

# IDAHO ADMINISTRATIVE BULLETIN

September 5, 2018 – Vol. 18-9

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C.L. "Butch" Otter, Governor  
Robert L. Geddes, Director, Department of Administration  
Dennis Stevenson, Administrative Rules Coordinator  
Bradley Hunt, Administrative Rules Specialist  
Jason Shaw, Regulatory Analyst and Publishing Specialist

# IDAHO ADMINISTRATIVE BULLETIN

## Table of Contents

September 5, 2018 – Volume 18-9

|   |    |
|---|----|
| <b>PREFACE</b> .....  | 9  |
| <b>THE OFFICE OF THE GOVERNOR</b>   |    |
| <i>Executive Order No. 2018-05</i>  |    |
| Continuing a System for Allocating Volume Cap in the State<br>Consistent With Provisions of Title 50, Chapter 28, Idaho Code,<br>and the U.S. Internal Revenue Code of 1986 ..... | 17 |
| <i>Executive Order No. 2018-06</i>  |    |
| Continuation of a State Housing Tax Credit Agency .....   | 24 |
| <i>Executive Order No. 2018-07</i>  |    |
| Establishing a Policy for Nuclear Energy Production and Manufacturing in Idaho .....  | 27 |
| <b>IDAPA 01 – BOARD OF ACCOUNTANCY</b>  |    |
| <i>01.01.01 – Idaho Accountancy Rules</i>   |    |
| <b>Docket No. 01-0101-1801</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 29 |
| <b>Docket No. 01-0101-1802</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 32 |
| <b>IDAPA 02 – DEPARTMENT OF AGRICULTURE</b>   |    |
| <i>02.02.14 – Rules for Weights and Measures</i>  |    |
| <b>Docket No. 02-0214-1801</b>  |    |
| Notice of Rulemaking – Adoption of Pending Rule .....   | 36 |
| <i>02.04.08 – Rules Governing Grade A Milk and Milk Products</i>  |    |
| <b>Docket No. 02-0408-1801</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 37 |
| <i>02.04.09 – Rules Governing Milk and Cream Procurement and Testing</i>  |    |
| <b>Docket No. 02-0409-1801</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 39 |
| <i>02.04.13 – Rules Governing Raw Milk</i>  |    |
| <b>Docket No. 02-0413-1801</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 45 |
| <i>02.04.29 – Rules Governing Trichomoniasis</i>  |    |
| <b>Docket No. 02-0429-1801</b>  |    |
| Notice of Rulemaking – Proposed Rule .....  | 49 |
| <i>02.05.01 – Rules Governing Produce Safety</i>  |    |
| <b>Docket No. 02-0501-1801 (New Chapter)</b>  |    |
| Notice of Rulemaking – Adoption of Pending Rule .....   | 51 |
| <i>02.06.01 – Rules Governing the Pure Seed Law</i>   |    |
| <b>Docket No. 02-0601-1801 (Fee Rule)</b>   |    |
| Notice of Rulemaking – Proposed Rule .....  | 52 |

02.06.02 – *Rules Pertaining to the Idaho Commercial Feed Law*  
**Docket No. 02-0602-1801**  
 Notice of Rulemaking – Proposed Rule .....55

02.06.12 – *Rules Pertaining to the Idaho Fertilizer Law*  
**Docket No. 02-0612-1801**  
 Notice of Rulemaking – Proposed Rule .....57

02.06.41 – *Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001*  
**Docket No. 02-0641-1801**  
 Notice of Rulemaking – Proposed Rule .....59

02.08.01 – *Sheep and Goat Rules of the Idaho Sheep and Goat Health Board*  
**Docket No. 02-0801-1801**  
 Notice of Intent to Promulgate Rules – Negotiated Rulemaking .....61

**IDAPA 07 – DIVISION OF BUILDING SAFETY**

07.01.01 – *Rules Governing Electrical Inspection Tags*  
**Docket No. 07-0101-1801**  
 Notice of Rulemaking – Proposed Rule .....62

07.01.02 – *Rules Governing Fees for Electrical Inspections*  
**Docket No. 07-0102-1801 (Fee Rule)**  
 Notice of Rulemaking – Proposed Rule .....67

07.01.03 – *Rules of Electrical Licensing and Registration – General*  
**Docket No. 07-0103-1801**  
 Notice of Rulemaking – Proposed Rule .....72

**Docket No. 07-0103-1802**  
 Notice of Rulemaking – Proposed Rule .....75

07.01.04 – *Rules Governing Electrical Specialty Licensing*  
**Docket No. 07-0104-1801**  
 Notice of Rulemaking – Proposed Rule .....78

07.01.05 – *Rules Governing Examinations*  
**Docket No. 07-0105-1801**  
 Notice of Rulemaking – Proposed Rule .....84

07.01.06 – *Rules Governing the Use of National Electrical Code*  
**Docket No. 07-0106-1801**  
 Notice of Rulemaking – Proposed Rule .....87

07.01.07 – *Rules Governing Continuing Education Requirements*  
**Docket No. 07-0107-1801**  
 Notice of Rulemaking – Proposed Rule .....91

07.01.08 – *Rules Governing Electrical Inspection Tag Appeals*  
**Docket No. 07-0108-1801**  
 Notice of Rulemaking – Proposed Rule .....96

07.01.11 – *Rules Governing Civil Penalties*  
**Docket No. 07-0111-1801**  
 Notice of Rulemaking – Proposed Rule .....99

|  |     |
|--|-----|
| 07.10.01 – <i>Rules Governing the Damage Prevention Board<br/>Division of Building Safety</i><br><b>Docket No. 07-1001-1801</b><br>Notice of Rulemaking – Proposed Rule .....                            | 102 |
| <b>IDAPA 12 – DEPARTMENT OF FINANCE</b>  |     |
| 12.01.09 – <i>Rules Pursuant to the Idaho Credit Code</i><br><b>Docket No. 12-0109-1801</b><br>Notice of Rulemaking – Proposed Rule .....  | 106 |
| 12.01.10 – <i>Rules Pursuant to the Idaho Residential Mortgage Practices Act</i><br><b>Docket No. 12-0110-1801</b><br>Notice of Rulemaking – Proposed Rule .....   | 109 |
| 12.01.11 – <i>Rules Pursuant to the Idaho Collection Agency Act</i><br><b>Docket No. 12-0111-1801 (New Chapter)</b><br>Notice of Rulemaking – Proposed Rule .....  | 111 |
| <b>IDAPA 13 – IDAHO FISH AND GAME COMMISSION</b>   |     |
| 13.01.08 – <i>Rules Governing the Taking of Big Game Animals in the State of Idaho</i><br><b>Docket No. 13-0108-1701AAP</b><br>Notice of Amended Proclamation .....                                      | 113 |
| 13.01.10 – <i>Rules Governing the Importation, Possession,<br/>Release, Sale, or Salvage of Wildlife</i><br><b>Docket No. 13-0110-1801</b><br>Notice of Rulemaking – Proposed Rule .....                 | 114 |
| 13.01.11 – <i>Rules Governing Fish</i><br><b>Docket No. 13-0111-1805P</b><br>Notice of Proposed Proclamation .....   | 117 |
| 13.01.17 – <i>Rules Governing the Use of Bait and Trapping<br/>for Taking Big Game Animals</i><br><b>Docket No. 13-0117-1802</b><br>Notice of Rulemaking – Temporary and Proposed Rule.....              | 118 |
| 13.01.18 – <i>Rules Governing Emergency Feeding of Antelope, Elk,<br/>and Deer of the Idaho Fish and Game Commission</i><br><b>Docket No. 13-0118-1801</b><br>Notice of Rulemaking – Proposed Rule ..... | 121 |
| <b>IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE</b>   |     |
| 16.02.08 – <i>Vital Statistics Rules</i><br><b>Docket No. 16-0208-1802</b><br>Notice of Rulemaking – Proposed Rule .....   | 124 |
| 16.02.15 – <i>Immunization Requirements for Idaho School Children</i><br><b>Docket No. 16-0215-1802</b><br>Notice of Rulemaking – Proposed Rule .....  | 127 |
| 16.03.10 – <i>Medicaid Enhanced Plan Benefits</i><br><b>Docket No. 16-0310-1802</b><br>Notice of Rulemaking – Proposed Rule .....  | 133 |



|   |     |
|---|-----|
| <b>Docket No. 16-0310-1803</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 156 |
| <b>Docket No. 16-0310-1804</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 160 |
| 16.03.14 – <i>Rules and Minimum Standards for Hospitals in Idaho</i>  |     |
| <b>Docket No. 16-0314-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 163 |
| 16.06.12 – <i>Rules Governing the Idaho Child Care Program (ICCP)</i>   |     |
| <b>Docket No. 16-0612-1801</b>  |     |
| Notice of Rulemaking – Temporary and Proposed Rule.....   | 185 |
| 16.07.37 – <i>Children's Mental Health Services</i>   |     |
| <b>Docket No. 16-0737-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 190 |
| 16.07.50 – <i>Minimum Standards for Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units</i> |     |
| <b>Docket No. 16-0750-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 193 |
| <b>IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE</b>   |     |
| 18.01.06 – <i>Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children</i>                           |     |
| <b>Docket No. 18-0106-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 238 |
| 18.01.23 – <i>Rules Pertaining to Idaho Acquisitions of Control and Insurance Holding Company Systems</i>             |     |
| <b>Docket No. 18-0123-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 240 |
| 18.01.24 – <i>Advertisement of Disability (Accident and Sickness) Insurance</i>                                       |     |
| <b>Docket No. 18-0124-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 242 |
| 18.01.49 – <i>Fire Protection Sprinkler Contractors</i>   |     |
| <b>Docket No. 18-0149-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 244 |
| 18.01.54 – <i>Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act</i>                |     |
| <b>Docket No. 18-0154-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 247 |
| 18.01.62 – <i>Annual Financial Reporting</i>  |     |
| <b>Docket No. 18-0162-1801</b>  |     |
| Notice of Rulemaking – Proposed Rule .....  | 277 |
| <b>IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY</b>  |     |
| 19.01.01 – <i>Rules of the Idaho State Board of Dentistry</i>   |     |
| <b>Docket No. 19-0101-1801</b>  |     |
| Notice of Rulemaking – Adoption of Pending Rule .....   | 279 |

*Docket No. 19-0101-1803*  
 Notice of Rulemaking – Proposed Rule .....280

*Docket No. 19-0101-1804*  
 Notice of Rulemaking – Proposed Rule .....283

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**

20.03.01 – *Dredge and Placer Mining Operations in Idaho*  
*Docket No. 20-0301-1801*  
 Notice of Rulemaking – Proposed Rule .....286

20.03.02 – *Rules Governing Exploration, Surface Mining,  
 and Closure of Cyanidation Facilities*  
*Docket No. 20-0302-1801*  
 Notice of Rulemaking – Proposed Rule .....297

20.03.04 – *Rules for the Regulation of Beds, Waters, and Airspace  
 Over Navigable Lakes in the State of Idaho*  
*Docket No. 20-0304-1801*  
 Notice of Rulemaking – Proposed Rule .....319

**IDAPA 22 – BOARD OF MEDICINE**

22.01.01 – *Rules of the Board of Medicine for the Licensure to Practice  
 Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho*  
*Docket No. 22-0101-1801*  
 Notice of Intent to Promulgate Rules – Negotiated Rulemaking .....332

22.01.03 – *Rules for the Licensure of Physician Assistants*  
*Docket No. 22-0103-1801*  
 Notice of Intent to Promulgate Rules – Negotiated Rulemaking .....333

22.01.05 – *General Provisions for the Board of Medicine*  
*Docket No. 22-0105-1801 (New Chapter)*  
 Notice of Intent to Promulgate Rules – Negotiated Rulemaking .....334

**IDAPA 23 – BOARD OF NURSING**

23.01.01 – *Rules of the Idaho Board of Nursing*  
*Docket No. 23-0101-1801*  
 Notice of Rulemaking – Proposed Rule .....335

**IDAPA 30 – IDAHO COMMISSION FOR LIBRARIES**

30.01.01 – *Rules of the Idaho Commission for Libraries Governing  
 the Use of Commission Services*  
*Docket No. 30-0101-1801*  
 Notice of Rulemaking – Adoption of Pending Rule .....342

**IDAPA 35 – STATE TAX COMMISSION**

35.01.01 – *Income Tax Administrative Rules*  
*Docket No. 35-0101-1803*  
 Notice of Rulemaking – Adoption of Temporary Rule .....343

35.01.03 – *Property Tax Administrative Rules*  
*Docket No. 35-0103-1801*  
 Notice of Rulemaking – Proposed Rule .....345

*Docket No. 35-0103-1802*  
 Notice of Rulemaking – Proposed Rule .....385

*Docket No. 35-0103-1803*  
 Notice of Rulemaking – Proposed Rule .....387

35.01.06 – *Hotel/Motel Room and Campground Sales Tax Administrative Rules*  
*Docket No. 35-0106-1801*  
 Notice of Rulemaking – Proposed Rule .....389

35.01.10 – *Idaho Cigarette and Tobacco Products Tax Administrative Rules*  
*Docket No. 35-0110-1801*  
 Notice of Rulemaking – Proposed Rule .....391

35.01.14 – *Prepaid Wireless E911 Fee Administrative Rules*  
*Docket No. 35-0114-1801*  
 Notice of Rulemaking – Proposed Rule .....393

**IDAPA 38 – DEPARTMENT OF ADMINISTRATION**

38.04.09 – *Rules Governing Use of the Chinden Office Complex*  
*Docket No. 38-0409-1801 (New Chapter)*  
 Notice of Rulemaking – Amendment to Temporary Rule .....395

*Docket No. 38-0409-1802 (New Chapter)*  
 Notice of Rulemaking – Proposed Rule .....401

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

39.02.46 – *Rules Governing Temporary Motor Vehicle Registration Permit*  
*Docket No. 39-0246-1801*  
 Notice of Rulemaking – Temporary and Proposed Rule.....410

39.02.61 – *Rules Governing License Plates for Governmental Agencies and Taxing Districts*  
*Docket No. 39-0261-1801*  
 Notice of Rulemaking – Adoption of Pending Rule .....412

39.03.41 – *Rules Governing Traffic Control Devices*  
*Docket No. 39-0341-1801*  
 Notice of Rulemaking – Adoption of Pending Rule .....413

39.03.48 – *Rules Governing Routes Exempt from Local Plans and Ordinances*  
*Docket No. 39-0348-1801*  
 Notice of Rulemaking – Proposed Rule .....414

**IDAPA 40 – COMMISSION ON THE ARTS**

40.01.01 – *Rules of the Idaho Commission on the Arts*  
*Docket No. 40-0101-1801*  
 Notice of Rulemaking – Proposed Rule .....416

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

58.01.02 – *Water Quality Standards*  
*Docket No. 58-0102-1802*  
 Notice of Rulemaking – Proposed Rule .....431

**Docket No. 58-0102-1802**  
 Notice of Meeting of the Idaho Board of Environmental Quality.....452

**Docket No. 58-0102-1803**  
 Notice of Rulemaking – Proposed Rule .....453

**Docket No. 58-0102-1803**  
 Notice of Meeting of the Idaho Board of Environmental Quality.....456

58.01.24 – *Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites*  
**Docket No. 58-0124-1801**  
 Notice of Rulemaking – Proposed Rule .....457

**IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

59.01.05 – *PERSI Separation from Service Rules*  
**Docket No. 59-0105-1801**  
 Notice of Rulemaking – Adoption of Pending Rule .....467

59.01.06 – *PERSI Retirement Rules*  
**Docket No. 59-0106-1801**  
 Notice of Rulemaking – Adoption of Pending Rule .....468

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

61.01.02 – *Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports*  
**Docket No. 61-0102-1801 (New Chapter)**  
 Notice of Rulemaking – Proposed Rule .....469

61.01.03 – *Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Services*  
**Docket No. 61-0103-1801 (New Chapter)**  
 Notice of Rulemaking – Proposed Rule .....475

61.01.08 – *Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions*  
**Docket No. 61-0108-1801**  
 Notice of Rulemaking – Proposed Rule .....480

**SECTIONS AFFECTED INDEX ..... 487**

**LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS ..... 501**

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES ..... 507**

**SUBJECT INDEX ..... 523**

# PREFACE

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

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

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

## **1. NEGOTIATED RULEMAKING**

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

## **2. PROPOSED RULEMAKING**

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a “Notice of Rulemaking - Proposed Rule” in the Bulletin. This notice must include very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

## **3. TEMPORARY RULEMAKING**

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

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

If a rulemaking meets one or more of these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

## **4. PENDING RULEMAKING**

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule. When a pending rule is published in the Bulletin, the agency is required to include certain information in the “Notice of Rulemaking - Pending Rule.” This includes a statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

Agencies are required to republish the text of the pending rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule.

