) degrees toward the side of the obstruction on which traffic is to pass, ~~to be used for entrance to Truck Escape Ramps ONLY. The minimum width of the white and red stripes shall be three (3) inches. Red retroreflective stripes shall meet the minimum requirements of sheeting.~~

Under "Support:" add the following revised paragraph 2:

Type 3 and Type 6 object markers with stripes that begin at the upper right side and slope downward to the lower left side are designated as right object markers (OM3-R) or (OM6-R). Object markers with stripes that begin at the upper left side and slope downward to the lower right side are designated as left object markers (OM3-L) or (OM6-L).

Under "Support:" add the following as paragraph 3:

The Type ~~45~~ object marker, known in Idaho as OM-~~45~~ (IdaShield), shall be placed below the Highway-Rail Grade or Highway-Light Rail Transit Grade crossing Crossbuck Sign Assembly on the right hand side of the roadway on each approach to a crossing where automatic signal warning devices do not exist. The bottom of the shield should be ~~six hundred ten (610) millimeters (twenty-four (24) inches)~~ above the top of the rail and shall not be more than ~~nine hundred fifteen (915) millimeters (thirty-six (36) inches)~~ above the ground.

Under “Guidance:” add the following as paragraph 3 to read as follows:

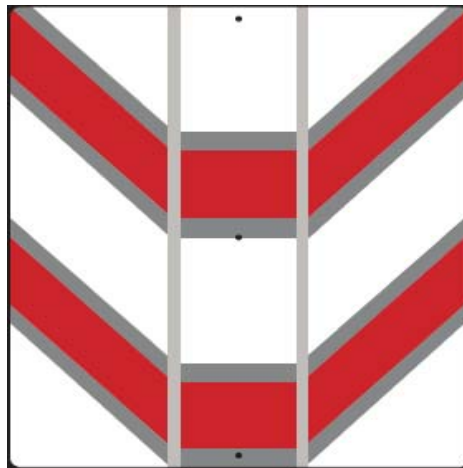
The Type 5 object marker, known in Idaho as OM-5 (IdaShield), shall be placed below the Highway-Rail Grade or Highway-Light Rail Transit Grade crossing Crossbuck Sign Assembly on the right hand side of the roadway on each approach to a crossing where automatic signal warning devices do not exist. The bottom of the shield should be twenty-four (24) inches above the top of the rail and shall not be more than thirty-six (36) inches above the ground.

~~(5-1-10)~~(9-15-11)T

~~(2)g.~~ On page ~~3C-2~~ 135, Figure ~~3C-1~~ 2C-13, Object Markers ~~and End-of-Roadway Markers~~ - add a Type ~~4~~ 5 and Type 6 Object Marker category to the figure which shall include an example of an OM-~~4~~ 5 object marker known in Idaho as IdaShield and the OM-6 object marker known as the Idaho Truck Escape Ramp marker.

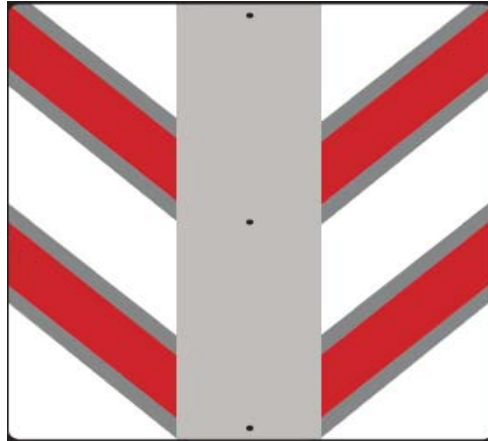
**Type 5 Object Markers**  
**OM-5 (IdaShield)**

**FRONT**





BACK



**Type 6 Object Markers**  
**OM-6 (Truck Escape Ramp)**



OM6-L OM6-R

~~(5-1-10)~~(9-15-11)T

**06. Section 2D.43, Street Name Signs (D3-1 or D3-1a).** (9-15-11)T

**a.** On page 162, change the second sentence of the fourteenth paragraph under the Standard statement to read as follows: The color of the legend and border shall contrast with the background color of the sign. (9-15-11)T

**b.** On page 162, change the fifteenth paragraph under the Option statement to read as follows: The border may not be omitted from a street name sign if used on the State Highway System or related roadways. (9-15-11)T

**067. Section 2E.2831, Interchange Exit Numbering.** On page ~~2E-24~~ 212, in the fourth sentence under “Standard” revise the sentence to read as follows: “The ~~standard~~ exit number plaque (E1-5P) (see Figure 2E-22) shall be thirty-six (36) inches in height and shall include the word “EXIT” along with the appropriate exit number, ~~and the suffix letter A or B (on multi-exit interchanges) in a single-line format on a plaque thirty-six (36) inches in height, except for those sign installations that were in existence prior to the adoption of this rule.~~” (5-1-10)(9-15-11)T

**07. Section 2E.37, Interchange Sequence Signs.** On page 2E-38, revise the last Standard to an Option to read as follows: “Interchange Sequence signs located in the median may be installed at overhead sign height.” (4-1-05)

**Subsection 004.08 has been moved and renumbered to proposed Subsection 004.05**

~~09.~~ **Table 4C-1, Warrant 1, Eight-Hour Vehicular Volume.** On page 4C-3, remove all references to the fifty six percent (56%) volume columns and note “d” and Section 4C.02 Warrant 1, Eight Hour Vehicular Volume, on page 4C-4, remove the Option statement in its entirety. (4-1-05)

~~10.~~ **Section 4D.04, Meaning of Vehicular Signal Indications.** On page 4D-2 451- in the second paragraph of Item C.1, substitute the following for the first sentence: “Except when a sign is in place prohibiting a turn on steady circular red signal or a RED ARROW signal indication is displayed, vehicular traffic facing a steady CIRCULAR RED signal indication may ~~cautiously enter the intersection to~~ turn right, or ~~to~~ turn left from a one-(1)-way or two-(2)-way street highway into a one-(1)-way street, after stopping in conformance with the provisions of the Idaho Vehicle Code.” (4-1-05)(9-15-11)T

~~11.~~ **Section 4K-2 524, Warning Beacon.** On page 4K-2 524 - in the second paragraph under “Standard,” ~~revise~~ add the following as a second sentence to read as follows: “The beacon shall not be included within the border of the sign or marker.” (4-1-05)(9-15-11)T

**10. Figure 5C.1, Horizontal Alignment and Intersection Warning Signs and Plaques and Object Markers on Low-Volume Roads.** On page 536, add a Type 5 Object Marker OM-5 (IdaShield) and a Type 6 Object Marker OM-6 (Truck Escape Ramp). (9-15-11)T

~~12.~~ **Section 5F.02, Highway Rail Grade Crossing (Crossbuck) Sign Assembly (R15-1, R15-2).** On page 5F-1, in the title add the word “Assembly” after the word “Sign,” and Under Standard, insert the following text as the first sentence: “The Highway Rail Grade Crossing (Crossbuck) (R15-1) sign (see Figure 5F-1) may be an assembly consisting of separate sign blades, assembled to appear as a single sign when installed at a highway rail grade crossing.” (4-1-05)

~~13.~~ **Section 5F.04, STOP ~~or~~ and YIELD Signs (R1-1, R1-2).** On page 5F-1 543, delete ~~the first paragraph titled as Option Statement, retaining the Standard for Stop Ahead (W3-1) or Yield Ahead (W3-2) signs~~ “and YIELD” from the title and insert the following paragraph as the ~~second~~ third paragraph under “Standard”: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence, based on a recognized engineering study.” (4-1-05)(9-15-11)T

**12. Table 7B.1, School Area Sign and Plaque Sizes.** On page 733, remove S4-2P, “When Children Are Present.” (9-15-11)T

**13. Figure 7B.1, School Area Signs.** On page 735, remove figure S4-2P. (9-15-11)T

**14. Section 7B.~~15~~, School Speed Limit Assembly (S4-1P, S4-2P, S4-3P, S4-4P, S4-6P, S5-1).** (9-15-11)T

**a.** On page ~~7B-7~~ 742, remove S4-2P in the title; and (9-15-11)T

**b.** On page 743, in the second paragraph under “Standard” remove the S4-2P and in the ~~fourth~~ third paragraph under “Option” ~~revise~~ add the ~~second~~ following as a fourth sentence to read as follows: “The lenses of the Speed Limit Sign Beacon shall not be positioned within the face of the School Speed Limit (S5-1) sign.” (4-1-05)(9-15-11)T

**15. Section 8A.03, Use of Standard Devices, Systems, and Practices at Highway-LRT Grade Crossings.** On page 748, under “Standard” add the following statement as a second sentence to read as follows: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the

crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (9-15-11)T

**16. Figure 8B.3, Crossbuck Assembly with a YIELD or STOP Sign on a Separate Sign Support (Sheet 1 of 2).** Delete figure in its entirety. (9-15-11)T

**17. Section 8B.22, Dynamic Envelope Markings.** On page 8B-13, revise the first sentence under Standard to read as follows: “If used, the dynamic envelope shall be contrasting pavement color and/or contrasting pavement texture.” And, on page 8B-13, revise the first sentence under Guidance to read as follows: “If used, dynamic envelope pavement markings with contrasting pavement color and/or texture should be placed for a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the operating railroad company advises otherwise.” **Figure 8B.3, Crossbuck Assembly with a YIELD or STOP Sign on a Separate Sign Support (Sheet 2 of 2).** Delete “YIELD or” from the title of the figure. Change Note 1 to read as follows: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)(9-15-11)T

**18. Figure 8B-8, Typical Train Dynamic Envelope Pavement Markings.** On page 8B-13, delete Figure in its entirety. (4-1-05)

**168. Section 8B.084, Crossbuck Assemblies with YIELD or STOP (R1-1) or YIELD (R1-2) Signs at Highway-Rail Passive Grade Crossings.** On pages 8B-6 754, 757 and 758, delete the first five paragraphs titled as “Option, Support and Guidance Statements,” retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and insert the following: paragraph as the second paragraph under Standard: “YIELD or” from the title and modify the Section to read as follows:

**Standard:**  
A grade crossing Crossbuck Assembly shall consist of a Crossbuck (R15-1) sign, and a Number of Tracks (R15-2P) plaque if two (2) or more tracks are present, that complies with the provisions of Section 8B.03, and shall have a STOP (R1-1) sign installed on the same support, as pursuant to the following requirement: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.”

At all public highway-rail grade crossings that are not equipped with the active traffic control systems that are described in Chapter 8C, except crossings where road users are directed by an authorized person on the ground to not enter the crossing at all times that an approaching train is about to occupy the crossing, a Crossbuck Assembly shall be installed on the right-hand side of the highway on each approach to the highway-rail grade crossing.

If a Crossbuck sign is used on a highway approach to a public highway-LRT grade crossing that is not equipped with the active traffic control systems that are described in Chapter 8C, a Crossbuck Assembly shall be installed on the right-hand side of the highway on each approach to the highway-LRT grade crossing.