## **5. FINAL RULEMAKING**

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

### **IDAPA 38.05.01.200.02.c.ii.**

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

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

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

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

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

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

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

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

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. Each rulemaking that is filed with the Coordinator is assigned a “DOCKET NUMBER.” The docket number is a series of numbers separated by a hyphen “-”, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

### **“DOCKET NO. 38-0501-1401”**

“**38-**” denotes the agency’s **IDAPA** number; in this case the Department of Administration.

“**0501-**” refers to the **TITLE AND CHAPTER** numbers of the agency rule being promulgated; in this case the Division of Purchasing (**TITLE 05**), Rules of the Division of Purchasing (**Chapter 01**).

“**1401**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “**1402**”. The docket number in this scenario would be **38-0501-1402**.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section “200” appears before Section “345” and so on). Whenever the sequence of the numbering is broken the following statement will appear:

**(BREAK IN CONTINUITY OF SECTIONS)**

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2018**

| <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> |
|-----------------|----------------------------------|---------------------------------------|-------------------------|---------------------------------------|
| 18-1            | January 2018                     | <b>*November 24, 2017</b>             | January 3, 2018         | January 24, 2018                      |
| 18-2            | February 2018                    | January 5, 2018                       | February 7, 2018        | February 28, 2018                     |
| 18-3            | March 2018                       | February 2, 2018                      | March 7, 2018           | March 28, 2018                        |
| 18-4            | April 2018                       | March 2, 2018                         | April 4, 2018           | April 25, 2018                        |
| 18-5            | May 2018                         | April 6, 2018                         | May 2, 2018             | May 23, 2018                          |
| 18-6            | June 2018                        | May 4, 2018                           | June 6, 2018            | June 27, 2018                         |
| 18-7            | July 2018                        | June 8, 2018                          | July 4, 2018            | July 25, 2018                         |
| 18-8            | August 2018                      | July 6, 2018                          | August 1, 2018          | August 22, 2018                       |
| 18-9            | September 2018                   | August 3, 2018                        | September 5, 2018       | September 26, 2018                    |
| 18-10           | October 2018                     | <b>**August 31, 2018</b>              | October 3, 2018         | October 24, 2018                      |
| 18-11           | November 2018                    | October 5, 2018                       | November 7, 2018        | November 28, 2018                     |
| 18-12           | December 2018                    | November 2, 2018                      | December 5, 2018        | December 26, 2018                     |

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2019**

| <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> |
|-----------------|----------------------------------|---------------------------------------|-------------------------|---------------------------------------|
| 19-1            | January 2019                     | <b>*November 30, 2018</b>             | January 2, 2019         | January 23, 2019                      |
| 19-2            | February 2019                    | January 4, 2019                       | February 6, 2019        | February 27, 2019                     |
| 19-3            | March 2019                       | February 8, 2019                      | March 6, 2019           | March 27, 2019                        |
| 19-4            | April 2019                       | March 8, 2019                         | April 3, 2019           | April 24, 2019                        |
| 19-5            | May 2019                         | April 5, 2019                         | May 1, 2019             | May 22, 2019                          |
| 19-6            | June 2019                        | May 3, 2019                           | June 5, 2019            | June 26, 2019                         |
| 19-7            | July 2019                        | June 7, 2019                          | July 3, 2019            | July 24, 2019                         |
| 19-8            | August 2019                      | July 5, 2019                          | August 7, 2019          | August 28, 2019                       |
| 19-9            | September 2019                   | August 2, 2019                        | September 4, 2019       | September 25, 2019                    |
| 19-10           | October 2019                     | <b>**August 30, 2019</b>              | October 2, 2019         | October 23, 2019                      |
| 19-11           | November 2019                    | October 4, 2019                       | November 6, 2019        | November 27, 2019                     |
| 19-12           | December 2019                    | November 1, 2019                      | December 4, 2019        | December 25, 2018                     |

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

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



| <b>ALPHABETICAL INDEX OF STATE AGENCIES<br/>AND CORRESPONDING IDAPA NUMBERS</b> |  |
|---|--|
| <b>IDAPA 01</b>   | <b>Accountancy</b> , Board of  |
| <b>IDAPA 38</b>   | <b>Administration</b> , Department of  |
| <b>IDAPA 44</b>   | <b>Administrative Rules Coordinator</b> , Office of the  |
| <b>IDAPA 02</b>   | <b>Agriculture</b> , Idaho Department of   |
| <b>IDAPA 40</b>   | <b>Arts</b> , Idaho Commission on the  |
| <b>IDAPA 03</b>   | <b>Athletic Commission</b>   |
| <b>IDAPA 04</b>   | <b>Attorney General</b> , Office of the  |
| <b>IDAPA 53</b>   | <b>Barley Commission</b> , Idaho   |
| <b>IDAPA 51</b>   | <b>Beef Council</b> , Idaho  |
| <b>IDAPA 07</b>   | <b>Building Safety</b> , Division of<br>Electrical Board (07.01)<br>Plumbing Board (07.02)<br>Building Codes & Manufactured Homes (07.03)<br>Building Code Advisory Board (07.03.01)<br>Public Works Contractors License Board (07.05)<br>Uniform School Building Safety (07.06)<br>HVAC Board (07.07) |
| <b>IDAPA 43</b>   | <b>Canola and Rapeseed Commission</b> , Idaho  |
| <b>IDAPA 55</b>   | <b>Career-Technical Education</b> , Division of  |
| <b>IDAPA 28</b>   | <b>Commerce</b> , Idaho Department of  |
| <b>IDAPA 06</b>   | <b>Correction</b> , Board of   |
| <b>IDAPA 19</b>   | <b>Dentistry</b> , Board of  |
| <b>IDAPA 08</b>   | <b>Education</b> , State Board of and State Department of  |
| <b>IDAPA 10</b>   | <b>Engineers and Land Surveyors</b> , Board of Professional  |
| <b>IDAPA 58</b>   | <b>Environmental Quality</b> , Department of   |
| <b>IDAPA 12</b>   | <b>Finance</b> , Department of   |
| <b>IDAPA 13</b>   | <b>Fish and Game</b> , Department of   |
| <b>IDAPA 14</b>   | <b>Geologists</b> , Board of Registration for Professional   |

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

| <b>ALPHABETICAL INDEX OF STATE AGENCIES<br/>AND CORRESPONDING IDAPA NUMBERS</b> |   |
|---|---|
| <b>IDAPA 24</b>   | <b>Occupational Licenses, Board of (24.20)</b><br>Acupuncture, Board of (24.17)<br>Architectural Examiners, Board of (24.01)<br>Barber Examiners, Board of (24.02)<br>Chiropractic Physicians, Board of (24.03)<br>Contractors Board, Idaho (24.21)<br>Cosmetology, Board of (24.04)<br>Counselors and Marriage and Family Therapists, Licensing Board of Professional (24.15)<br>Dentistry, Board of (24.16)<br>Drinking Water and Wastewater Professionals, Board of (24.05)<br>Driving Businesses Licensure Board, State (24.25)<br>Landscape Architects, Board of (24.07)<br>Liquefied Petroleum Gas Safety Board (24.22)<br>Massage Therapy, Board of (24.27)<br>Midwifery, State Board of (24.26)<br>Morticians, Board of (24.08)<br>Nursing Home Administrators, Board of Examiners of (24.09)<br>Occupational Therapy Licensure Board, State (24.06)<br>Optometry, Board of (24.10)<br>Physical Therapy Licensure Board (24.13)<br>Podiatry, Board of (24.11)<br>Psychologist Examiners, Board of (24.12)<br>Real Estate Appraiser Board (24.18)<br>Residential Care Facility Administrators, Board of Examiners of (24.19)<br>Social Work Examiners, Board of (24.14)<br>Speech and Hearing Services Board (24.23) |
| <b>IDAPA 25</b>   | <b>Outfitters and Guides Licensing Board</b>  |
| <b>IDAPA 50</b>   | <b>Pardons and Parole, Commission for</b>   |
| <b>IDAPA 26</b>   | <b>Parks and Recreation, Department of</b>  |
| <b>IDAPA 27</b>   | <b>Pharmacy, Board of</b>   |
| <b>IDAPA 11</b>   | <b>Police, Idaho State</b>  |
| <b>IDAPA 29</b>   | <b>Potato Commission, Idaho</b>   |
| <b>IDAPA 61</b>   | <b>Public Defense Commission, State</b>   |
| <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 Management 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<br/>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. 2018-05**

**CONTINUING A SYSTEM FOR ALLOCATING VOLUME CAP IN THE STATE  
CONSISTENT WITH PROVISIONS OF TITLE 50, CHAPTER 28, IDAHO CODE,  
AND THE U.S. INTERNAL REVENUE CODE OF 1986**

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*WHEREAS, Section 146 of the U.S. Internal Revenue Code of 1986 (the “Code”) subjects certain private activity and non-private activity bonds to volume limitations or “volume cap” (the “volume cap”); and*

*WHEREAS, as required by Section 146(e) of the Code, the Idaho Legislature did adopt the provisions of Title 50, Chapter 28, Idaho Code, (the “State Law”) to provide a permanent allocation formula for volume cap in the state; and*

*WHEREAS, Section 50-2804 Idaho Code, authorizes and directs the Governor of the State of Idaho to provide for the implementation and administration of the allocation formula established under Section 50-2803, Idaho Code, by executive order, and the Governor did issue Executive Order No. 2013-04 providing therefore; and*

*WHEREAS, in order to renew the provisions contained in said Executive Order No. 2013-04, to amend the allocation formula in order to meet the requirements of said amendments to the State Law and to continue to provide for the implementation and administration of the formula for allocation of the volume cap among the state and its issuing authorities under the State Law, it is necessary and desirable to issue this Executive Order;*

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

Section 1: *As used in this Executive Order:*

2. *“Allocation Dollars” means the dollar amount of the volume cap expressed in terms of dollars. Each allotment dollar equals one dollar of volume cap that may be allocated under this Executive Order and the State Law;*
3. *“Bonds” means any obligations for which an allocation of the volume cap is required by the Code and the State Law including, without limitation, mortgage credit certificates described in Section 25 of the Code. With respect to any allocation of Allotment Dollars for the purpose of issuing certificates, certificates will be deemed “issued” when the mortgage credit certificate program for which the allocation is made is implemented;*
4. *“Code” means the Internal Revenue Code of 1954, as amended by the Reform Act of 1986 and renamed the Internal Code of 1986, and any related regulations;*
5. *“Department” means the Department of Commerce of the State.*
6. *“Director” means the director of the Department or such other official or officials of the Department as the director shall designate to carry out the duties of the director set forth in this Executive Order.*
7. *“Form 8038” means U.S. Department of the Treasury tax form 8038 (OMB NO. 1545- 0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.*
8. *“Issuing authority” means*
  - a. *any county, city or port district;*

- b. *any public corporation created pursuant to Section 50-2703 of the Idaho Code, or other entity acting on behalf of one or more counties, cities, or both;*
  - c. *the State; or*
  - d. *any other entity authorized to issue Bonds in the State.*
8. *“Priority Set Aside” means one of the priority set asides established under Section 4(1) hereof.*
  9. *“Program” means the program to be financed in whole or in part with the proceeds of the sale of Bonds or to be implemented through the issuance of mortgage credit certificates under Section 25 of the Code.*
  10. *“Project” means the facility to be financed in whole or in part with the proceeds of sale of Bonds.*
  11. *“Qualifying Carryforward Project or Program” means a Project or Program qualifying for carryforward under Section 146(f) of the Code.*
  12. *“State” means the State of Idaho, any of its agencies, instrumentalities, institutions and divisions authorized to issue Bonds under State law.*
  13. *“State Law” means Title 50, Chapter 28, Idaho Code, as amended.*
  14. *“Volume cap” means the volume cap for the State as computed under Section 146 of the Code.*
  15. *“Year” means each calendar year beginning January 1.*

Section 2: *The Volume cap for each Year is allocated to Issuing Authorities in accordance with the procedures set forth in this Executive Order. An allocation of the Volume cap may be obtained by submitting an application to the Director in accordance with Section 3 or Section 5, as appropriate. The Director shall evidence a grant of an allocation of the Volume cap by issuing a certificate of allocation in accordance with Section 4 or Section 5, as appropriate.*

Section 3:

1. *Any Issuing authority proposing to issue Bonds shall, prior to the issuance of such Bonds, submit an application to the Director which contains the following information and attachments:*
  - a. *The name of the issuing authority*
  - b. *the mailing address of the issuing authority*
  - c. *the tax identification number of the issuing authority;*
  - d. *the name, title and office telephone number of the official of the issuing authority to whom notices should be sent and from whom information can be obtained;*
  - e. *the principal amount of Bonds proposed to be issued for which an application for an allocation of the Volume cap is requested;*
  - f. *the nature, the purpose and the specific location of the project or the type of program;*
  - g. *the initial owner or user of the project or program, if other than the issuing authority;*
  - h. *a copy of a valid and fully executed resolution or similar official action of the issuing authority evidencing its intention to issue bonds for the project or program;*
  - i. *with respect to bonds, the anticipated date on which the bonds are expected to be sold and the anticipated date on which the closing or final transaction with respect to the issuance and sale of the bonds is expected to occur and, with respect to mortgage credit certificates under Section 25 of the Code, the anticipated date on which such mortgage credit certificates are expected to be issued;*
  - j. *the name, address, and telephone number of all parties to the transaction;*
  - k. *the applicable provisions of the Code under which the bonds are expected to be issued;*
  - l. *such information as the applicant may wish to submit in order to demonstrate the need for, and economic impact of, its program or project in the State, together with any information which demonstrates how its program or project will effectively utilize and efficiently distribute resources throughout the State; and*
  - m. *any other information or attachments reasonably required by the Director.*
2. *The Director shall:*
  - a. *establish the form of application for requests for allocations of the Volume cap, which form shall contain the information required by Section 3(1); and*

- b. *make such forms available to the public upon request.*
3. *The Director shall be under no obligation to process any application that is incomplete. Any application submitted by an issuing authority that the Director does not process shall be returned by the Director on or before the fifteenth (15th) day after receipt thereof with a brief explanation as to why the application was not processed.*

Section 4:

1. *Allocations of Volume cap shall be made each Year according to the following priority set asides:*
  - a. *qualified small-issue manufacturing projects under Section 144(a) of the Code, in an amount between 7% and 13% of the total allocation dollars available for the Year as determined by the Director;*
  - b. *single-family housing financing through the Idaho Housing and Finance Association under Section 143 of the Code, in an amount between 55% and 80% of the total allocation dollars available for the Year as determined by the Director;*
  - c. *multifamily housing, as qualified residential rental projects under Section 142(a)(7) of the Code, in an amount between 0% and 18% of the total allocation dollars available for the Year as determined by the Director;*
  - d. *student loan programs through the Education Funding Association of Idaho under Section 144(b) of the Code, in an amount between 0% and 6% of the total allocation dollars available for the Year as determined by the Director;*
  - e. *exempt facilities under Section 142(a) of the Code, other than qualified residential rental projects, in an amount between 0% and 32% of the total allocation dollars available for the year as determined by the Director;*
  - f. *any qualified uses for Volume cap not identified above are eligible for allocations in accordance with Section 4(4) below;*
  - g. *not later than January 31 of each Year, subject to the provisions of Section 4(9) hereof, the Director shall determine the amount of allocation dollars within each priority set aside, based on the need for and economic impact of the program or project to be financed under each application and how such expected program or project will effectively utilize and efficiently distribute resources throughout the State; and*
  - h. *the above priority set asides shall be in effect through August 31 of each Year. Thereafter, allocations shall be made in accordance with Section 4(4) and (5) below. All other potential uses of volume cap under the Code, other than those listed in the priority set asides above, may also be allocated on or after September 1 of each Year upon application to the Director as provided in Section 4(4) and (5) below.*
2. *Except as otherwise provided in this Executive Order, on or before the fifteenth (15th) day after receipt by the Director of an application for an allocation of the volume cap, the Director shall, if the application is in satisfactory order, and if the Director determines that the application demonstrates the need for, and economic impact of, the particular program or project in the State and how the program or project will effectively utilize and efficiently distribute resources throughout the State, the Director will make the requested allocation in the amount so requested, if available under the applicable priority set aside in Section 4(1) above, and certify to the issuing authority applying for the allocation that an allocation has been made, the amount of such allocation. Certificates of allocation evidencing the granting of an allocation by the Director in accordance with the preceding sentence, shall be issued by the Director in the chronological order in which completed applications are received within the applicable priority set aside in Section 4(1) above. No Issuing authority issuing bonds or certificates is entitled to any allocation of the volume cap with respect to such bonds or certificates unless it has first received the aforementioned certificate of allocation from the Director evidencing the granting of an allocation for such bonds or certificates.*
3. *Every allocation of the Volume cap granted under this Executive Order by the Director for which bonds or certificates have not been issued with respect to such allocation, except those grants made pursuant to Section 5, shall remain effective until, and including, the earlier of:*

- a. a date to be determined by the Director but not to exceed 180 days after the date on which such allocation was made or any date until December 27 as determined by the Director if the program is being allocated Volume cap under a priority set aside which sets aside allocation dollars for a specific issuing authority [Sections 4(1)(b), 4(1)(d) and 4(1)(e) above] and such issuing authority has a program for bond issuance to be carried out throughout the Year;
  - b. 12:00 o'clock midnight on December 27 of the Year in which such allocation was made; or
  - c. the date upon which the Director receives a written notification from any such Issuing authority pursuant to Section 7(2). Any allocation for which bonds or certificates are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such bonds or certificates.
4. On and after September 1 of each Year, allocations of Volume cap shall be made to applicants submitting applications by such date for project(s) or program(s) that best demonstrate effective utilization, need, economic impact and efficient distribution of resources throughout the State. The Director and the Department may elect not to allocate Volume cap if an application does not demonstrate a need for and economic impact of the particular program or project in the State and how the program or project will effectively utilize and efficiently distribute resources throughout the State. If qualified applications have not been received by the Department for all remaining allocation dollars by September 1 of such Year, then the Department shall continue to receive additional applications until the first of each succeeding month and make allocations on the same basis until all allocation dollars have been allocated.
5. Until and including December 27 of each Year, any allocation of allocation dollars made in such year, except allocations made pursuant to Section 5, for which bonds or certificates are not issued on or prior to the applicable date specified in Section 4(3) shall be available for reallocation to applying Issuing authorities. On December 28 of each Year, any allocation of allocation dollars made in such Year for which bonds or certificates are not issued on or prior to the applicable date specified in Section 4(3) and any allocation dollars for such year or any allocation dollars not allocated under Section 4(4) above shall become available for reallocation only for qualifying carryforward projects or programs. In either case, such reallocations shall be made in the same manner as for allocations of allocation dollars on and after September 1 as provided in Section 4(4) above.
6. No application submitted by an Issuing authority to the Director pursuant to this section shall be processed if the amount of allocation of the Volume cap requested in such application is in excess of the amount of Volume cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in the chronological order in which received, granting allocations pursuant to the provisions of this Executive Order.
7. The expiration date of an allocation of Volume cap under this Executive Order may be extended upon prior written approval of the Director; provided there are no pending applications for Volume cap within the same priority set aside, or if there are other such applications pending, that the application for the allocation being extended best demonstrates the need for and economic impact of the program or project in the State and how the program or project will effectively utilize and efficiently distribute resources throughout the State, and provided further that all other provisions of this Executive Order are complied with.
8. In the event that the Director is uncertain whether an application meets the requirements set forth in 4(2) or 4(4) above, he may defer action on such application until he has received another application(s) and then determine which application best meets such criteria.
9. In the case of an application filed prior to the date when the Director makes an allocation under



4(1)(h) above for an allocation from a Priority Set Aside which provides for a minimum percent of allocation dollars and sets forth a specific Issuing authority to receive the Priority Set Aside [specifically, Priority Set Asides 4(1)(b), 4(1)(d) and 4(1)(e)], the Director may, at the request of the Issuing authority, make an allocation of that Year's allocation dollars in an amount not to exceed the minimum percentage stated for the Priority Set Aside prior to the date the Director has set for determination of allocations under 4(1)(h) but in no event later than fifteen (15) days after the date such application is filed.

Section 5:

1. Issuing authorities with Qualifying Carryforward Projects or Programs may apply for an allocation of allotment dollars for such Qualifying Carryforward Projects or Programs by submitting an application to the Director which shall contain:
  - a. the carryforward purpose for the bonds under Section 146(f) of the Code;
  - b. any other information required by Section 146(f) of the Code;
  - c. a certification signed by both an official of the issuing authority responsible for the supervision of the issuance of the bonds and, if applicable, a representative of the person or entity constructing, acquiring, or rehabilitating the project or administering the program, stating that the Issuing authority and, if applicable, such person or entity, will proceed with diligence to ensure the issuance of the bonds within the carryforward period provided by Section 146(f) of the Code;
  - d. a preliminary opinion from the bond counsel that the project or program qualifies for carryforward under Section 146(f) of the Code, if applicable;
  - e. if applying for an allocation of allotment dollars for the purpose of issuing mortgage credit certificates under Section 25 of the Code, the amount of qualified mortgage bonds defined in Section 143 of the Code which the issuing authority elects not to issue under the Code; and
  - f. other such information and attachments as are set forth in Section 3(1).
2. No application submitted by an issuing authority to the Director pursuant to this section shall be processed if at the time such application is considered the amount of allocation of the Volume cap requested in such application is in excess of the amount of the Volume cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in accordance with the provisions of Section 4(4), granting allocations pursuant to the provisions of this Executive Order.
3. Allocations of the Volume cap for Qualifying Carryforward Projects or Programs shall be granted by the Director in the amount requested by the applying issuing authority, if available, on or after December 1, but no later than December 31, of the Year in which an application in satisfactory order is submitted to the Director for an allocation of the Volume cap for a Qualifying Carryforward Project or Program in accordance with the provisions of Section 4(5). The Director shall issue certificates of allocation evidencing the granting of an allocation within the time period specified in the preceding sentence to each issuing authority which applied to the Director and which received an allocation of the volume cap for a Qualifying Carryforward Project or Program of such Issuing authority, such certificates of allocation to be similar to the certificates of allocation described in Section 4, stating the amount of allotment dollars which have been allocated to such Issuing authority, specifying the Qualifying Carryforward Project or Program for which the allocation has been made and specifying the expiration date of the allocation, as provided by Section 146(f) of the Code.

Section 6: No application submitted to the Director may be amended without the consent of the Director; provided, however, that no such consent shall be required for an Issuing authority to submit a new application in order to replace a previously submitted application if such new application is submitted before an allocation is made on the basis of the original application; provided further, that the consent of the Director shall not be required for an Issuing authority to withdraw a previously submitted application. For purposes of receiving an allocation of the Volume cap, any application that has been amended shall be treated as though such application was submitted on the date that the

*amendment was made, rather than on the date of the original submission of such application.*

Section 7:

1. *After the effective date of this Executive Order, any Issuing authority issuing Bonds without a certificate or allocation of the Director issued pursuant to Section 4 or Section 5, as appropriate, evidencing the granting of an allocation for such Bonds or Certificates, or any Issuing authority issuing Bonds or Certificates after the expiration of an allocation under Section 4 or Section 5, as appropriate, is not entitled to any allocation of the Volume cap for such Bonds or Certificates, and any Issuing authority issuing Bonds or Certificates in excess of the allocation set forth in the certificate of allocation is not entitled to any allocation of the Volume cap for such excess.*
2. *Each Issuing authority shall:*
  - a. *advise the Director on or before the earlier of the sixtieth day after the issuance of any Bonds or Certificates or December 27 of each Year, of the principal amount of bonds or certificates issued under the allocation set forth in each certificate of allocation issued by the Director evidencing the granting of an allocation for such bonds or certificates by delivering to the Director a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such bonds or certificates, or, if no such form was required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the Director with respect to such bonds or certificates; or*
  - b. *if all or a stated portion of such bonds or certificates will not be issued, shall advise the Director in writing, on or before the earlier of*
    - i. *the fifteenth (15th) day after the earlier of*
      - A. *the final decision not to issue or a stated portion of such bonds or certificates, or*
      - B. *the expiration of the allocation, or*
    - ii. *December 27 of the year in which the allocation of such Bonds or Certificates was made.*
3. *Each issuing authority shall cooperate with the Director in furnishing any information the Director reasonably requires. If an Issuing authority obtains an allocation of a portion of the Volume cap for a particular project or program from the Director as provided in Section 4 or Section 5, as appropriate, but does not issue its Bonds or Certificates within the prescribed time limit, or issues a lesser amount of Bonds or Certificates within the prescribed time limit, such Issuing authority may again submit an application with respect to the proposed Bonds or Certificates or portion of such Bonds or Certificates not issued for such project or program as provided in Section 4 or Section 5, as appropriate. Such application shall be treated as a new application.*

Section 8: *In addition to the duties otherwise specifically set forth in this Executive Order, the Director shall:*

4. *determine the amount of allotment dollars available on December 28 of each Year for allocation for Qualifying Carryforward Projects or Programs and allocate the allotment dollars available for Qualifying Carryforward Projects or Programs as provided in this Executive Order;*
5. *maintain a record of all applications filed by Issuing Authorities under Section 3 and Section 5 and all certificates of allocation issued under Section 4 and Section 5;*
6. *maintain a record of all bonds or certificates issued by issuing authorities during each Year;*
7. *maintain a record of all information filed by issuing authorities under this Executive Order;*
8. *make available upon reasonable request a certified copy of all or any part of the records maintained by the Department under this Executive Order or a summary thereof including information regarding the volume*

cap for each Year and any amounts available or at any time remaining available, for allocation under this Executive Order;

9. the Director shall serve as the State official designated under State law to make any certifications required to be made under the Code including, without limitation, the certification required by Section 149(e)(2)(F) of the Code; and
10. promulgate reasonable rules not inconsistent with this Executive Order deemed necessary or expedient to allocate the Volume cap hereunder.

Section 9: If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid, inoperative, or unconstitutional, all allocations of the Volume cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with provisions of the State Law.

Section 10: This Executive Order replaces Executive Order No. 2013-04 which is hereby repealed, provided that such replacement shall not affect any allocations in the State made prior to the effective date hereof pursuant to any other Executive Orders or laws of the State.

Section 11: The State pledges and agrees with the owners of any bonds or certificates to which an allocation of the Volume cap has been granted under this Executive Order that the State will not retroactively alter the allocation of the Volume cap to such bonds or certificates.

Section 12: No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued hereunder.

Section 13: The purpose of this Executive Order is to maximize the benefits of financing and development through the use of bonds and certificates providing a system for the implementation and administration of the formula specified in the State Law for allocating the Volume cap within the meaning of Section 146 of the Code.

Section 14: This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or federal law.

Notwithstanding the foregoing, allocations for qualifying carry forward projects or programs pursuant to Section 5 hereof shall remain effective for the term of such allocation provided for in Section 146(f) of the Code.



  
LAWRENCE DENNEY

SECRETARY OF STATE

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 23rd day of May, in the year of our Lord two thousand and eighteen and of the Independence of the United States of America the two hundred forty-second and of the Statehood of Idaho the one hundred twenty-eighth.



C.L. "BUTCH" OTTER  
GOVERNOR

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2018-06**

**CONTINUATION OF A STATE HOUSING TAX CREDIT AGENCY**

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*WHEREAS, the United States Congress has enacted and amended the Internal Revenue Code of 1986 (the "Code"); and*

*WHEREAS, Section 42 of the Code authorizes a Low-Income Housing Credit; and WHEREAS, Section 42(h) of the Code stipulates that the Housing Credit is subject to certain restrictions regarding the aggregate credit allowable with respect to projects located in a state; and*

*WHEREAS, the Idaho Housing and Finance Association was created by the adoption of Title 67, Chapter 62 of Idaho Code to increase the supply of housing for persons and families of low income and to encourage cooperation and coordination among private enterprise and state and local government to sponsor, build and rehabilitate residential housing for such persons and families; and*

*WHEREAS, in order to establish and continue an equitable process for the allocation of the allowable Low-Income Housing Credit for the State of Idaho, it is necessary and desirable to issue this Executive Order to provide authorization required under Section 42(h) for a State Housing Credit agency as defined in the Code;*

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

*Section 1: As used in this Executive Order:*

- a. "Annual Report" means the report required from any agency which allocates any housing credit amount to any building for any calendar year, as specified in Section 42(1)(3) of the Code.*
- b. "Code" means the Internal Revenue Code of 1986, as amended, and any related regulations.*
- c. "Executive Director" means the Executive Director of the Idaho Housing and Finance Association or such other official or officials of the Idaho Housing and Finance Association as the Executive Director shall designate to carry out the duties set forth in this Executive Order.*
- d. "Housing Credit Ceiling" means the dollar amount of State Housing Credit Ceiling applicable to any state for any calendar year in an amount based upon the applicable per capita limit and the State's population as determined in accordance with Section 42(h)(3) of the Code.*
- e. "Idaho Housing and Finance Association" or "Association" means the Idaho Housing and Finance Association, an independent public body, corporate and politic, created by the Idaho Legislature under the provisions of Chapter 62, Title 67 of the Idaho Code, as amended.*
- f. "Low-Income Housing Credit" means the federal tax credit authorized under Section 42 of the Code.*
- g. "Qualified Low-Income Housing Project" means any project for residential rental property which meets the requirements of Section 42(g) of the Code; in general, Section 42(g) of the Code pertains to the requirement that 20 percent of the units in the project be both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, or that 40 percent of the units in the project be both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.*
- h. "State" means the State of Idaho.*
- i. "State Housing Credit Agency" means the agency authorized to carry out the provisions of Section 42(h), Section 42(1) and Section 42(m) of the Code and in particular the Idaho Housing and Finance Association.*
- j. "Year" means the period January 1 through December 31, inclusive, for each calendar year beginning prior to or after January 1, 2018.*

Section 2: The Code has created a Low-Income Housing Credit which can be granted by a State Housing Credit Agency for a Qualified Low-Income Housing Project. The Code has further created a Housing Credit Ceiling which the state may use in any year to assist Qualified Low-Income Housing Projects during the allocation term.

Section 3: The state has delegated certain responsibilities and granted certain powers to the Idaho Housing and Finance Association in order that the supply of housing for persons and families of low income be increased and that coordination and cooperation among private enterprise, state and local government be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

Section 4: The state requires development of a Qualified Allocation Plan described in Section 7(a) below for the allocation of the Low-Income Housing Credit in order to ensure fair and equal opportunity by interested parties in gaining an allocation of the Housing Credit Ceiling.

Section 5: The state requires the implementation of said Qualified Allocation Plan in order to ensure the proper use of such credits for Qualified Low-Income Housing Projects.

Section 6: An Annual Report shall be submitted to the U.S. Secretary of the Treasury and to the Governor of the State of Idaho with respect to the use of the Low-Income Housing Credit for any year.

Section 7: In consideration of the requirements of the state, the Governor appoints the Idaho Housing and Finance Association to act as the State Housing Credit Agency for the state in the distribution of the Housing Credit Ceiling for any year.

The Idaho Housing and Finance Association is required to:

- a. Establish a Qualified Allocation Plan as defined and provided for in Section 42(m) of the Code for the fair distribution of the Housing Credit Ceiling for the state;
- b. Distribute the Housing Credit Ceiling for Qualified Low-Income Housing Projects in the manner required under Section 42 of the Code;
- c. Submit an Annual Report to the U.S. Secretary of the Treasury and the Governor of the State of Idaho (at such time and in such manner as the Secretary shall prescribe) specifying:
  - i. the amount of housing credit allocated to each building for such year;
  - ii. sufficient information to identify each such building and the taxpayer with respect thereto, and
  - iii. such other information as the Code, the Secretary, the Governor or the Legislature of the State of Idaho may require.

Section 8: The state pledges and agrees with the owners of any Qualified Low-Income Housing Project for which an allocation of the Housing Credit Ceiling has been granted under this Executive Order that the state will not retroactively alter the allocation of the Housing Credit Ceiling to such project except as may be required under the terms of the Code.

Section 9: No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt, or liability of the state.

Section 10: The purpose of this Executive Order is to maximize the opportunity for developing low-income housing units through the use of the Low-Income Housing Credit by providing a responsible State Housing Credit Agency within the meaning and requirements of Section 42 of the Code.

Section 11: This Executive Order shall be effective immediately and continue the designation of the Idaho Housing and Finance Association as the State Housing Tax Credit Agency and shall be applied to all allocations made with respect to any Qualified Low-Income Housing Project. This Executive Order shall continue in effect until such time as it may be repealed or superseded by operation of the state or federal law.



*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 23rd day of May, in the year of our Lord two thousand and eighteen and of the Independence of the United States of America the two hundred forty-second and of the Statehood of Idaho the one hundred twenty-eighth.*

A handwritten signature in blue ink, reading "C.L. 'Butch' Otter".

C.L. "BUTCH" OTTER  
GOVERNOR

A handwritten signature in blue ink, reading "Lawrence Denney".