Where restricted sight distance or unfavorable highway geometry exists on an approach to a grade crossing that has a Crossbuck Assembly, or where there is a one-way multi-lane approach, an additional Crossbuck Assembly shall be installed on the left-hand side of the highway.

Guidance:

The use of STOP signs at passive grade crossings should be placed in accordance with Idaho law.

Support:

Sections 8A.02 and 8A.03 contain information regarding the responsibilities of the highway agency and the railroad company or LRT agency regarding the selection, design, and operation of traffic control devices placed at grade crossings.

Option:

When a STOP sign is installed for a Crossbuck Assembly at a grade crossing, it may be installed on the same support as the Crossbuck sign or it may be installed on a separate support at a point where the highway vehicle is to stop, or as near to that point as practical, but in either case, the STOP sign is considered to be a part of the Crossbuck Assembly.

Standard:

When a STOP sign is installed on an existing Crossbuck sign support, the minimum height, measured vertically from the bottom of the STOP sign to the top of the curb, or in the absence of curb, measured vertically from the bottom of the STOP sign to the elevation of the near edge of the traveled way, shall be four (4) feet (see Figure 8B-2).

If a Crossbuck Assembly is installed on a new sign support (see Figure 8B-2) or if the STOP sign is installed on a separate support (see Figure 8B-3), the minimum height, measured vertically from the bottom of the STOP sign to the top of the curb, or in the absence of curb, measured vertically from the bottom of the STOP sign to the elevation of the near edge of the traveled way, shall be seven (7) feet if the Crossbuck Assembly is installed in an area where parking or pedestrian movements are likely to occur.

Guidance:

If a STOP sign is installed for a Crossbuck Assembly at a grade crossing on a separate support than the Crossbuck sign (see Figure 8B-3), the STOP sign should be placed at a point where the highway vehicle is to stop, or as near that point as practical, but no closer than fifteen (15) feet measured perpendicular from the nearest rail.

Support:

Certain commercial motor vehicles and school buses are required to stop at all grade crossings in accordance with 49 CFR 392.10.

The meaning of a Crossbuck Assembly that includes a STOP sign is that a road user approaching the grade crossing must come to a full and complete stop not less than fifteen (15) feet short of the nearest rail, and remain stopped while the road user determines if there is rail traffic either occupying the crossing or approaching and in such close proximity to the crossing that the road user must yield the right-of-way to rail traffic. The road user is permitted to proceed when it is safe to cross.

Standard:

A vertical strip of retroreflective white material, not less than two (2) inches in width, shall be used on each Crossbuck support at passive grade crossings for the full length of the back of the support from the Crossbuck sign or Number of Tracks plaque to within two (2) feet above the ground, except as provided in Paragraph 16.

~~(4-1-05)~~(9-15-11)T

**2019.** Section ~~10C.04~~ **8B.05**, STOP (R1-1) Or YIELD (R1-2) **Signs without Crossbuck Signs at Highway-Light Rail Transit LRT Grade Crossings.** On page ~~10C-2 and 10C-4~~ 758, delete ~~“Or YIELD (R1-2)”~~ **from the title and delete** the Guidance, ~~and Option~~ Statements, retaining the Standard ~~for Stop Ahead or Yield Ahead Advance Warning signs~~ and insert the following paragraph as the first paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.”

~~(4-1-05)~~(9-15-11)T

~~1520.~~ Section ~~8B.057~~, EXEMPT Highway-Rail Grade Crossing **Signs Plaques (R15-3P, W10-1aP).**

~~(5-1-10)~~(9-15-11)T

a. On page ~~8B-5~~ 759 - add the following paragraph titled as: “Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator.”

~~(5-1-10)~~(9-15-11)T

b. Retain the “Option” statement and modify the “Support” statement ~~on page 760 to read~~ as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-rail grade crossings.

(5-1-10)

21. ~~Section 10C.10, EXEMPT Highway Rail Grade Crossing Sign (R15-3, W10-1a).~~ **Section 8B.09, DO NOT STOP ON TRACKS Sign (R8-8).** On page 760, ~~change the second paragraph of the Guidance statement to read as follows:~~

*When a STOP sign is installed at a location, including at a circular intersection, that is downstream from the grade crossing such that highway vehicle queues are likely to extend beyond the tracks, a DO NOT STOP ON TRACKS sign (R8-8) should be used.*

~~(5-1-10)~~(9-15-11)T

~~a. On page 10C-5, add the following paragraph titled as: “Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator.”~~

~~(5-1-10)~~

~~b. Retain the “Option” statement and modify the “Support” statement as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-light rail transit grade crossings.~~

~~(5-1-10)~~

22. ~~Section 10C.25 Dynamic Envelope Delineation.~~ **Section 8B.16, Divided Highway with Light Rail Transit Crossing Signs (R15-7 Series).** On page 762, ~~change the second sentence of the first paragraph of the Option statement to read as follows:~~ The sign shall be mounted separately.

~~(4-1-05)~~(9-15-11)T

~~a. On page 10C-12, delete the word “markings” in the title and, under Support, delete the word~~

~~“markings” and replace with “contrasting pavement color and/or contrasting pavement texture.”~~ (4-1-05)

~~b. On page 10C-12, under Option: Replace the sentence with the following: “The dynamic envelope may be delineated on the pavement using contrasting pavement color and/or contrasting pavement texture (see Figures 10C-7 and Figure 10C-10),” and on page 10C-12, delete “Standard, relating to pavement markings in its entirety,” and on page 10C-12, revise Guidance, to read as follows: “If used at the light rail transit crossing, dynamic envelope contrasting pavement color and/or texture should be placed at a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the transit authority and/or operating railroad company advises otherwise,” and on page 10C-12, delete the work “markings” in all four paragraphs under the second Option and replace with “delineation.”~~ (4-1-05)

23. ~~Figure 10C-8, Typical Light Rail Transit Vehicle Dynamic Envelope Delineation Pavement Markings.~~ On page 10C-13, delete Figure 10C-8 in its entirety. **Section 8B.18, Emergency Notification Sign (I-13).** On page 763, change the second paragraph of the Guidance statement to read as follows: Emergency Notification signs should be oriented so as to face highway vehicles at the grade crossing or on the traveled way near the grade crossing. (4-1-05)(9-15-11)T

24. ~~Section 10D-06, Traffic Signal Preemption Turning Restrictions.~~ On page 10D-4, under the third paragraph titled ~~Guidance:~~ add text “if justified by an engineering study,” to the end of the final sentence in the paragraph. (4-1-05)

~~1924.~~ **Section 8D-07C.09, Traffic Control Signals at or Near Highway-Rail Grade Crossings.** On page ~~8D-07 777~~, in the ~~tenth~~ **fourth** paragraph titled “Standard,” ~~add text~~ replace “if applicable” with “if justified by an engineering study,” to at the end of the final sentence in the paragraph. (4-1-05)(9-15-11)T

## **1005. AVAILABILITY OF THE “MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS.”**

01. **Review of Manual.** Persons wishing to review the Manual may do so at any of the locations listed in Section 0056. The Manual and subsequent amendments are also available for review ~~at on~~ the Idaho State Library Federal Highway Administration website at <http://mutcd.fhwa.dot.gov>. (3-20-04)(9-15-11)T

02. **Purchase of Manual.** The Manual ~~and all subsequent amendments dated~~ with an effective date of December 21 January 15, 200710, with Revision No. 1 and Revision No. 2 changes may be viewed and printed from the Federal Highway Administration website at <http://mutcd.fhwa.dot.gov>, or purchased from a number of organizations described on the website, such as the U.S. Government Printing Office, AASHTO, ATSSA, and ITE. (5-1-10)(9-15-11)T

## **0056. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

01. **Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P.O. Box 7129, Boise, ID 83707-1129. (3-20-04)

02. **Office Hours.** Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (3-20-04)

03. **Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (3-20-04)

04. **Idaho Transportation Department District Offices.** Offices are at the following locations: (3-20-04)

- a. Idaho Transportation Department District 1  
6050 W. Prairie, Coeur d'Alene  
Mailing address -- ~~P.O. Box D~~ 600 W. Prairie, Coeur d'Alene, Idaho 838145-8764  
Office Hours -- 7 a.m. to 4 p.m., Pacific Time Zone

Phone -- (208) 772-1200 ~~(3-20-04)~~(9-15-11)T

- b. Idaho Transportation Department District 2  
~~26th and North and South Highway~~ 2600 Frontage Road, Lewiston  
Mailing address -- P.O. Box 837, Lewiston, Idaho 83501-~~0837~~  
Office Hours -- 7 a.m. to 4 p.m., Pacific Time Zone  
Phone -- (208) 799-5090 ~~(3-20-04)~~(9-15-11)T
- c. Idaho Transportation Department District 3  
8150 Chinden Blvd., Boise  
Mailing address -- P.O. Box 8028, Boise, Idaho 83707-~~2028~~  
Office Hours -- 8 a.m. to 5 p.m., Mountain Time Zone  
Phone -- (208) 334-8300 ~~(3-20-04)~~(9-15-11)T
- d. Idaho Transportation Department District 4  
216 South Date Street, Shoshone  
Mailing address -- ~~P.O. Box 2 A~~ 216 South Date Street, Shoshone, Idaho 83352-~~0820~~  
Office Hours -- 8 a.m. to 5 p.m., Mountain Time Zone  
Phone -- (208) 886-7800 ~~(3-20-04)~~(9-15-11)T
- e. Idaho Transportation Department District 5  
5151 South 5th, Pocatello  
Mailing address -- P.O. Box 4700, Pocatello, Idaho 8320~~4~~5-4700  
Office Hours -- 8 a.m. to 5 p.m., Mountain Time Zone  
Phone -- (208) 239-3300 ~~(3-20-04)~~(9-15-11)T
- f. Idaho Transportation Department District 6  
206 North Yellowstone Highway, Rigby  
Mailing address -- P.O. Box 97, Rigby, Idaho 83442-~~0097~~  
Office Hours -- 8 a.m. to 5 p.m., Mountain Time Zone  
Phone -- (208) 745-8735 ~~(3-20-04)~~(9-15-11)T

**00~~67~~. PUBLIC RECORDS ACT COMPLIANCE.**

Rules contained herein are promulgated in accordance with Title 67, Chapter 52, Idaho Administrative Procedures Act (IDAPA) and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Idaho Attorney General." All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (3-20-04)

**00~~78~~. -- ~~0999~~. (RESERVED)**

## IDAPA 52 - IDAHO STATE LOTTERY COMMISSION

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

#### DOCKET NO. 52-0103-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-7408(1)(c), (e) and (f), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

An antiquated practice requires update. IDAPA 52.01.03 (RULE 201.13 – Ticket Stamping) pertains to a practice discontinued with the advent of Instant Ticket Automation (ITA) and the ability to cash Lottery Scratch tickets at any location, negating the requirement relating to paying out winning Lottery Scratch tickets.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of this rulemaking and the need to remove an antiquated, unnecessary requirement from rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeffrey R. Anderson, Director, at (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 18th day of July, 2011.