LAWRENCE DENNEY  
SECRETARY OF STATE

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2018-07**

**ESTABLISHING A POLICY FOR NUCLEAR ENERGY PRODUCTION AND MANUFACTURING IN IDAHO**

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*WHEREAS, the promotion and advancement of new energy technologies, particularly advanced reactors, is an important aspect of Idaho's economic development; and*

*WHEREAS, the commercialization and deployment of advanced reactor technologies, including small modular reactors, has been identified by the federal government as a means to meet clean energy targets and as a key element in the nuclear energy research and development roadmap; and*

*WHEREAS, Idaho has the potential to become a regional and global leader in the development of advanced reactors including small modular reactor technology; and*

*WHEREAS, Idaho has the Leadership in Nuclear Energy (LINE) Commission 3.0, Idaho National Laboratory (INL), and the Center for Advanced Energy Studies (CAES) which are invaluable partners in researching nuclear energy and safety; and*

*WHEREAS, the CAES brings together the INL, Boise State University, Idaho State University, the University of Idaho, and the University of Wyoming to conduct cutting- edge energy research, educate the next-generation workforce, and partner with industry to advance innovation; and*

*WHEREAS, today students are the foundation for providing the diverse and highly skilled workforce for a growing clean energy technology sector; including the manufacturing of advanced small modular reactors, it is in the public's technological and economic interest to provide students the educational opportunity to strengthen their knowledge of the fundamentals of the energy sciences, including engineering, physics, chemistry, mathematics, and related disciplines; and*

*WHEREAS, Idaho is positioned to become a significant link in a national and worldwide network of production, manufacturing and exportation of advanced reactors, including small modular reactors; and*

*WHEREAS, Idaho needs to develop a policy framework and funding system positioning our state to become a worldwide leader in the manufacturing and commercialization of advanced reactor technology, including the fabrication and manufacturing of small modular reactors;*

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

- 1. Idaho, through the LINE Commission 3.0, will develop new public-private programs and policy partnerships nationally and internationally that promote, establish, and grow this advanced reactor industry; and*
- 2. The Idaho State Board of Education will develop career-technical education programs and training opportunities in nuclear energy and advanced reactor manufacturing; and*
- 3. Idaho will partner with CAES and the INL to develop additional research for improving advanced reactor energy technology, security and safety.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Blackfoot on this 6th day of June, in the year of our Lord two thousand and eighteen and of the Independence of the United States of America the two hundred forty- second and of the Statehood of Idaho the one hundred twenty-eighth.*

C.L. "BUTCH" OTTER  
GOVERNOR

LAWRENCE DENNEY  
SECRETARY OF STATE



# **IDAPA 01 – BOARD OF ACCOUNTANCY**

## **01.01.01 – IDAHO ACCOUNTANCY RULES**

### **DOCKET NO. 01-0101-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(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 19, 2018.

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 606 – This rule is being updated to reflect that a firm/licensee that is advised by a peer reviewer or team captain that a grade of fail will be recommended on their peer review must notify the Board within 30 days of said advisement. Amending this rule is needed to:

- 1) help protect the public, those that rely on reports issued by CPAs; and
- 2) to help firms/licensees be in compliance when issuing peer reviewable services for clients.

Rule 617 – This rule is being amended to help the Board take appropriate action to protect the public should the Board determine through the peer review process that a firm/licensee's performance or reporting practices, or both, are not or may not be in accordance with applicable professional standards.

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

This proposed rule change has no associated fee.

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

There is no negative fiscal impact or effect to the state general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Volume 18-7 pages 17 and 18](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director at (208) 334-2490.

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 26, 2018.

DATED this 27th day of July, 2018.

Kent A. Absec,  
Executive Director  
Idaho State Board of Accountancy  
3101 W. Main St., Suite 210, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0002  
Phone: (208) 334-2490 / Fax: (208) 334-2615  
E-mail: [kent.absec@jsba.idaho.gov](mailto:kent.absec@jsba.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**606. REPORTING TO THE BOARD (RULE 606).**

**01. Firm Registration Form.** All firms performing any of the services set out in Rule 602 shall annually file a firm registration report no later than September 30. The registration shall be on such form as prescribed by the Board. Firm registrations filed after September 30 are subject to penalty for non-compliance pursuant to Rule 703. (4-11-15)

**02. Peer Review Documentation.** A firm that has undergone peer review will file a copy of the peer review report, letter of comments if any, letter of response if any, and letter accepting the review report issued by the administering organization. The letter will be filed within thirty (30) days after receipt. Additionally, a firm must notify the Board within thirty (30) days of the date the peer reviewer or a team captain advises the firm that a grade of fail will be recommended. The Board reserves the right to obtain all other information relating to the peer review. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**617. PENALTY REMEDIES FOR FAILURE TO COMPLY (RULE 617).**

*A penalty as prescribed in Rule 703 shall be assessed for each act of non-compliance with Subchapter G. The annual license of the principal(s) of a non-compliant firm will not be issued until the firm complies with all requirements of Subchapter G, provided the licensee has met all licensing requirements.* (4-2-03)

**01. Corrective Actions.** The Board will take appropriate action to protect the public interest if the Board determines, through the peer review process or otherwise, that a firm's performance or reporting practices, or both, are not, or may not be, in accordance with applicable professional standards, or that the firm does not comply with peer review program requirements or with all or some of the reporting, remedial action, or fee penalty requirements of this section. The Board's actions may include, but are not limited to: ( )

**a.** The annual license of the principal(s) of a non-compliant firm will not be issued until the firm complies with all requirements of Subchapter G, provided the licensee has met all licensing requirements; ( )

**b.** Requiring the firm to develop quality control procedures to provide a reasonable assurance that similar occurrences will not occur in the future; ( )

**c.** Requiring any individual licensee who had responsibility for, or who substantially participated in, the engagement(s) to successfully complete specific courses or types of continuing education as specified by the Board; ( )

**d.** Requiring the reviewed firm to engage a Board-approved licensee to conduct a Board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the

degree or pervasiveness of nonconforming work product. The Board-approved licensee engaged by the firm shall submit a report of the findings to the Board within thirty (30) days of the completion of the services. The cost of the Board-prescribed on-site review or other Board-prescribed procedures will be at the firm's expense; ( )

**e.** Requiring the reviewed firm responsible for engagement(s) to submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a Board-approved licensee in a manner and for a duration prescribed by the Board. Prior to the firm issuing the reports on the engagements reviewed, the Board-approved licensee shall submit to a designee of the Board for the purpose of recommending that the Board accept a report of the findings, including the nature and frequency of recommended actions for the firm. The cost of the Board-approved preissuance evaluation will be at the firm's expense; ( )

**f.** Initiating an investigation to determine if additional discipline pursuant to Section 54-219, Idaho Code, is warranted. Notwithstanding the foregoing, absent an investigation the specific rating of a single peer review report is not a sufficient basis to warrant disciplinary action; or ( )

**g.** Requiring the firm pay a penalty as prescribed in Rule 703 of these rules, for each act of non-compliance with Subchapter G. ( )

**02. Solicitation and Review of Other Sources.** The Board may solicit and review licensee reports and other information covered by the reports from clients, public agencies, banks, and other users of such information. ( )

# **IDAPA 01 – BOARD OF ACCOUNTANCY**

## **01.01.01 – IDAHO ACCOUNTANCY RULES**

**DOCKET NO. 01-0101-1802**

### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(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 19, 2018.

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 108: Rule will eliminate reference to the former paper-based exam which is no longer applicable. The rule will now focus only on the applicable computer-based exam.

Rule 304: Rule will allow the agency to utilize established substantial equivalency standards of other states as established by the National Association of State Boards of Accountancy, NASBA, to help make a more efficient and less challenging process for reciprocal license applicants. This will allow the agency to gather information from the Accountancy Licensing Database electronically instead of requiring a candidate to have another jurisdiction supply the information to Idaho on a paper based medium.

Rule 502: Rule will now allow licensees with a status of CPA-Retired or CPA-Inactive to provide volunteer accounting services that they were prohibited from doing in the past or as the current rule stands. Individuals in these status' will now be able to serve on Boards of non-profit organizations such as Homeowner Associations and assist citizens in the Volunteer Income Tax Assistance, VITA, program, for example.

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

This proposed rule change has no associated fee.

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

There is no negative fiscal impact or effect to the state general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Volume 18-7, pages 19 and 20](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director at (208) 334-2490.

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 26, 2018.

DATED this 27th day of July, 2018.

Kent A. Absec  
Executive Director  
Idaho State Board of Accountancy  
3101 W. Main St., Suite 210, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0002  
Phone: (208) 334-2490 / Fax: (208) 334-2615  
E-mail: [kent.absec@jsba.idaho.gov](mailto:kent.absec@jsba.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**108. RETAKE AND GRANTING OF CREDIT (RULE 108).**

~~01. **Credit for Sections Prior to Computerization of the CPA Examination.** A candidate shall be required to pass all test sections of the CPA Examination in order to qualify for a CPA certificate and license. If, at a given sitting of the examination prior to the implementation of a computer-based CPA Examination, a candidate passes two (2) or more but not all sections, then the candidate shall be given conditional credit for those sections that the candidate has passed and need not sit for re-examination in those sections, provided that:~~ (3-16-04)

~~a. The candidate wrote all sections of the examination for which the candidate does not have credit at that sitting;~~ (3-16-04)

~~b. The candidate attained a minimum grade of fifty (50) on each section not passed at that sitting. However, if a candidate passes three (3) sections of the examination, the candidate shall be conditionally credited with the sections passed without regard to the grade in the remaining section;~~ (3-16-04)

~~c. The candidate passes the remaining sections of the CPA Examination within six (6) consecutive administrations of the CPA Examination given after the one at which the first sections were passed; and~~ (3-16-04)

~~d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate sits for all sections not yet passed.~~ (3-16-04)

~~02. **Credit for Subjects After Computerization of the CPA Examination.** Upon implementation of a computer-based CPA Examination, a candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for eighteen (18) months from the actual date the candidate took that test section(s), without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections, provided that:~~ (3-16-04)

~~a. Candidates must pass all four (4) test sections of the CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken;~~ (3-16-04)

~~b. Candidates cannot retake a failed test section(s) in the same examination window; and~~ (3-16-04)

~~c. Candidates who do not pass all four (4) sections of the CPA Examination within the rolling eighteen-month period shall lose credit for any test section(s) passed outside the eighteen-month period and that test section(s) must be retaken.~~ (3-16-04)

~~03. **Candidates with Conditional Credit Earned on the Paper Based CPA Examination.** Candidates who have conditional credit on the paper-based CPA Examination as of the launch date of the computer-based CPA Examination are subject to the following transition requirements:~~ (3-16-04)

~~a. Candidates will retain conditional credits from the paper-based sections for the corresponding~~

~~computer-based sections as follows:~~

~~(3-16-04)~~

- ~~i. "Auditing" under paper-based corresponds to "Auditing and Attestation" under computer-based;~~  
~~(3-16-04)~~
- ~~ii. "Financial Accounting and Reporting" under paper-based corresponds to "Financial Accounting and Reporting" under computer-based;~~  
~~(3-16-04)~~
- ~~iii. "Accounting and Reporting" under paper-based corresponds to "Regulation" under computer-based; and~~  
~~(3-16-04)~~
- ~~iv. "Business Law and Professional Responsibilities" under paper-based corresponds to "Business Environment and Concepts" under computer-based.~~  
~~(3-16-04)~~
- ~~b. A candidate who attained conditional credit under the paper-based examination will be allowed a transition period to complete any remaining test sections. The transition period is the maximum number of opportunities that the candidate has remaining, at the launch of the computer based examination, to complete all remaining test sections, or three (3) years from the last day of the month conditional credit was attained, whichever is exhausted first. During the candidate's transition period, any computer-based test section passed is not subject to the credit granting provisions of Subsection 108.02.~~  
~~(3-16-04)~~
- ~~e. If a candidate who attained conditional credit under the paper-based examination does not pass all remaining test sections during the transition period, conditional credits earned under the paper based examination will expire and the candidate will lose credit for the test sections earned under the paper-based examination. When paper-based credit is lost, any computer-based test section passed during the transition period becomes subject to the credit granting provisions of Subsection 108.02.~~  
~~(3-16-04)~~

**042. Extending the Term of Credit.** The Board may in particular cases extend the term of credit validity set forth in Subsections ~~108.02 and~~ 108.03<sup>1</sup> upon demonstration by the candidate that the credit was lost by reason of circumstances beyond the candidate's control. ~~(3-16-04)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**304. RECIPROCAL LICENSURE (RULE 304).**

If the practice privilege standard set out in Section 54-227, Idaho Code, is not applicable, the Board shall issue a license to an applicant provided that the applicant pays the application and licensure fees prescribed in Rule 701 and meets the one of the following: (4-2-03)

**01. Interstate Reciprocity.** The requirements for a reciprocal license under Section 54-210(2), Idaho Code; Notwithstanding anything to the contrary, an individual whose principal place of business is not in this state and who holds a valid license or permit with unrestricted practice privileges as a Certified Public Accountant from any state that the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have the qualifications substantially equivalent to this state's requirements. ~~(4-2-03)~~( )

**02. Transfer of Grades.** The requirements for transferring CPA Examination grades under Section 54-210(4), Idaho Code; or (4-2-03)

**03. International Reciprocity.** The requirements for foreign reciprocal licensure under Section 54-210(5), Idaho Code, provided that the Board shall rely on the International Qualifications Appraisal Board for evaluation of foreign credential equivalency. Such licensees shall report any investigations undertaken, or sanctions imposed, by a foreign credentialing body against the licensee's foreign credential. Suspension or revocation of, or refusal to renew, the licensee's foreign accounting credential by the foreign credentialing body, or conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country may be evidence of conduct reflecting adversely upon the licensee's fitness to retain the license and may be a basis for Board action. The Board

shall notify the appropriate foreign credentialing authorities of any sanctions imposed against the licensee. The Board shall participate in joint investigations with foreign credentialing bodies and rely on evidence supplied by such bodies in disciplinary hearings. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**502. EXCEPTIONS, EXTENSIONS, AND EXEMPTIONS (RULE 502).**

**01. Exceptions and Extensions.** The Board may make exceptions to the CPE requirements or grant extensions of time for completion of the CPE requirements, where reasons of health as certified by a medical doctor prevent compliance by the licensee, or other good cause exists. (4-2-03)

**a.** Licensees asking for exceptions or extensions under these conditions must apply annually on the reporting form for the year in which the extension or exemption is sought, and within the time period set for CPE reporting, stating the reasons for asking for such exception or extension. Any licensee failing to file a timely application shall be subject to the late fee prescribed in Rule 703, in addition to any additional proceeding that may be instituted for violation of these rules. (4-2-03)

**b.** A penalty of no more than fifty percent (50%) of the hours a licensee is short in meeting the calendar year CPE requirement may be assessed for extensions. In such cases, the licensee shall be required to complete the CPE hours and any assessed penalty no later than April 30. The penalty for non-compliance with ethics CPE is to obtain the mandatory hours of ethics CPE plus fifty percent (50%) penalty hours in ethics CPE prior to April 30. The penalty for non-compliance with state-specific ethics for Idaho is to complete the course plus fifty percent (50%) penalty hours in ethics CPE prior to April 30. (4-11-15)

**02. Exemptions for Inactive or Retired.** Licensees who elect inactive or retired status shall be exempt from any CPE requirements provided that: (3-20-04)

**a.** The licensees do not perform or offer to perform for the public services involving: (4-2-03)

**i.** The use of accounting or auditing skills including the issuance of reports on financial statements, or of management advisory, financial advisory or consulting services; or (4-2-03)

**ii.** The preparation of tax returns, or the furnishing of advice on tax matters as a licensee. Notwithstanding the foregoing, nothing in this section shall preclude a licensee who has elected inactive or retired status from providing the following volunteer, uncompensated services: tax preparation services, participating in a government-sponsored business mentoring program, serving on the board of directors for a nonprofit or governmental organization, or serving on a government-appointed advisory board. If the CPA provides the foregoing volunteer, uncompensated services, the CPA has a duty to ensure that they hold the professional competencies necessary to offer these services. (4-2-03)( )

**b.** Licensees granted such exemption must place the word “inactive” adjacent to their CPA or LPA title on any business card, letterhead or any other document or device. The Board shall issue a wall certificate for public display that indicates the license is inactive; (4-2-03)

**c.** Those individuals who are inactive and have reached fifty-five (55) years of age may substitute the word “retired” for the word “inactive”; (3-29-10)

**d.** Licensees granted the exemption as either “inactive” or “retired” shall annually pay the license renewal fee as prescribed in Rule 701; and (4-2-03)

**e.** Licensees granted the exemption must comply with a return to active status competency requirement as set out in Rule 510 before they may discontinue use of the word “inactive” or “retired” in association with their CPA or LPA title. (4-2-03)



## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.02.14 – RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

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

To incorporate by reference the 2019 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. And, to incorporate by reference the 2019 edition of the National Institute of Standards and Technology Handbook 133, Checking the Net Contents of Packaged Goods. NIST documents are available online at <https://www.nist.gov/pml/weights-and-measures/publications>.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 19-20](#).

**IDAHO CODE SECTION 22-101A STATEMENT:** This rule does regulate an activity not regulated by the federal government, because the federal government does not regulate specifications, tolerances and other technical requirements for weighing and measuring devices as defined in NIST Handbook 44. Also, the federal government does not regulate procedures for checking net contents of packaged goods as defined in NIST Handbook 133. The rule is, however consistent with national standards by the National Institute of Standards and Technology.

**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:

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kevin Merritt, Section Manager at (208) 332-8690.

DATED this 2nd day of August, 2018.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
PO Box 790  
Boise, ID 83701  
Phone; (208) 332-8500  
Fax: (208) 334-2170



**IDAPA 02 – DEPARTMENT OF AGRICULTURE**  
**02.04.08 – RULES GOVERNING GRADE A MILK AND MILK PRODUCTS**  
**DOCKET NO. 02-0408-1801**  
**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 37-303, 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 19, 2018.

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

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

To incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance; 2017 edition of the Evaluation of Milk Laboratories reference document; 2017 Methods of Making Sanitation Ratings of Milk Shippers reference document and 2017 edition of Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration reference document.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 21](#).

**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 documents that are incorporated by reference are recognized nationally as the primary reference and regulatory documents related to Grade A milk and milk products. Incorporating the most current version of the documents promotes uniformity throughout the United States dairy industry and the U.S. Food and Drug Administration.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mitchell Vermeer, Section Manager- Division of Animal Industries at (208) 332-8551. 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 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0408-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The Idaho State Department of Agriculture incorporates by reference the following documents in this chapter. Copies of these documents may be obtained at the Idaho State Department of Agriculture central office. (4-7-11)

**01. Grade “A” Pasteurized Milk Ordinance.** The Grade “A” Pasteurized Milk Ordinance, 2015~~7~~ revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, except the bacterial limit standard and the somatic cell count standard in Section 7 of the document. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>. (~~3-29-17~~)( )

**02. Evaluation of Milk Laboratories.** The Evaluation of Milk Laboratories, 2015~~7~~ revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM615021.pdf>. (~~3-29-17~~)( )

**03. Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures.** The Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures, 2015~~7~~ revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM600123.pdf>. (~~3-29-17~~)( )

**04. Interstate Milk Shipments.** The Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2015~~7~~ revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM594813.pdf>. (~~3-29-17~~)( )

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.09 – RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

DOCKET NO. 02-0409-1801

#### 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 37-506 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 19, 2018.

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

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

This rule change is a result of a joint petition received from the Milk Producers of Idaho, Idaho Dairymen's Association and the Idaho Milk Processors Association to clarify language in the rule regarding the definition of terms, sample tolerance standards, enforcement protocols and the recertification process for labs that fail to meet performance standards.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 21-22](#). Negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 18, 2018. There were extensive comments received from the meeting attendees as well as written comments entered into the record that were taken into consideration when drafting this proposed rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0409-1801  
(Only Those Sections With Amendments Are Shown.)

**008. DEFINITIONS.**

The following definitions shall apply in the interpretation and the enforcement of this chapter: (3-21-12)

**01. Abnormal Test.** A test result from a producer sample that is dissimilar from recent producer milk component or quality parameter testing results; an anomaly. (3-21-12)

**02. Accuracy Check.** A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the testing device. (3-21-12)

**03. Approved Testing Methods.** Methods approved by the director for testing milk or cream components and quality parameters when those components and parameters are used as a basis of payment. (3-21-12)

**04. Calibration.** The settings established on a testing device that will result in an average number of results that are within tolerance. (3-21-12)

**05. Clearance Test.** A sample set issued to an official laboratory, by the Department, to maintain a probationary testing license or reinstate a suspended testing license. ( )

**056. Control Samples.** Milk samples used to determine or set the calibration of the testing device. (3-21-12)

**067. Component Testing.** An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. (3-21-12)

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

**089. Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-21-12)

**109. Detailed Pricing Description.** The method used by the purchaser of milk or cream as the criteria for determining the price paid. (3-21-12)

**101. Milk Component or Component.** A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. (3-21-12)

**172. Official Laboratory.** A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. (3-21-12)

**123. Outlier.** A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. (3-21-12)

**134. Pay Records.** Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. (3-21-12)

**145. Performance Error.** The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by the testing device. (3-21-12)

~~156.~~ **Person.** An individual, association, partnership, firm, joint stock company, private company, or legal entity, which is recognized by law as the subject of rights and duties. (3-21-12)

~~167.~~ **Producer.** A dairy farm permitted by the department to sell milk for human consumption. (3-21-12)

~~178.~~ **Processor.** A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. (3-21-12)

~~189.~~ **Quality Parameter.** The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. (3-21-12)

~~20.~~ **Rolling Group of Thirteen (13).** A series of thirteen (13) consecutive sample testing dates where the lab performance error of each biweekly component test is averaged together to represent the long term accuracy of the lab. To be considered a valid testing date, a lab must evaluate and provide results on no less than nine (9) component samples from each round of testing. ( )

~~219.~~ **Testing Device.** The equipment used to determine the percentage of milk or cream components. (3-21-12)

~~22.~~ **Sample Set.** A group of not less than nine (9) milk samples issued by the Department to each official laboratory to evaluate component testing accuracy. ( )

~~203.~~ **Tolerance.** The allowable plus and allowable minus variances from zero (0) when conducting component testing. For purposes of this rule, the variances shall be within plus or minus forty-four one-thousandths percent (.044%) for milkfat or protein and within plus or minus eighty-four one-thousandths percent (.084%) for total solids or solids nonfat, except that regulatory sample tolerances are those set forth in Section 302 of this rule. The acceptable performance error from the control values of each sample set as determined by the sample provider. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. SAMPLE INTEGRITY.**

Milk or cream samples must be handled, stored, and shipped in a manner that maintains the integrity of the samples. Samples must be maintained in a temperature range of thirty-three degrees (33°) to forty-five degrees (45°) Fahrenheit (zero point fifty-five hundredths degrees (0.55°) to seven point twenty-two hundredths degrees (7.22°) Celsius). (3-21-12)( )

**121. DAILY PERFORMANCE CHECKS.**

All testing devices must be subjected to a daily performance check before each day's testing, in accordance with the standards set by the testing device manufacturer, or as set forth in this section. (3-21-12)

**01. Daily Performance Check Samples.** (3-21-12)

**a.** Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. (3-21-12)

**b.** Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. (3-21-12)

**c.** Requirements. The control samples must comply with the requirements set forth in Sections ~~103 and 104~~ 111 of this rule and fall within the component ranges typically found in the samples to be tested. (3-21-12)( )

**02. Procedure.** To conduct a daily performance check, the official laboratory must test a set of daily performance check samples. Based on the daily performance check, the official laboratory must do the following: (3-21-12)

**a.** Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content as measured by the testing device; and (3-21-12)

**b.** Calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set. (3-21-12)

**03. Calibration Based On Daily Performance Check.** If the mean difference calculated on a daily performance check exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat, the testing device shall not be used until it is recalibrated in accordance with Section 111. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. REGULATORY SAMPLES.**

**01. Samples ~~Set~~.** (~~3-21-12~~)(    )

**a.** The department will provide ~~a minimum of nine (9)~~ samples ~~sets~~ to ~~an~~ official laboratory ~~ies~~, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results. (~~3-21-12~~)(    )

**b.** The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary. (3-21-12)

**c.** The official laboratory must immediately process the samples, while being observed by a department employee or agent, for those components used by the processor or procurer as a basis of payment. (3-21-12)

**d.** The official laboratory must evaluate the sample set using identical control standards and device settings which are used to routinely evaluate Idaho producer milk components for basis of payment. (    )

**d.e.** If the official laboratory is unable to process the samples due to maintenance or mechanical issues, the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay, the department may obtain and deliver an additional set of regulatory samples. (3-21-12)

**02. Regulatory Sample Results.** The regulatory sample results will be compiled ~~by the department~~ and evaluated by the department in rolling groups of thirteen (13) ~~test results~~. (~~3-21-12~~)(    )

**03. Outliers.** Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. (3-21-12)

**04. Regulatory Sample Tolerances.** Each group of rolling thirteen (13) ~~test results~~ average shall be within the following tolerances for those components used as a basis of payment by the processor or procurer: (~~3-21-12~~)(    )

- a. Plus or minus ~~thirty-three thousandths~~ two hundredths percent (.033~~2~~%) for milkfat and protein. ~~(3-21-12)~~(    )
- b. ~~Plus or minus thirty-one thousandths percent (.031%) for protein.~~ ~~(3-21-12)~~
- e. Plus or minus sixty-five thousandths percent (.065%) for solids, other than milkfat or protein. (3-21-12)

**303. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.**

**01. Regulatory Sample Test Result Averages Two (2) Out of Four (4) Violation.** Whenever the average performance error of two (2) of the last four (4) regulatory sample results rolling groups of thirteen (13) exceed the tolerance for milkfat, protein, or solids as set forth in Subsection 302.04 of this rule, the Department may suspend the official laboratory's license will issue a written notice to the official laboratory. This notice shall be in effect as long as two (2) of the last four (4) rolling groups of thirteen (13) exceed the allowable tolerance for component testing. ~~(3-21-12)~~(    )

**02. Cumulative Regulatory Sample Results.** ~~When the department has accumulated a minimum of one thousand (1,000) regulatory sample results from an official laboratory, and the average of those regulatory sample results exceeds zero (0) by more than plus or minus two hundredths percent (.02%) for milkfat or protein, the department may suspend the official laboratory's license.~~ ~~(3-21-12)~~

**03. Review of Records Prior to License Suspension.** If two (2) out of four (4) of an official laboratory's regulatory sample results rolling groups of thirteen (13) average are out of tolerance pursuant to Subsection 302.04 of this rule, ~~the Department may review the records kept by the official laboratory pursuant to Section 350 of this rule. If the official laboratory is able to demonstrate through those records that it has performed all calibration and checks required under these rules, and that the results of those calibrations and checks show that the testing device is operating within the tolerances set forth in Sections 110, 111 and 130, the official laboratory may, at the department's discretion, be placed on probation for a period of two (2) weeks. The department will review the most recent thirteen (13) week average following the next regulatory samples, and if that average remains out of tolerance pursuant to Subsection 302.04 of this rule, the department may suspend the official laboratory's will evaluate the following items prior to suspending the testing~~ license. ~~(3-21-12)~~(    )

**a. Records Review.** The Department shall review records kept by the official laboratory pursuant to Section 350 of this rule. (    )

**b. Clearance Test.** The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat and sixty-five thousandths percent (.065%) other solids on all scheduled sample sets, until the official laboratory no longer exceeds the performance tolerance on two (2) out of four (4) rolling groups of thirteen (13) average. If an official laboratory does not meet these performance requirements on each component of the clearance test, the testing license shall be suspended. (    )

**c. Probation.** The Department may place an official laboratory on probation for two (2) weeks if: (    )

**i. The records demonstrate all calibration and performance checks of all testing devices were performed, as required under these rules, and are operating within the tolerances set forth in Sections 110, 111, and 130 of this rule; and** (    )

**ii. The average performance error in the clearance test sample set was within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids. Clearance test results from laboratories on probationary status shall be included in the calculation of the rolling group of thirteen (13) average.** (    )

**043. License Reinstatement.** An official laboratory may seek reinstatement of a suspended license when the official laboratory provides the department written documentation detailing the procedural corrections that



~~have been made to the testing device. The documentation must include a minimum of two (2) weeks of component testing results demonstrating that the testing device has been and will remain in tolerance. Upon receipt of that information, the department may reinstate the official laboratory's license. by completing the following: (3-21-12)( )~~

a. Written Request. The official laboratory shall provide the Department a written request for reinstatement of their testing license. The request shall include documentation detailing the procedural corrections that have been made to the testing device(s), as well as a minimum of two (2) weeks of component testing results demonstrating that the testing device(s) have been and will remain in tolerance. ( )

b. Clearance Test. The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids on a sample set issued by the Department. If the request for reinstatement does not coincide with the normal biweekly sample set issued by the Department, the official laboratory will be solely responsible for the cost of procuring and shipping the additional sample set. Clearance test results used for license reinstatement shall not be included in the calculation of the rolling group of thirteen (13) average. ( )

**054. License Revocation for Repeated Out of Tolerance Test Results.** If the regulatory sample results are repeatedly out of tolerance, the department may initiate steps to revoke the official laboratory's license to conduct component testing for three (3) months or more. (3-21-12)



## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.13 – RULES GOVERNING RAW MILK

DOCKET NO. 02-0413-1801

### 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 37-303, 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 19, 2018.

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 statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

To incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance, except those provisions establishing raw milk standards for raw milk for pasteurization.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 22](#).

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

The Pasteurized Milk Ordinance (PMO) is a State and federal requirement for all Grade A milk plants that sell for human consumption. Incorporating the most current version of the documents promotes uniformity throughout the United States dairy industry and the U.S. Food and Drug Administration.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mitchell Vermeer, Section Manager-Division of Animal Industries at (208) 332-8551. 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 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0413-1801  
(Only Those Sections With Amendments Are Shown.)

**004. INCORPORATION BY REFERENCE.**

The following document is incorporated by reference, and copies of the document may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712: The Grade A Pasteurized Milk Ordinance 2009~~17~~ Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2009~~17~~ Pasteurized Milk Ordinance”), except those provisions establishing raw milk standards for raw milk for pasteurization. This document is available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS.**

**01. Requirements.** All raw milk and raw milk products shall be produced and processed to conform with the standards listed in Subsection 010.02 of this rule. Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2009~~17~~ Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department. (4-7-11)( )

**02. Chemical, Bacteriological, and Temperature Standards.**

| RAW MILK            |   |
|---------------------|---|
| Temperature         | Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).  |
| Bacterial Limits    | Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.   |
| Coliform Limits     | Raw milk and raw milk products may not exceed twenty-five (25) per ml.  |
| Drugs               | Raw milk must test negative by a test method approved by the Department.  |
| Somatic Cell Counts | Raw milk must not exceed five hundred thousand (500,000) per ml. Goat or sheep raw milk must not exceed seven hundred and fifty thousand (750,000) per ml.  |
| Brucellosis Test    | Raw milk obtained from sheep or goats must be from animals that have tested negative on an annual brucellosis test performed by an official laboratory. Raw milk obtained from bovines must be from animals that have tested negative on the Brucellosis Ring Test performed by an official laboratory. |
| Tuberculosis Test   | All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an annual tuberculosis test.   |

(4-7-11)

**03. Commingled Milk.** Milk from commingled species must meet the somatic cell count of the most restrictive species. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. RAW MILK PERMITS.**

**01. Requirements.** It is unlawful for any person who does not possess a Raw Milk Permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption to persons other than members of the dairy farm's immediate household. (4-7-11)

**02. Obtaining a Raw Milk Permit.** Only a person who complies with these rules may receive and retain a Raw Milk Permit. Raw Milk Permits are not transferable with respect to persons or locations. Prior to the issuance of a permit each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho must comply with the following requirements: (4-7-11)

- a.** Submit to and pass a qualifying inspection conducted by the Department; (4-7-11)
- b.** Meet the applicable sanitation, construction, and procedural requirements of the 2009~~17~~<sup>17</sup> Pasteurized Milk Ordinance; (~~4-7-11~~)(    )
- c.** Meet the raw milk and raw milk products quality standards in Section 010 of these rules; (4-7-11)
- d.** Meet the tuberculosis and brucellosis standards in Section 010 of these rules; and (4-7-11)
- e.** Produce and process all raw milk and raw milk products on the same premises. (4-7-11)

**03. Inspection Frequency.** Following the issuance of a permit, the Department will inspect each Raw Milk Permit holder operation at least once every three (3) months. (4-7-11)

**04. Sanitation Requirements.** All raw milk dairy farms and raw milk plants that process raw milk or raw milk products into final containers for human consumption must meet the requirements of the 2009~~17~~<sup>17</sup> Pasteurized Milk Ordinance and Section 010 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (~~4-7-11~~)(    )

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

**030. SMALL HERD RAW MILK PERMITS.**

It is unlawful for any person with a small herd to sell raw milk and raw milk products for human consumption without a Small Herd Raw Milk Permit issued by the Department. The Small Herd Raw Milk Permit applies to raw milk and raw milk products intended for human consumption for persons other than members of the dairy farm's immediate household. (4-7-11)

**01. Obtaining a Small Herd Raw Milk Permit.** Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. The Small Herd Raw Milk Permit will indicate the physical location of the small herd and the mailing address of the owner or operator in charge of the herd's care and milk quality. Small Herd Raw Milk Permits are not transferable to another person or location. Applications for a Small Herd Raw Milk Permit may be upon a form provided by the Department. All holders of Small Herd Raw Milk Permits issued by the Department must meet the following conditions: (4-7-11)

- a.** Meet the raw milk and raw milk products quality standards as set forth in Section 010 of these rules; (4-7-11)
- b.** Meet the tuberculosis and brucellosis standards as set forth in Section 010 of these rules; (4-7-11)
- c.** Meet the applicable drug testing requirements as determined by the Department based on dairy farm drug therapy and milk quality history; and (4-7-11)

- d.** All raw milk and raw milk products must be produced and processed on the same premises. (4-7-11)
- 02. Testing Frequency.** Raw milk or raw milk products must be tested at a frequency of at least four (4) times in separate months during any consecutive six-month period. (4-7-11)
- 03. Product Quality.** Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 010 of these rules. (4-7-11)
- 04. Test Results Made Available.** A Small Herd Raw Milk Permit holder must provide raw milk and raw milk product quality tests results if requested by individuals who purchase raw milk and raw milk products. (4-7-11)
- 05. Exemption from Pasteurized Milk Ordinance.** A small herd operation that is in compliance with a Small Herd Raw Milk Permit requirements is exempt from the sanitary, construction, inspection, and operation requirements of the 20~~09~~17 Pasteurized Milk Ordinance. (~~4-7-11~~)(    )

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.04.29 – RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

IDAPA 02.04.29.330.01 states “Official laboratories shall operate in accordance with the official Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle,” 2018 Edition, as amended. The ISDA-Animal Health Lab has updated this protocol for *Trichomonas foetus* testing. Since this procedure is incorporated by reference, it should be updated. Specific changes include additional details and options for veterinarians to collect and transport samples to the laboratory. These changes will allow veterinarians to utilize more cost effective ways to submit *Trichomonas foetus* samples to the lab for testing. The new version was also rewritten to eliminate irrelevant and repetitive information.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 23](#).