Jeffrey R. Anderson, Director  
Idaho State Lottery  
1199 Shoreline Lane, Ste. 100  
Boise, ID 83702  
Phone: (208) 334-2600  
Facsimile: (208) 334-2610

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NUMBER 52-0103-1101



**201. CRITERIA FOR REVIEW OF RETAILER APPLICATIONS AND CONDUCT OF OPERATIONS (RULE 201).**

**01. Retailer's Application.** Any person interested in obtaining a contract for a certificate to sell Lottery tickets must first file an application on forms provided by the Director. The forms will require disclosure of, but are not limited to, an applicant's personal, financial, and criminal history, and an authorization to investigate the applicant's criminal and credit history. (3-26-08)

**02. Fees, Procedure, and Criteria Precluding Issuing Contract.** (3-26-08)

**a.** All certificate applications must be accompanied by a minimum, nonrefundable, fee of twenty-five dollars (\$25). If a certificate is awarded, an additional, nonrefundable, certificate fee of one hundred dollars (\$100) must be paid. (3-26-08)

**b.** Certified retailers may apply for a certificate modification to allow the sale of additional Lottery products. A current retailer may be required to complete an additional application or application supplements. If a current retailer requests that the existing certificate be modified to allow the sale of additional Lottery products, no additional application fee will be charged. (3-26-08)

**c.** The Lottery may waive the payment of any certificate fee to facilitate an experimental program or a research project. (3-26-08)

**03. Provisional Certifications.** (3-26-08)

**a.** The Lottery may issue a provisional certificate to an applicant for a Lottery certificate after receipt of a fully completed certificate application, the authorization of a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional certificate will expire at the time of issuance of the requested certificate or ninety (90) days from the date the provisional certificate was issued, whichever occurs first, unless the provisional certificate is extended by the Lottery. (3-26-08)

**b.** The following criteria preclude the Director from entering into a contract with an applicant. No contract shall be made with an applicant: (3-26-08)

i. Who is under eighteen (18) years of age; (3-26-08)

ii. Who will be engaged exclusively in the business of selling tickets; (3-26-08)

iii. Who is an employee of the Lottery; (3-26-08)

iv. Who is, or is owned or controlled or affiliated with, a supplier of instant tickets or a manufacturer of computer equipment used to operate instant or on-line games, or both; (3-26-08)

v. Who is not a resident of Idaho, or a corporation that is not incorporated in Idaho or not authorized to do business in Idaho; (3-26-08)

vi. Who has been found to have violated any rule, regulation, or order of the Commission or the Director; (3-26-08)

vii. When any person, firm, association, or corporation other than the applicant will participate in the management of the affairs of the applicant. (3-26-08)

**04. Criteria That May Be Grounds for Refusal.** Before contracting with an applicant, the Director will consider the factors set out below. In considering these factors, the Director will seek to determine which applicants will best serve the economical and efficient operation of a statewide Lottery through their ticket sales. If any of these factors lead the Director to determine that contracting with the applicant would not promote the economical and efficient operation of a statewide Lottery consonant with the public interest, or would not serve the

public interest, convenience, or trust, the Director may deny the application. (3-26-08)

**a.** The Director must consider the financial responsibility and security of the person and the person's business or activity. The Director must consider the person's credit worthiness and integrity in past financial transactions. The Lottery may investigate the credit worthiness of the applicant by using the services of a commercial credit reporting agency. The Director may also consider the physical security of the applicant's place of business to determine whether tickets that will be sold to the applicant and the proceeds from ticket sales will be kept safe. (3-26-08)

**b.** The Director must consider the accessibility to the public of an applicant's place of business or activity. The Director will contract only with applicants who have regular contact with significant numbers of persons at the applicant's place of business. Before contracting with any organization that has restricted membership policies, the Director must determine whether the restrictions are generally acceptable to the public and whether contracting with that group or organization or similar groups or organizations would best serve the interests of the Lottery. (3-26-08)

**c.** The Director must consider the sufficiency of existing retailers to serve the public interest. The Director may seek to maximize total ticket sales by encouraging retailers with the highest potential volume in a particular area or neighborhood. (3-26-08)

**d.** The Director must consider the volume of expected sales by the applicant. In determining the anticipated actual sales volume of the applicant, the Director may rely upon the experience and knowledge of the Lottery's staff as well as any other available professional expertise. The Director must determine whether the volume of an applicant's sales is likely to be sufficient that contracting with the applicant will be economically feasible. (3-26-08)

**e.** The Director must consider the types of products, services, or entertainment offered at the applicant's place of business. The Director must determine whether the applicant's products, services, or entertainment are generally acceptable to the public and whether they would bear adversely upon the general credibility, integrity, and reputation of the Lottery. (3-26-08)

**f.** The Director must consider the experience, character, or general fitness of the applicant. Entering into a contract with the applicant must be consistent with the public interest, convenience, and trust. (3-26-08)

**g.** The Director must consider the veracity and completeness of the information submitted with the retailer's application. The Director must consider the criminal history of the applicant and any person whose name is required to be disclosed under Section 67-7412, Idaho Code, of the Act and may refuse to enter into a contract with any applicant when the applicant or such person has been convicted of violating any of the gambling laws of this state, general or local, or has been convicted at any time of any crime other than traffic infraction. (3-26-08)

**05. Duplicate Certificate.** Upon the loss, mutilation, or destruction of any certificate issued by the Lottery, application for a duplicate must be made. The Lottery may require a statement signed by the retailer that details the circumstances under which the certificate was lost, mutilated, or destroyed. (3-26-08)