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

The ISDA-Animal Health Lab has established a peer reviewed protocol to ensure Trichomoniasis testing is conducted in a very accurate manner. To ensure other labs maintain this strict standard, we have incorporated by reference our laboratory requirements. With approval by the ISDA–Division of Animal Industries, other non-ISDA labs can conduct Trichomoniasis testing in Idaho, but they are required to maintain ISDA practices outlined in the ISDA document “Protocol for *Trichomonas foetus* Diagnosis in Cattle”.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dan Salmi, (208) 332-8526.

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 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey, Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0429-1801  
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

~~01. **Incorporated Document.**~~ IDAPA 02.04.29 incorporates by reference the official 2018 Edition of Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle” which can be viewed online at <https://agri.idaho.gov/main/laboratories/animal-health-laboratories/protocol-for-trichomonas-diagnosis-in-cattle/>. ~~(4-7-11)( )~~

~~02. **Availability of Document.**~~ ~~Copies of this document may be obtained from the Idaho State Department of Agriculture.~~ ~~(3-30-07)~~

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.05.01 – RULES GOVERNING PRODUCE SAFETY

#### DOCKET NO. 02-0501-1801 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-101(3), 22-113, and 22-5404, Idaho Code.

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

The Produce Safety Rule is part of the new FDA Food Safety Modernization Act (FSMA) and establishes science-based minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. These minimum standards were developed to ensure the safe production and harvesting of produce by domestic and foreign farms. Farms that meet the criteria may be subject to on-farm inspections. ISDA was given statutory authority to conduct on-farm inspections of farms subject to the FDA Produce Safety Rule by the 2018 Legislature in House Bill No. 537.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 24–27](#).

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

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

There will be no negative fiscal impact greater than \$10,000 as a result of the changes being made, since this program will be funded with Federal dollars.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Pamela Juker, (208) 332-8671.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

## **IDAPA 02 – DEPARTMENT OF AGRICULTURE**

### **02.06.01 – RULES GOVERNING THE PURE SEED LAW**

#### **DOCKET NO. 02-0601-1801 (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 Title 22, Chapter 4, 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 19, 2018.

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:

IDAPA 02.06.01.500 through 502 list the different services and fees for seed testing. These Sections were last updated in 2006. Based on customer demands, the services offered by the lab have changed since this rule was last updated. The tests not listed on our current fee schedule are charged based on our “Miscellaneous Fees” – \$40.00/hour rate. To provide clarity to our customers on our services and prices, we propose updating our list of services.

We are not increasing any prices for any currently offered service; however charging for newly listed services will make this a fee rule.

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

The Seed Lab has updated its service list based on customer demands. The service list was last updated in 2006. Please see the attached updated list of services.

According to Title 22-418, Idaho Code, “The director of the department of agriculture may by rule set the service and license fees to be collected.”

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

There will be no negative fiscal impact on the state general fund. The proposed service fees will cover the agencies cost to perform the work.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 28-29](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dan Salmi, (208) 332-8526. 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 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey, Deputy Director  
Idaho Department of Agriculture  
Phone: (208) 332-8550 / Fax: (208) 334-2710

2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0601-1801  
 (Only Those Sections With Amendments Are Shown.)

501. SERVICE TESTING FEES -- SPECIAL TESTS.

| Special Testing Fees  |  |
|---|--|
| Test Procedures:  | Fees \$/Unit   |
| All States Noxious  | <del>\$</del> 25.00  |
| <i>Ammonia Test</i>   | <i>33.00</i>   |
| Canada:   |  |
| Purity  | <del>\$</del> 13.00 Added to purity fee  |
| Germination   | <del>\$</del> 2.50 Added to germination fee  |
| <u>Certified Grains</u>   | <u>\$13.00 Added to purity fee</u>   |
| Cold Test   | <del>\$</del> 23.50  |
| Crop & Weed Check   | <del>\$</del> 24.50  |
| <i>Cut Test</i>   | <i>22.00</i>   |
| Dormancy Percentage   | <del>\$</del> 10.00 Minimum or Dormant % found x germination fee                             |
| E.C. Norms  | <del>\$</del> 20.00  |
| <u>Ergot Check</u>  | <u>\$13.50</u>   |
| <i>Foreign Material</i>   | <i>12.00</i>   |
| <i>Grading (beans)</i>  | <i>18.00</i>   |
| <u>Hay Pellet Noxious Weed Germination (Compost/Mulch, etc.)</u>    | <u>\$18.00</u>   |
| <u>Noxious Weed Purity (Hay, Straw, etc.)</u>                       | <u>\$40</u>  |
| Identification  | <del>\$</del> 5.00 Minimum or hourly if necessary  |
| Inventory Germinations<br>(For Carryover Seed Only, when requested) | 20% Discount of listed germination fee; Available only for the months of March through July. |
| ISTA:   |  |
| Purity  | <del>\$</del> 13.00 Added to purity fee  |
| Germination   | <del>\$</del> 2.50 Added to germination fee  |
| Mixtures:   |  |
| Purity  | <del>\$</del> 12.50 Added per kind exceeding 5%  |
| Germination   | <del>\$</del> 12.50 Added per kind exceeding 5%  |
| Tetrazolium   | <del>\$</del> 18.00 Added per kind exceeding 5%  |
| Moisture Test   | <del>\$</del> 14.00  |

| Special Testing Fees   |                    |
|--|--------------------|
| Test Procedures:   | Fees \$/Unit       |
| <del>Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)</del> | <del>\$40.00</del> |
| <del>Sand Germination</del>                                  | <del>\$25.00</del> |
| Seed Count   | \$13.50            |
| <del>Pest, Disease, Soil &amp; Ergot Check</del> Soil Exam   | \$13.50            |
| Sod Quality:   |                    |
| Bentgrass  | \$66.00            |
| Bermudagrass   | \$64.00            |
| Bluegrass  | \$64.00            |
| Soil Germination   | \$23.50            |
| Species Exam   | \$24.50            |
| Undesirable Grass Species                                    | \$25.50            |

~~(3-30-06)~~( )

502. SERVICE TESTING FEES -- MISCELLANEOUS FEES.

| Miscellaneous Fees  |                               |
|---|-------------------------------|
| Type of Service:  | Fees \$/Unit                  |
| Administrative Charge per Test for Internet Access and Data Processing. | Not to exceed \$2.00 per test |
| <del>FAX</del>  | <del>\$ 3.00 per sheet</del>  |
| Hourly Charge   | \$40.00                       |
| Reports:  |                               |
| <del>Copies</del>   | <del>\$ 1.50</del>            |
| Merge Records   | \$4.00                        |
| <del>Revised</del>  | <del>\$ 7.00</del>            |
| Rush Service  | \$25.00                       |

~~(3-30-06)~~( )

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.06.02 – RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2710, 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 19, 2018.

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

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

To incorporate by reference information and updates contained in the 2019 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**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:

ISDA has incorporated the Association of American Feed Control Officials (AAFCO) Official Publication into the Rules Pertaining to the Idaho Commercial Feed Law for a number of years. The only change to the incorporation by reference section is to the date of the Official Publication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8622 or email [jared.stuart@isda.idaho.gov](mailto:jared.stuart@isda.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 26th, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0602-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

**01. The Association of American Feed Control Officials (AAFCO) Official Publication.** The Terms, Ingredient Definitions and Policies as published in the “201~~8~~<sup>9</sup> Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAFCO website at: [www.aaeco.org](http://www.aaeco.org). (~~3-28-18~~) ( )

**02. The Merck Index.** The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>. (4-7-11)

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**  
**02.06.12 – RULES PERTAINING TO THE IDAHO FERTILIZER LAW**  
**DOCKET NO. 02-0612-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

To incorporate by reference information and updates contained in the 2019 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**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 Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and federal fertilizer control officials and regulators.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8622 or email [jared.stuart@isda.idaho.gov](mailto:jared.stuart@isda.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey, Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0612-1801  
(Only Those Sections With Amendments Are Shown.)

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (4-7-11)

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.**

The Terms, Ingredient Definitions, and Policies, as published in the “2018<sup>9</sup> Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. ~~The AAPFCO Official Publication is a copyrighted publication and not available in electronic format.~~ A copy may be purchased online from the AAPFCO website at: [www.aapfco.org](http://www.aapfco.org). (3-28-18)( )

**02. The Merck Index.**

The “2006 Merck Index,” 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex>. (4-7-11)

**03. The Association of Official Agricultural Chemists (AOAC) International.**

The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: [www.EOMA.AOAC.org](http://www.EOMA.AOAC.org). A copy may be purchased online from AOAC International. (3-29-12)

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.06.41 – RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

To incorporate by reference information and updates contained in the 2019 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**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 Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the industry and all state and federal soil and plant amendments control officials and regulators.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jared Stuart Agriculture Section Manager at (208) 332-8622 or [jared.stuart@isda.idaho.gov](mailto:jared.stuart@isda.idaho.gov). Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 26, 2018.

Dated this 2nd day of August, 2018.

Brian Oakey  
Deputy Director  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8550  
Fax: (208) 334-2710

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0641-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-7-11)

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.**

The terms, ingredient definitions and policies as published in the “201~~8~~<sup>9</sup> Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. ~~The AAPFCO Official Publication is a copyrighted publication and not available in electronic format.~~ A copy may be purchased online from the AAPFCO website at: [www.aapfco.org](http://www.aapfco.org). (3-28-18)( )

**02. The Merck Index.** The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available

in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex..> (4-7-11)

**03. The Association of Official Agricultural Chemists (AOAC) International.** The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: [www.EOMA.AOAC.org](http://www.EOMA.AOAC.org). A copy may

be purchased online from AOAC International. (3-29-12)



## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.08.01 – SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD

#### DOCKET NO. 02-0801-1801

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 25-128, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by September 14, 2018.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon the conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

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

This rule is to clarify how and when the goat assessment should be assessed and turned into the Idaho Sheep and Goat Health Board by Livestock Auction Yards and Individuals. This will provide the goat assessment with its own rules instead of trying to use wool assessment rules on goats. Since goats and wool are sold very differently this rule will simplify the process.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text (if available), contact Brandy Kay, (208) 803-5084. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Sheep and Goat Health Board/IWGA web site at the following web address: [idahowoolgrowers.org](http://idahowoolgrowers.org)

Dated this 30th day of August, 2018.

Brandy Kay  
Executive Secretary  
Idaho Sheep and Goat Health Board  
112 E. 6th Street  
P.O. Box 825  
Emmett, ID 83617  
(208) 803-5084  
[brandy.kay@isda.idaho.gov](mailto:brandy.kay@isda.idaho.gov)

**IDAPA 07 – DIVISION OF BUILDING SAFETY**  
**07.01.01 – RULES GOVERNING ELECTRICAL INSPECTION TAGS**  
**DOCKET NO. 07-0101-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Many provisions in IDAPA 07.01.01 have not been updated to account for changes in technology, terminology and procedures used by the Division of Building Safety in issuing electrical permits. Further, recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology and procedures for electrical facility accounts and issuing electrical permits.

This rulemaking updates procedures and terminology for electrical facility accounts and issuing electrical permits in IDAPA 07.01.01. These updates align IDAPA 07.01.01 with technology, terminology and procedures currently used by the Division of Building Safety in issuing electrical permits and with recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 30-31](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0101-1801  
(Only Those Sections With Amendments Are Shown.)

07.01.01 – RULES GOVERNING ELECTRICAL PERMITS AND INSPECTIONS TAGS

000. LEGAL AUTHORITY.

The Idaho Electrical Board is authorized under Sections 54-1005, and 54-1006, Idaho Code, to adopt rules concerning the issuance of electrical permits and inspections tags covering electrical installations referred to in Section 54-1001, Idaho Code. (2-26-93)( )

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07.01.01, “Rules Governing Electrical Permits and Inspections Tags,” Division of Building Safety. These rules include criteria for the use of electrical inspection tags permits for electrical installations. (2-26-93)( )

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ( )

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

007. DEFINITIONS.

01. **Associated Buildings.** All buildings, structures, and fixtures used for domestic purposes and in connection with the primary or secondary residence, such as garages, sheds, barns, or shops. (2-23-94)

02. **Person.** Includes an individual, company, firm, partnership, corporation, association or other organization. ( )

008. -- 010. (RESERVED)

011. ELECTRICAL INSPECTION TAGS PERMITS.

Electrical inspection tags permits as authorized by Section 54-1005, Idaho Code, shall each bear a serial number. (4-2-08)

~~012. ELECTRICAL CONTRACTORS' INSPECTION TAGS.~~

~~Permits for electrical contractors' inspection tags installations shall be furnished by available for purchase online or at the Division of Building Safety by those legally authorized to licensed make electrical contractors upon request installations under Title 54, Chapter 10, Idaho Code. The serial numbers of such tags electrical permits shall be registered in the name of the electrical contractor permit holder to whom they are issued and they shall not be are~~

transferable only as provided in IDAPA 07.01.02, "Rules Governing Fees for Electrical Permits and Inspections," Subsection 011.16. Electrical ~~inspection tags issued to an electrical contractor~~ permits shall be used only for the electrical installations made by said electrical contractor identified in the permit application and for which said ~~electrical contractor~~ permit holder shall assume full responsibility. (4-2-08)(    )

**01. Completion of Electrical Inspection-Tag Installation.** For each electrical installation made by ~~an electrical contractor~~ a permit holder and coming under the provisions of Section 54-1001, Idaho Code, said ~~contractor~~ permit holder or his authorized representative shall complete request an electrical inspection tag application, ~~issued by~~ from the Division of Building Safety, ~~giving all pertinent information. The name of the electrical contractor shall be stated and the tag shall be signed by the electrical contractor or his authorized agent.~~ (4-2-08)(    )

**02. Posting Purchase of Electrical Inspection-Tag Permit.** ~~B~~All electrical permits shall be purchased before work is commenced, ~~the electrical contractor or his authorized representative shall place a copy of the electrical inspection tag at the location of the service switch and mail or deliver a copy to the power supplier. An application, together with the proper inspection fee as herein provided, shall be received by the Division of Building Safety within seven (7) calendar days from the time the electrical work is started.~~ Where the total cost of installation is unknown, the minimum inspection permit fee as listed in IDAPA 07.01.02, "Rules Governing Fees ~~F~~for Electrical Permits and Inspections," Subsection 011.06 of the fee schedule shall ~~accompany the tag and arrangements shall be made, in writing, with the Division of Building Safety or its authorized agent for payment of the balance of the fee paid.~~ In all cases, payment of the total inspection permit fee shall be made prior to completion of the installation and a final inspection. (4-2-08)(    )

a. The Division of Building Safety may refuse to extend credit to any ~~electrical contractor for late payment~~ person with outstanding fines, violations or ~~non-payment of any electrical inspection~~ unpaid permit fees when due. ~~In such instance, the contractor shall return all unused permits to recorded with the Division of Building Safety forthwith. No further permits will be issued to the contractor unless prepaid in cash or cash equivalent. Such contractor Permit holders will not be allowed to purchase further electrical permits unless and until all such unused permits have been returned to the Division of Building Safety, Meridian, and all outstanding fees due have been paid in full.~~ (4-2-08)(    )

b. ~~Failure to post a copy of the electrical inspection tag at the required location, or failure to submit an application of such tag and the proper inspection fee to the Division of Building Safety within seven (7) calendar days from the time the electrical installation work is commenced will result in the imposition of a double inspection fee.~~ (4-2-08)

~~e.~~ No electrical inspections shall be provided ~~without the Division of Building Safety receiving an application for a tag along with the proper fee~~ prior to the purchase of an electrical permit. (4-2-08)(    )

**03. Power Supply Company.** Pursuant to Section 54-1005, Idaho Code, a power supply company may connect and energize an electrical installation made by an electrical contractor without delay and before the installation has passed inspection if the contractor submits to the power supply company a copy of an electrical permit purchased by the contractor and the power supply company deems the connection and energization necessary to preserve life or property. The contractor shall request that the Division of Building Safety conduct an inspection on the next business day. (    )

**0132. ELECTRICAL LICENSING PERMITTING AND INSPECTION REQUIREMENTS FOR PERSONS EXEMPTION FOR HOME OWNERS AND MAINTENANCE ELECTRICIANS; INSPECTION TAG REQUIREMENTS FROM LICENSING.**

~~The licensing provisions of Title 54, Chapter 10, Idaho Code, and IDAPA 07.01.03, "Rules Governing Electrical Licensing," do not apply to the following pursuant to Section 54-1016, Idaho Code:~~ (7-1-98)

**01- Home Owner Installations.** ~~Home owners making installations on their own primary residence, secondary residence, and buildings associated with these residences that are not used for commercial purposes.~~ (4-2-08)

**02- Maintenance Electricians.** ~~Maintenance electricians employed full-time only to service, maintain,~~

~~assemble, or repair EXISTING electrical installations located on their employers' premises. (2-23-94)~~

~~03. Procedures for Inspection Tags for Exempt Home Owners. Persons exempt from licensing pursuant to Subsection 013.01 of this rule must still Section 54-1016, Idaho Code, shall secure all electrical inspection tags permits required by Section 54-1005, Idaho Code, before making any electrical installation. No electrical wiring or equipment may be concealed in any manner from access or sight until the work has been inspected and approved for cover by the electrical inspector. A final inspection shall be made upon the completion of all electrical work. The procedure for obtaining inspection tags electrical permits follows: (4-2-08)(\_\_\_\_)~~

~~01. Electrical Permit. Any exempt person shall obtain an application form electrical permit from the Division of Building Safety, either online or at its Meridian main office or at designated locations. The application form shall be properly completed, signed, and forwarded to the Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, Pocatello or Coeur d'Alene satellite offices with the proper inspection permit fee as provided for in these rules. (4-2-08)(\_\_\_\_)~~

~~b. Upon receipt of the properly completed application together with the proper inspection fee, the Division of Building Safety shall immediately issue an electrical inspection tag for the electrical installation designated in the application. (4-2-08)~~

~~e. A copy of an electrical inspection tag shall be retained by the Division of Building Safety. A copy of an electrical inspection tag shall be forwarded to the applicant and shall be placed on the location of the service, and a copy of an electrical inspection tag shall be forwarded to the state electrical inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (4-2-08)~~

~~02. Notice to Power Supplier. A copy of an electrical inspection tag shall be forwarded or delivered to the power supplier by the Division of Building Safety shall provide notice to the power supplier to connect installations requiring energization once an installation has passed inspection. (4-2-08)(\_\_\_\_)~~

**0143. ELECTRICAL PERMIT AND INSPECTION TAG REQUIREMENTS FOR INDUSTRIAL FACILITY ACCOUNTS.**

~~Companies, firms, associations, or corporations An electrical facility employer licensee, as defined by Section 54-1003A, Idaho Code, who uses licensed or registered employees to make electrical installations coming under the provisions of Section 54-1001, Idaho Code, on the licensee's own premises, must establish an Industrial Account with shall obtain a facility account license and purchase electrical permits from the Division of Building Safety and secure electrical inspection tags by making application to the Division of Building Safety with the proper permit fee as provided in IDAPA 07.01.02, "Rules Governing Fees for Electrical Permits and Inspections, Section 011. Employees performing non-maintenance electrical installations on an Industrial Account must under a facility account shall be licensed electrical journeymen or master electricians or registered electrical apprentices under the constant on-the-job supervision of a licensed journeyman or master electrician as provided by Section 54-1002(2) in Title 54, Chapter 10, Idaho Code. One (1) properly licensed employee journeyman or master electrician shall be designated the supervising journeyman electrician for the Industrial facility Account with the Division of Building Safety. Individuals employed as maintenance electricians may only perform maintenance electrical installations in accordance with Section 54-1016, Idaho Code. (4-2-08)(\_\_\_\_)~~

~~01. Application Forms. The application form shall be properly completed, signed by the property owner or agent of the company, firm, association, or corporation, and forwarded to the Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, with the proper inspection fee as hereinafter provided. (4-2-08)~~

~~02. Posting of Electrical Inspection Tag. Upon receipt of a properly completed application from a property owner, company, firm, association, or corporation for an electrical inspection tag, together with the proper inspection fee, the Division of Building Safety shall immediately issue an electrical inspection tag for the electrical installations designated in the application. A copy of an electrical inspection tag shall be retained by the Division of Building Safety. A copy of an electrical inspection tag shall be forwarded to the applicant and shall be placed at the location of the service switch. A copy of an electrical inspection tag shall be forwarded or delivered to the power supplier, and a copy shall be forwarded to the state electrical inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (4-2-08)~~

~~03. **Power Supply Company.** In the event the power supplier deems it necessary to energize an electrical installation without delay to preserve life or property, the power supply company may accept the application properly completed and signed, with the proper inspection fee attached, in lieu of the electrical inspection tag required by Section 54-1004, Idaho Code, provided the power supply company or its authorized agent shall assume the responsibility of forwarding the application and inspection fee to the Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642. The Division of Building Safety shall, upon request, furnish application forms and self-addressed envelopes to power supply companies operating within the state of Idaho. (4-2-08)~~

**0154. TEMPORARIES INSTALLATIONS CONNECTED PRIOR TO INSPECTION.**

~~Temporaries~~ Only a licensed electrical contractor may have a power supply company connect and energize a temporary service for construction may be energized by power suppliers prior to an inspection being performed. Any contractor energizing a temporary service prior to inspection shall assume full responsibility for the installation of the temporary service. A power supply company may only connect and energize a temporary service upon receipt of a copy of an inspection tag electrical permit purchased from the Division of Building Safety. (4-2-08)( )

~~0165.~~ -- 999. (RESERVED)

**IDAPA 07 – DIVISION OF BUILDING SAFETY**  
**07.01.02 – RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS**  
**DOCKET NO. 07-0102-1801 (FEE RULE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Many provisions in IDAPA 07.01.02 have not been updated to account for changes in technology, terminology and procedures used by the Division of Building Safety in issuing electrical permits. Further, recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology and procedures for issuing electrical permits.

This rulemaking updates procedures and terminology for issuing electrical permits in IDAPA 07.01.02. These updates align IDAPA 07.01.02 with technology, terminology and procedures currently used by the Division of Building Safety in issuing electrical permits and with recently passed amendments to Title 54, Chapter 10, Idaho Code. This rulemaking also allows and adds a fee for transferring electrical permits.

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

This rulemaking allows for and adds a fee of forty-five dollars (\$45) for transferring electrical permits. The imposition of this fee is authorized by Section 54-1006, Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 32-33](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150 / Fax: (877) 810-2840



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0102-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**IDAPA 07**  
**TITLE 01**  
**CHAPTER 02**

**07.01.02 – RULES GOVERNING FEES FOR ELECTRICAL PERMITS AND INSPECTIONS**

**(BREAK IN CONTINUITY OF SECTIONS)**

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 07.01.02, “Rules Governing Fees for Electrical Permits and Inspections,” Division of Building Safety. These rules include criteria for the fees to be charged for permits and inspections of electrical systems. ~~(2-26-93)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

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

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**007. DEFINITIONS.**

**01. Person.** Includes an individual, company, firm, partnership, corporation, association, or other organization. ( )

**0048. -- 010. (RESERVED)**

**011. FEES FOR ELECTRICAL PERMITS AND INSPECTIONS.**

Electrical ~~inspection permit~~ fees are to cover the cost of electrical inspections as provided by Section 54-1005, Idaho Code; any person, ~~partnership, company, firm, association, or corporation~~ making an electrical installation coming under the provisions of Section 54-1001, Idaho Code, shall pay to the ~~Electrical Bureau an inspection~~ Division of Building Safety a permit fee as provided in the following schedule. The type of electrical permit a person may purchase shall be limited to the scope of work for which the person is licensed ~~(1-14-87)~~( )



**01. Temporary Construction Services (Temporary Power) Permit.** To be installed for construction purposes only, for a period not to exceed one (1) year: ~~(3-18-99)~~( )

a. Two hundred (200) amp or less, one (1) location: sixty-five dollars (\$65). (3-26-08)

b. All others shall be calculated using Subsection 011.06, Other Installations\* (Including Industrial and Commercial) Permit, of these rules. ~~(3-18-99)~~( )

**02. New Residential—~~Single Family Dwelling~~.** (Includes ~~all~~ associated buildings with wiring being constructed on each property.)

| <b>New <u>Residential</u> - <u>Single One-Family Dwellings</u></b>     |  |
|--|--|
| Up to 1,500 square feet of living space                                | - \$130  |
| 1,501 to 2,500 square feet of living space                             | - \$195  |
| 2,501 to 3,500 square feet of living space                             | - \$260  |
| 3,501 to 4,500 square feet of living space                             | - \$325  |
| Over 4,500 square feet of living space                                 | - \$325 plus \$65 for each additional 1,000 square feet or portion thereof |
| <b>New <u>Residential</u> - <u>Two- and Multi-Family Dwellings</u></b> |  |
| <del>Duplex Apartment</del> <u>Two-family dwellings</u>                | - \$260  |
| <del>Three (3) or more m</del><br><u>Multi-family units dwellings</u>  | - \$130 per building plus \$65 per unit                                    |

~~(4-9-09)~~( )

a. Existing residential dwelling unit permit: sixty-five dollars (\$65) plus ten dollars (\$10) for each additional branch circuit up to the maximum of the corresponding square footage of the residential building dwelling unit. ~~(3-26-08)~~( )

b. Residential Dwelling unit spas, hot tubs, hydro massage tubs, and swimming pools permit: sixty-five dollars (\$65) for each trip to inspect. (For all ~~Other than residential installations of spas, hot tubs, hydro massage tubs, and swimming pools~~, use Subsection 011.06, Other Installations\* (Including Industrial and Commercial) Permit, of these rules.) ~~(3-26-08)~~( )

**03. Residential Electric Space Heating and Air Conditioning.** When not part of a new residential construction permit, or heat/ventilating/air conditioning permit with no additional wiring: sixty-five dollars (\$65). (3-26-08)

**04. Domestic Water Pumps Permit.** See Subsection 011.076 - Pumps\* (Water, Domestic Water, Irrigation, Sewage) -- Each Motor Permit, of these rules. ~~(3-18-99)~~( )

**05. Mobile/Manufactured Homes Permit.** Sixty-five dollars (\$65) basic fee plus ten dollars (\$10) for each additional circuit. ~~(3-26-08)~~

~~ff~~ Mobile home and RV parks for distribution wiring including pedestal, service conductors and lot supply to individual units come under Subsection 011.06, Other Installations\* (Including Industrial and Commercial) Permit, of these rules. ~~(3-18-99)~~( )

**06. Other Installations\* (Including Industrial and Commercial) Permit.** The inspection permit fees listed in this section shall apply to any and all electrical installations not specifically mentioned elsewhere in this schedule. The electrical cost shall be the cost to the owner of all labor charges and all other costs that are incurred in

order to complete the installation of any and all electrical wiring and equipment installed as part of the electrical system, factory assembled industrial machinery to be operated by electrical energy shall not be included in calculating these fees. ~~(3-26-08)~~( )

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

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

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

**d.** All fees calculated under this schedule must be calculated on the total wiring cost of the job, and this figure must be shown on the permit. The inspection permit fees listed in this Subsection shall apply to any and all electrical installations not specifically mentioned elsewhere in this schedule. The wiring cost shall be the cost to the owner of all labor charges and all wiring materials and equipment installed as part of the wiring system. When labor is performed by the owner, such labor cost shall be based upon the market value of said labor and used or reused materials shall be based at fifty percent (50%) of the column 3 pricing as published by Trade Service Publication or National Price Service Pricing or the actual cost, whichever is greater. For all owner-supplied, factory assembled electrical infrastructural equipment to be installed, the inspection will be based on one-half of one percent (.5%) of total cost of the equipment OR an hourly rate of one hundred thirty dollars (\$130) for the first hour of each inspection and sixty-five dollars (\$65) for each subsequent hour. Factory assembled machinery to be operated by electrical energy shall not be included when calculating these fees. ~~(3-26-08)~~( )

**e.** Small work not exceeding two hundred dollars (\$200) in cost and not involving a change in service connections: ten dollars (\$10). (3-30-06)

**07. Pumps (Water, Domestic Water, Irrigation, Sewage) -- Each Motor Permit.**

|  |   |       |
|--|---|-------|
| To 25 HP   | - | \$65  |
| 26 to 200 HP   | - | \$95  |
| Over 200 HP  | - | \$130 |
| <u>For P</u> phase inverters and roto phase equipment, use Subsection 011.06, in addition to the pump motor fee. |   |       |

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

**08. Electrically-Driven Irrigation Machine Permit.** Center Pivot: sixty-five dollars (\$65) plus ten dollars (\$10) per tower or drive motor. Other types: sixty-five dollars (\$65) plus ten dollars (\$10) per motor. (Note: No additional fee required for underground feeder). ~~(3-26-08)~~( )

**09. Electric Signs and Outline Lighting Permit.** Electric signs: sixty-five dollars (\$65) per sign; Outline lighting: sixty-five dollars (\$65) per each occupancy. ~~(3-26-08)~~( )

**10. Requested Inspections Permit.** A base fee of sixty-five dollars (\$65) plus an additional sixty-five dollars (\$65) for each hour, or portion thereof, in excess of one (1) hour including travel time. Out-of-state travel expenses shall be paid by the requesting party. ~~(3-26-08)~~( )

**11. Additional Fees and Reinspection Fees.** A base fee of sixty-five dollars (\$65) plus an additional sixty-five dollars (\$65) for each additional hour, or portion thereof, in excess of one (1) hour including travel time, shall also be paid before approval of the installation if the following services are necessary: (3-26-08)

**a.** Trips to inspect when the ~~submitter of the~~ permit holder had given notice to the inspector that the work is ready for inspection when it was not, ~~or if~~. (1-14-87)( )

**b.** ~~Trips to inspect when the submitter permit holder has not clearly or correctly given the location of the installation either by directions, or maps, coordinates, or correct address and posting a copy of the permit at the service or other conspicuous location on the property or if the inspector cannot gain access to make the inspection.~~ (1-14-87)( )

~~**c.**~~ Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. (1-14-87)

~~**d.**~~ Each trip necessary to remove a red tag from the jobsite. (1-14-87)

~~**e.**~~ ~~When~~ Trips to conduct a reinspection because corrections have not been made in the prescribed time, unless an extension has been requested and granted. (1-14-87)( )

~~**e12.**~~ ~~No permit.~~ — Failure to ~~post or send~~ purchase an electrical permit ~~and required fee in the prescribed time will, at the discretion of the Division of Building Safety~~ before work is commenced, may result in the assessment imposition of a double permit fee. (3-18-99)( )

**123.** **Plan Check Fee.** Sixty-five dollars (\$65) minimum for one (1) hour or less. Over one (1) hour: sixty-five dollars (\$65) plus sixty-five dollars (\$65) for each hour, or portion thereof, in excess of one (1) hour. (3-26-08)

**134.** **Fees for Temporary Amusement/Industry Electrical Inspections.** Each time a ride, concession, or generator is set up: sixty-five dollars (\$65) base fee plus ten dollars (\$10) for each ride, concession, or generator. (3-26-08)

**145.** **Expiration of Permits.** Every permit issued by the Electrical Bureau shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of such permit or if the work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty (180) days. A permit may be renewed for an additional year upon receipt of Bureau approval and sixty-five dollars (\$65) renewal fee. (3-26-08)

**16.** **Transferring a Permit.** An electrical permit may be transferred to another eligible party if such party provides to the Division of Building Safety written authorization signed and notarized by the original permit holder consenting to the transfer itself and assignment of all the responsibilities and conditions incorporated into the original permit issuance. A permit may be transferred to the owner of the property on which the electrical work is to be performed and for which the permit was issued, or such owner's designated legal agent, in cases where such owner has terminated his legal relationship with the electrical contractor who originally obtained the permit. An administrative fee in the amount of forty-five dollars (\$45) for the transfer of the permit shall be assessed by the Division of Building Safety. ( )

**17.** **Refunds of Permits.** The administrator of the Division of Building Safety may authorize a refund for any permit fee paid on the following bases: ( )

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

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

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

### **07.01.03 – RULES OF ELECTRICAL LICENSING AND REGISTRATION – GENERAL**

**DOCKET NO. 07-0103-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

IDAPA 07.01.03.012.02 presumes electrical contractors to be in violation of the law for employing “more than two (2) apprentice electricians for each licensed journeyman electrician employed.” IDAPA 07.01.11.011.04 imposes a civil penalty on contractors for such violations. Because of these provisions, a contractor could receive a civil penalty simply for employing more than two (2) apprentices for each journeyman employed.