**06. Reporting Changes in Circumstances of the Retailer.** Every change of business structure of a certificated business, such as from a sole proprietorship to a corporation, and every change in the name of a business, must be reported to the Lottery before the change. Substantial changes in the ownership of a certificated business must also be reported to the Lottery before the change. A substantial change of ownership is defined as the transfer of ten percent (10%) or more equity in the certificated business from or to another single individual or legal entity. If a change involves the addition or deletion of one (1) or more existing owners or officers, the certificate holder must submit a certificate application reflecting the change and any other documentation that the Lottery may require. All changes will be reviewed by the Lottery to determine if the existing certificate should be continued. (3-26-08)

**07. Certificate Not a Vested or Legal Right.** The possession of a certificate issued by the Lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a vested or legal right. The possession of a certificate issued by the Lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game. (3-26-08)

**08. Suspension or Revocation of a Certificate.** The Lottery may suspend or revoke any certificate issued pursuant to these rules for one (1) or more of the following reasons: (3-26-08)

**a.** Failing to meet or maintain the eligibility criteria for certificate application and issuance established by Title 67, Chapter 74, Idaho Code, or these rules; (3-26-08)

**b.** Violation of any of the provisions of Title 67, Chapter 74, Idaho Code, these rules, or the certificate terms and conditions; (3-26-08)

**c.** Failing to file any return or report or to keep records required by the State Lottery; (3-26-08)

**d.** Failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; (3-26-08)

**e.** Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the Lottery; (3-26-08)

**f.** If the public convenience is adequately served by other certificate holders, failure to sell a minimum number of tickets as established by the Lottery; (3-26-08)

**g.** A history of thefts or other forms of losses of tickets or revenue from the business; (3-26-08)

**h.** Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control; (3-26-08)

**i.** Obtaining a certificate by fraud, misrepresentation, concealment or through inadvertence or mistake; (3-26-08)

**j.** Making a misrepresentation of fact to the Commission or the Lottery on any report, record, application form, or questionnaire required to be submitted to the Commission or the Lottery; (3-26-08)

**k.** Denying the Lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a certificate activity is conducted; (3-26-08)

**l.** Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the certificate; (3-26-08)

**m.** Systemically pursuing economic gain in a manner or context that is in violation of the criminal or civil public policy of this state if there is cause to believe that the participation of such person in these activities is inimical to the proper operation of the authorized Lottery; (3-26-08)

**n.** Failing to follow the instructions of the Lottery for the conduct of any particular game or special event; (3-26-08)

**o.** Failing to follow security procedures of the Lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event; (3-26-08)

**p.** Misrepresenting a fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event; (3-26-08)

**q.** Allowing activities on the licensed premises that could compromise the dignity of the state. (3-26-08)

**09. Surrender of Certificate Upon Revocation.** Upon revocation or suspension of a retailer's certificate, the retailer must surrender to the Lottery, by a date designated by the Lottery, the certificate and all other

Lottery property. (3-26-08)

**10. Certified Retailers.** All Lottery retailers must be certified in the manner provided in these rules. Retailers are required to abide by all applicable laws and administrative rules, the terms and conditions of the contract and certificate, and all other directives and instructions issued by the Lottery. (3-26-08)

**11. Requirements for the Sale of Tickets.** (3-26-08)

**a.** Retailers must be knowledgeable about the Lottery and Lottery products and may be required to take training in the operation of Lottery games. Retailers must make the purchase of tickets convenient to the public. (3-26-08)

**b.** Tickets must be sold at the price designated by the Lottery. Retailers cannot sell tickets for a greater amount than the amount specified by the Lottery. Retailers may sell tickets for a lesser amount for promotional purposes if authorized by the Lottery. (3-26-08)

**c.** No retailer or any employee or member of a retailer shall attempt to identify a winning ticket before sale of the ticket. (3-26-08)

**d.** When a retailer is required by its contract with the Lottery to pay a prize to a winner, the retailer must pay the prize whenever the winner tenders a winning ticket during the retailer's normal business hours at the location designated on the retailer's certificate. (3-26-08)

**e.** Retailers are prohibited from purchasing tickets previously sold by the retailer. (3-26-08)

**12. Display of Certificate and Other Materials.** Retailers must display the Lottery certificate in an area visible to the general public wherever tickets are being sold. Retailers must also display point-of-sale material provided by the Lottery in a manner that is readily seen by and available to the public. Retailers may advertise and use or display other appropriate promotional and point-of-sale material. The Lottery may require the removal of objectionable material or the discontinuance of objectionable advertising that may have an adverse impact on the Lottery. (3-26-08)

~~**13. Ticket Stamping.** On the back of each scratch ticket sold by a retailer, the retailer must stamp the retailer's name, address, and retailer number in the area provided for retailer identification using the equipment provided by the Lottery. (3-26-08)~~

**143. Dishonored Checks and Electronic Fund Transfers.** Any payment made to the Lottery by an applicant for a certificate or by a certificated retailer either by a check that is dishonored or by an electronic funds transfer (EFT) that is not paid by the depository, is grounds for immediate denial of the application for a certificate or for suspension or revocation of an existing certificate. The Lottery may assess a surcharge of ten dollars (\$10) for each dishonored check or EFT. The Lottery may also alter the payment terms of a retailer's certificate and require a retailer to reimburse the Lottery for costs that occur as a result of a dishonored check or EFT. (3-26-08)

**154. Retailer Identification Card.** The Lottery may issue to each retailer an identification card which must be presented by its authorized representative when taking delivery of tickets. If the identification card is lost or otherwise misplaced or mutilated, the retailer must immediately notify the State Lottery. (3-26-08)

**165. Inspection of Lottery Materials and Retailer Premises.** Retailers must allow the Lottery to enter upon the retailer's certificated premises in order to inspect Lottery materials, tickets, and the premises. All books and records pertaining to the retailer's Lottery activities must be available to the Lottery for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's Lottery activities are subject to seizure by the Lottery without prior notice. (3-26-08)

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.06 - SOLID WASTE MANAGEMENT RULES**

**DOCKET NO. 58-0106-1101**

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

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-7408C, Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meeting will be held as follows:

**Wednesday, September 28, 2011  
9:00 am to 12:30 MST**

**Department of Environmental Quality,  
Conference Room B  
1410 N. Hilton, Boise, Idaho**

Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by September 26, 2011.

**PRELIMINARY DRAFT:** By September 7, 2011, a preliminary draft of the rule can be obtained at <http://www.deq.idaho.gov/58-0106-1101-negotiated> or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418.

**DESCRIPTIVE SUMMARY:** Under the current Solid Waste Management Rules, IDAPA 58.01.06, owners and operators of proposed composting facilities are required to submit applications and obtain DEQ approval prior to constructing and operating a composting facility. This rulemaking has been initiated to establish a permit-by-rule program for composting facilities meeting certain requirements. The requirements will specify waste to be processed and will include site, design, operating, and closure and post-closure criteria that are intended to be protective of public health and the environment.

Composting facility owners and operators meeting the proposed requirements would be authorized to construct and operate a composting facility through a permit-by-rule.

The text of the proposed rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. County and city government, industry, generators of non-hazardous solid waste, private citizens, and environmental groups concerned with disposal of non-hazardous solid waste may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the spring of 2012 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2012. If adopted by the Board, the pending rule will be reviewed by the 2013 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Dean Ehlert at [dean.ehlert@deq.idaho.gov](mailto:dean.ehlert@deq.idaho.gov), (208)373-0416.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by September 30, 2011. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 18th day of August, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
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Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is September 28, 2011, unless otherwise listed.  
(Temp & Prop) indicates the rule is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

**02-0633-1101, Organic Food Product Rules.** Removes the educational activity requirements for certification, the July 1 deadline for certification, and the fees for chemical residue analysis from the rule.

#### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

**\*16-0417-1101, Residential Habilitation Agencies.** (Temp & Prop) (\*PH) Implements House Bill 260 by replacing the provider support services known as affiliation with a contract for a waiver administrative function referred to as Residential Habilitation Program Coordination for Certified Family Home (CFH) Providers; clarifies the certification requirements for residential habilitation agency providers, the health and safety critical incident reporting requirements, and certification enforcement procedures.

**16-0501-1101, Use and Disclosure of Department Records.** Updates rule to meet federal requirements of the Child Abuse Prevention and Treatment and Adoption Reform Act by allowing the Department to share information with law enforcement without a court order when law enforcement is investigating cases of child abuse or neglect to alleviate delays in such investigations.

**\*16-0506-1101, Criminal History and Background Checks.** (\*PH) Adds definitions for “agency” and “employer” and clarifies that they are synonymous terms; clarifies timeframe for completion of an individual's application and fingerprints; updates list of disqualifying crimes resulting in unconditional denials for the different types of manslaughter and for any substantially conforming foreign criminal violations; clarifies that an individual sanctioned by Department programs will receive an unconditional denial; and clarifies that the Department cannot proceed with a CHC when an applicant has a relevant record or criminal action that is pending in any jurisdiction.

#### **16.06.01 - Child and Family Services**

**16-0601-1101,** Streamlines the “Notice of Pending Proceedings” to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA).

**16-0601-1102,** Fee rule clarifies the application and reapplication processes; clarifies responsibilities of the Department or certified adoption professional and the adoptive applicant during the completion of the adoption home study; specifies mandatory elements of the home study; clarifies the length of time an adoption home study is valid for use by an adoptive family, and the process for updating the home study; updates the Department's process for selecting adoptive placements for children in foster care; adds additional requirements for Department approval of a certified adoption professional; limits certified adoption professional's scope of work and allows for changes to be made to an individual's certification, based on rule compliance.

**IDAPA 18 - DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0063**

**18-0105-1101, Health Carrier External Review.** (Temp & Prop) Implements HB 131 and HB 299 by expanding the types of claims eligible for external review to include denials based on appropriateness, health care setting, level of care and effectiveness; clarifies definition of "urgent care request" and permits a person to simultaneously file for internal and external review of an urgent care request in certain circumstances; allows self-funded ERISA health plans to opt into the state external review process if they do not wish to use the federal external review process; and makes changes to notices to be given by health carriers to covered persons.

**IDAPA 35 - STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-0103-1104, Property Tax Administrative Rules.** Clarifies that exchange of information between the county and the Tax Commission is not limited and explains which documents are confidential; updates incorporations by reference; adds requirement that the values be listed by category value on the abstract for any taxing district with a restriction that such district does not levy property taxes on all otherwise taxable property; deletes requirement to assign separate parcel numbers if the parcel is located entirely within one county and one tax code area; limits the life of an urban renewal agency to 20 years and restricts revenue allocation to one annexation; excludes federal and state property from inclusion in Section 63-602Y, Idaho Code; establishes standards for maintaining parcel record information; requires urban renewal increment value and the value of certain exemptions be reported and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property; designates the Commission as the approving authority for the property tax reduction application; provides a five-year look back limit both for new construction that was missed in the year it should have been placed on the NC roll so will be placed on the next roll and for deductions that must be included on the NC roll; provides information for assessors to adjust the urban renewal base assessment roll for changes in the taxable amount of a property due to the annual changes in maximum homeowner's exemption; provides direction on how to compute levies for certain districts that may not levy against all taxable property in the district and requires that each relevant county and the Commission be given documentation of the election or ordinance which determined the category of property to be taxed; provides the taxpayers' options should the QIE election be denied by the assessor and that the assessor will notify the taxpayer electing the QIE and will identify the basis for the denial.

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION  
PO Box 83720, Boise ID 83720-0035**

**38-0301-1101, Rules Governing Group Insurance.** (Temp & Prop) Raises the eligibility age limits for dependents of state employees and state retirees in compliance with federal law.

**38-0406-111, Rules Governing Prequalification of Contractors on Capitol Building Projects.** Chapter repeal.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT  
PO Box 7129, Boise ID 83707-1129**

**39-0321-1101, Rules Governing Overlegal Permit Fees.** Provides that administrative costs incurred in the processing, issuance and enforcement of overlegal permits will be borne by the permittees; provides for reimbursement of actual costs incurred for extraordinary services associated with planning and/or movement of overlegal loads moving under the requirements of a traffic control plan.

**39-0341-1101, Rules Governing Traffic Control Devices.** (Temp & Prop) Incorporates by reference the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the USDOT Federal Highway Administration, effective January 15, 2010, with conforming additions, as specified in the rulemaking, and approved by FHWA/Idaho.

**IDAPA 52 - IDAHO STATE LOTTERY COMMISSION  
1199 Shoreline Lane, Ste. 100, Boise, ID 83702**

**52-0103-1101, Rules Governing Operations of the Idaho State Lottery.** Deletes an obsolete requirement relating to paying out winning Lottery Scratch tickets.

**RULES ADOPTED AS TEMPORARY ONLY**

State Tax Commission  
35-0103-1103, Property Tax Administrative Rules

**SCHEDULED NEGOTIATED RULEMAKING MEETINGS**

Department of Environmental Quality  
58-0106-1101, Solid Waste Management Rules

**NOTICE OF PUBLIC HEARING**

Department of Health and Welfare  
16-0310-1104, Medicaid Enhanced Plan Benefits (Written comment period deadline: 9/15/11)  
16-0319-1101, Certified Family Homes (Written comment period deadline: 9/23/11)

Please refer to the Idaho Administrative Bulletin, [September 7, 2011, Volume 11-9](#), for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Fax: 332-1896; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

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

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*July 1, 1993 -- Present*

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

*This online index provides a history of all agency rulemakings from 1993 to the present.  
It tracks all rulemaking activities on each chapter of rules and includes negotiated,  
temporary, proposed, pending and final rules, public hearing notices,  
vacated rulemaking notices, and executive orders of the Governor.*

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# **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*April 7, 2011 -- September 7, 2011*

*(eff. \*PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

*(eff. date)L - Denotes Adoption by Legislative Action*

*(eff. date)T - Temporary Rule Effective Date*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes rules promulgated before April 7, 2011 that have not been  
adopted as final rules and all rulemakings being promulgated after April 7, 2011 - Sine Die.)*

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

***10.01.01, Rules of Procedure***

- 10-0101-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 10-0101-1101** Proposed Rulemaking, Bulletin Vol. 11-7
- 10-0101-1101** Adoption of Pending Rule, Bulletin Vol. 11-9 (eff. \*PLR 2012)

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- 10-0102-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 10-0102-1101** Proposed Rulemaking, Bulletin Vol. 11-7

***10.01.04, Rules of Continuing Professional Development***

- 10-0104-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
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***IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE***

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- 16-0101-1101** Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7

***16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements***

- 16-0107-1101** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7 (eff. 7-1-11)T
- 16-0107-1102** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.01.12, Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions***

- 16-0112-1101** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 11-7 (eff. 7-1-11)T

***16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission***

- 16-0202-1101** Proposed Rulemaking, Bulletin Vol. 11-8

***16.02.03, Rules Governing Emergency Medical Services***

- 16-0203-0901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-5
- 16-0203-0901** Temporary and Proposed Rulemaking, Bulletin Vol. 09-10 (eff. 7-1-09)T



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  - 16-0203-0901 Rescission and Vacation of Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)
  - 16-0203-1101\* Temporary and Proposed Rulemaking, Bulletin Vol. 11-7 (eff. 7-1-11)T
- \*Changes chapter name to: "Emergency Medical Services" from: "Rules Governing Emergency Medical Services"*

#### **16.02.25, Fees Charged by the State Laboratory**

- 16-0225-1101 Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-8

#### **16.03.01, Eligibility for Health Care Assistance for Families and Children**

- 16-0301-1003 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
- 16-0301-1003 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0301-1003 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

#### **16.03.03, Rules Governing Child Support Services**

- 16-0303-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
- 16-0303-1001 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0303-1001 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

#### **16.03.04, Rules Governing the Food Stamp Program in Idaho**

- 16-0304-1004 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
- 16-0304-1004 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0304-1004 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

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- 16-0305-1003 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
- 16-0305-1003 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
- 16-0305-1003 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)
- 16-0305-1101 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. (7-1-11)T)
- 16-0305-1101 Rescission of Temporary Rule/Vacation of Proposed Rulemaking, Bulletin Vol. 11-8 (eff. 7-1-11)

#### **16.03.08, Rules Governing Temporary Assistance for Families in Idaho**

- 16-0308-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
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- 16-0308-1002 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. \*PLR 2012)

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- 16-0309-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
- 16-0309-1102 Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T)
- 16-0309-1103 Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T)
- 16-0309-1104 Temporary and Proposed Rulemaking, Bulletin Vol. 11-8 (eff. (7-1-11)T)

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