This rulemaking makes contractors liable under IDAPA 07.01.03.012.02 and IDAPA 07.01.11.011.04 only if one (1) journeyman employed by the contractor supervises more than two (2) apprentices employed by the contractor.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018 Idaho Administrative Bulletin, [Vol. 18-4, pages 12-13](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney  
Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0103-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**012. APPRENTICE ELECTRICIAN.**

**01. Requirements for Apprentice Electrician. (5-3-03)**

**a.** A person wishing to become an apprentice electrician shall register with the Division of Building Safety prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. Each apprentice shall register for a period of five (5) years and pay the applicable fee. During the period of registration an apprentice must annually complete a minimum of one hundred forty-four (144) hours of an organized sequence of instruction in technical subjects related to the electrical trade as approved by the Idaho Electrical Board and the Idaho State Board for Professional and Technical Education until a certificate of achievement is earned from the vocational institution attended. Each apprentice shall obtain work experience during the period of registration as described in Paragraph 012.01.b. of these rules and provide the Division with notarized letters from each employer evidencing such work to be maintained in the apprentice's file with the Division. Time toward the work requirements detailed in Paragraph 012.01.b. of these rules shall not be credited while the apprentice is inactive or not registered. (4-7-11)

**b.** In order to qualify to take the journeyman electrician examination an apprentice electrician shall furnish proof of completion of four (4) years of related instruction for electrical apprentices as approved by the Idaho Electrical Board and the Idaho State Board for Professional-Technical Education, and be required to work at least three (3) years, defined as a minimum of six thousand (6,000) hours of work experience, under the constant on-the-job supervision of a journeyman electrician. Such work experience shall include three (3) categories: (4-7-11)

- i.** Residential; (5-3-03)
- ii.** Commercial; and (5-3-03)
- iii.** Industrial installations. (5-3-03)

**c.** Successful completion of the journeyman examination does not eliminate the requirement to complete four (4) years of work experience, defined as eight thousand (8,000) hours, under the constant on-the-job supervision of a journeyman electrician in order to be issued a journeyman license. Successful completion of the Idaho state journeyman examination notwithstanding, no journeyman license shall be issued until proof of satisfaction of the requirements contained in Section 013 of these rules is furnished to the Division. (4-7-11)

**d.** Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category. The work requirements of Paragraph 012.01.b. of these rules shall not apply to an apprentice registered in an apprenticeship program approved by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. (4-7-11)

**e.** An apprentice registration shall only be renewed by the Division upon receipt of sufficient evidence demonstrating that the apprentice has successfully completed at least two (2) years of an approved sequence of instruction and worked two (2) years defined as a minimum of four thousand (4,000) hours of work experience under the constant on-the-job supervision of a journeyman electrician in the categories described in Paragraph 012.01.b. of these rules; provided however, that in no case shall an apprentice registration be renewed more than one (1) time by the Division without a recommendation from the Idaho Electrical Board to do so. An apprentice may only petition the Electrical Board for registration renewals subsequent to the first renewal. If application to the Division or petition to the Board is made pursuant to this paragraph, the Division and the Board, as applicable, shall consider whether extenuating circumstances exist which prevent the completion of the instruction or work experience requirements for renewal. (3-29-12)

f. An apprentice who has completed the required number of instructional hours and has not passed the journeyman's examination within two (2) years of completion of the required instructional training hours shall provide proof of continuation training in order to be eligible to take the journeyman exam. For the purposes of Section 012 of these rules, continuation training is defined as registration in a Board-approved fourth year apprenticeship class. (3-29-12)

**02. Direct Supervision.** It shall be the responsibility of the employing electrical contractor to ensure that ~~the~~ apprentices performs electrical work only under the constant on-the-job supervision of a journeyman electrician. (3-29-12)( )

**a. Journeyman to Apprentice Ratio.** One (1) journeyman shall not supervise more than two (2) apprentices. ( )

**b.** Any contractor ~~who employs more than two (2) violating the journeyman to apprentice electricians for each licensed journeyman electrician employed ratio~~ is presumed to be in violation of the direct supervision requirements of Section 54-1010, Idaho Code, and of the constant on-the-job supervision requirement of Section 54-1003A, Idaho Code. ~~This presumption~~ **The journeyman to apprentice ratio** may be ~~rebutted~~ **adjusted on a case-by-case basis** by a showing by ~~the a~~ contractor ~~that of~~ special circumstances ~~exist,~~ which are peculiar to the work done by that contractor ~~and~~ which allows for effective supervision by each journeyman electrician ~~of more than two (2) apprentice electricians. Prior to employing more than two (2) apprentice electricians for each journeyman electrician, a~~ contractor must obtain permission from the Division of Building Safety to ~~do so~~ **adjust the journeyman to apprentice ratio**. Failure to comply with this requirement will be grounds for suspension or revocation of the electrical contractor's license. ( )

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

### **07.01.03 – RULES OF ELECTRICAL LICENSING AND REGISTRATION – GENERAL**

**DOCKET NO. 07-0103-1802**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology for electrical licensing and registration.

This rulemaking updates terminology for electrical licensing and registration in IDAPA 07.01.03. These updates align the terminology in IDAPA 07.01.03 with terminology in recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 34-35](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0103-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

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

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**007. -- 009. (RESERVED)**

**010. LICENSURE HISTORY.**

An applicant for any electrical registration; ~~or license, or certificate of competency~~ who has been previously licensed as a journeyman or master electrician in any recognized jurisdiction is required upon application to the Division of Building Safety to disclose such licensure history and provide sufficient proof thereof. An applicant for any electrical registration, license, or certificate of competency who has been previously licensed as a journeyman or master electrician in any recognized jurisdiction shall not be issued an electrical apprentice registration. (4-11-15)( )

**011. LICENSE APPLICATION FORMS/APPRENTICE REGISTRATION FORMS.**

Application forms for ~~E~~lectrical ~~C~~ontractor, ~~A~~master ~~E~~lectrician, ~~J~~ourneyman ~~E~~lectrician ~~L~~icenses, ~~S~~pecialty ~~and limited E~~lectrical ~~installer L~~icenses, and registration forms for ~~A~~pprentice ~~E~~lectricians and ~~S~~pecialty ~~limited E~~lectrical ~~installer F~~trainees shall be printed and made available by the Division of Building Safety, state of Idaho. (3-29-12)( )

**01. Application Forms.** All applications for licenses and all registrations shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (4-5-00)

**02. Application Fee.** All applications for electrical licenses shall be accompanied by the fifteen dollar (\$15) application fee; apprentice and ~~specialty limited electrical installer~~ trainee registration forms shall be accompanied by the ten dollar (\$10) registration fee as provided by Section 54-1014, Idaho Code. (4-5-00)( )

**03. Application Submission.** An application for license shall be submitted to the Division of Building Safety and shall be approved by an authorized representative of the Division before any examination is given and before any license is issued. (3-29-12)

**04. Examination.** An applicant for licensure must take the required examination within ninety (90) days of the date of application, or the application shall be considered to be null and void. (4-5-00)

**05. License.** Following the approval by an authorized representative and the successful completion of the required examination, the applicant must purchase a license prior to engaging in business within the state of Idaho. Applicants who fail to purchase a license within ninety (90) days of the date of successful examination shall be required to reapply for licensure, again obtain the approval of an authorized representative, and re-examine. (4-5-00)

**06. License Period.** All original licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All license and



registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve (12) month period following the expiration date will continue to have the original license anniversary date for purposes of subsequent renewal. (3-29-10)

**IDAPA 07 – DIVISION OF BUILDING SAFETY**  
**07.01.04 – RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**  
**DOCKET NO. 07-0104-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Many provisions in IDAPA 07.01.04 have not been updated to account for changes in technology, terminology and procedures used by the Division of Building Safety for limited electrical (specialty) licensing and registration. Further, recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology and procedures for limited electrical licensing and registration.

This rulemaking updates procedures and terminology for limited electrical licensing and registration in IDAPA 07.01.04. These updates align IDAPA 07.01.04 with technology, terminology and procedures currently used by the Division of Building Safety for limited electrical licensing and registration and with recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 36-37](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney  
Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0104-1801  
(Only Those Sections With Amendments Are Shown.)

IDAPA 07  
TITLE 01  
CHAPTER 04

07.01.04 – RULES GOVERNING **LIMITED ELECTRICAL  
~~SPECIALTY~~ LICENSING **AND REGISTRATION****

**(BREAK IN CONTINUITY OF SECTIONS)**

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 07.01.04, “Rules Governing **Limited** Electrical ~~Specialty~~ Licensing **and Registration**,” Division of Building Safety. These rules set out the ~~special~~ **limited** types of electrical installations for which a ~~specialty~~ **limited electrical** license is required; the minimum experience requirements for such license; and describe the procedure for securing such license. (7-1-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

~~There are no documents that have been incorporated by reference into this rule.~~ ( )

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

~~The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642.~~ ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

~~The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records.~~ ( )

~~007.~~ -- 010. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. MINIMUM EXPERIENCE REQUIREMENTS.**

Experience gained by an individual while engaged in the practice of one (1) or more of the ~~specialties~~ **limited categories** named below shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman electrician. (11-28-77)( )

**013. ~~SPECIALTY LIMITED~~ EXPERIENCE REQUIREMENT.**

01. ~~Specialty Journeyman Electrician~~ **Limited Electrical Installer**. An applicant for a ~~specialty~~

~~journeyman electrician~~ **limited electrical installer** license must have at least two (2) years of experience, or more as specified for the individual ~~specialty category~~, with the type of installation for which the license is being applied for, in compliance with the requirements of the state in which the experience was received, or as a ~~specialty limited electrical installer~~ trainee making electrical installations in accordance with the requirements as stated herein. ~~(4-7-11)~~( )

**02. Specialty Limited Electrical Installer Trainee.** A ~~specialty limited~~ electrical ~~installer~~ trainee shall be required to work not less than two (2) years, defined as a minimum of four thousand (4,000) hours of work experience, under the constant on-the-job supervision of a ~~specialty journeyman electrician limited electrical installer~~ of the same ~~specialty limited~~ category to qualify for testing as a ~~specialty journeyman electrician limited electrical installer~~. A person wishing to become a ~~specialty limited~~ electrical ~~installer~~ trainee shall register with the Division of Building Safety for a period of three (3) years and pay the applicable fee prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. A ~~specialty limited~~ electrical ~~installer~~ trainee registration shall only be renewed by the Division upon receipt of sufficient evidence demonstrating that the trainee has worked at least one (1) year defined as a minimum of two thousand (2,000) hours of work experience under the constant on-the-job supervision of a ~~specialty journeyman electrician limited electrical installer~~; provided however, that in no case shall a ~~specialty limited~~ electrical ~~installer~~ trainee registration be renewed more than one (1) time by the Division without a recommendation from the Idaho Electrical Board to do so. A ~~specialty limited~~ electrical ~~installer~~ trainee may only petition the Electrical Board for registration renewals subsequent to the first renewal. If application to the Division or petition to the Board is made pursuant to this subsection, the Division and the Board, as applicable, shall consider whether extenuating circumstances exist which prevent the completion of the instruction or work experience requirements for renewal. Time shall not be credited while the trainee is inactive or not registered. ~~(3-29-12)~~( )

**014. ELECTRICAL ~~SPECIALTIES~~ INSTALLATIONS REQUIRING A ~~SPECIAL LIMITED ELECTRICAL INSTALLER~~ LICENSE.**

The following ~~categories of electrical installations~~ shall be considered ~~as limited~~ electrical ~~specialties installations~~, the practice of which shall require a ~~special journeyman electrician, master electrician, or limited electrical installer~~ license: ~~(4-9-79)~~( )

**01. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical.** Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor ~~or electrical contractor~~, and his installations shall be limited to this category. The holder of such ~~specialty limited~~ license may ~~not only~~ countersign a ~~limited electrical~~ contractor's license application as ~~a~~ supervising ~~journeyman except limited electrical installer~~ for work within ~~his specialty this category~~. ~~(4-9-79)~~( )

**02. Sign Electrical.** Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor ~~whose or electrical contractor, and his~~ installations shall be limited to this category. The holder of such ~~specialty limited~~ license may ~~not only~~ countersign a ~~limited electrical~~ contractor's license application as supervising ~~journeyman except limited electrical installer~~ for work within ~~his specialty this category~~. ~~(3-15-02)~~( )

**03. Manufacturing or Assembling Equipment. (4-5-00)**

**a.** A licensed ~~specialty limited electrical~~ manufacturing or assembling equipment ~~electrician installer~~ must be employed by a licensed ~~specialty limited electrical~~ manufacturing or assembling equipment contractor ~~in order to work in or electrical contractor, and his installation shall be limited to~~ this category. The holder of ~~a specialty such limited~~ license ~~in this category~~ may ~~not only~~ countersign a ~~limited electrical~~ contractor's license application as ~~a~~ supervising ~~journeyman except limited electrical installer~~ for work within this ~~specialty category~~. ~~(4-5-00)~~( )

**b.** Any person licensed pursuant to Paragraph 014.03.a. of these rules may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the

equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

c. Subsection 014.03 of these rules does not apply to a limited electrical manufacturing or assembling equipment ~~electrician~~ installer, installing electrical wiring, equipment, and apparatus in modular buildings as that term is defined in Section 39-4105, Idaho Code. Only journeyman electricians and electrical apprentices, employed by an electrical contractor, may perform such installations. (3-30-07)(    )

**04. Limited Energy Electrical License.** (9-17-85)(    )

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. (7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy limited electrical license and must be employed by a licensed limited energy ~~specialty~~ limited electrical contractor or electrical contractor. The holder of ~~a specialty~~ such limited license may only countersign a limited electrical contractor's application as a supervising ~~journeyman~~ limited electrical installer for work within ~~his specialty~~ this category. (7-1-98)(    )

**05. Irrigation Sprinkler Electrical.** Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this subsection shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed limited electrical contractor whose license is contingent upon the granting of a ~~specialty~~ limited electrical license to an employee, and ~~whose his~~ installations shall be limited to this category. The holder of ~~a specialty~~ such limited license may not countersign a limited electrical contractor's license application as supervising ~~specialty journeyman~~ limited electrical installer except for work ~~in his specialty~~ within this category. (1-1-92)(    )

**06. Well Driller and Water Pump Installer Electrical Licenses.** All ~~such~~ installations performed by individuals under this subsection shall be done in accordance with the applicable provisions of the approved National Electrical Code. ~~He~~ A license holder in this category shall be employed by a licensed well driller and water pump installer limited electrical contractor ~~whose or electrical contractor, and his~~ installations shall be limited to this category. The holder of such ~~specialty~~ limited license may ~~not only~~ countersign a limited electrical contractor's license application as supervising ~~specialty journeyman except~~ limited electrical installer for work ~~in his specialty~~ within this category. Any person currently licensed in this category may perform the following types of installations: (1-14-87)(    )

a. Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (4-6-05)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-family, two-family, or three-family residential installations. (4-11-06)

**07. Refrigeration, Heating, and Air-Conditioning Electrical Installer.** All *such* installation, maintenance, and repair performed by individuals under this subsection shall be done in accordance with applicable provisions of the National Electrical Code. ~~He~~ A license holder in this category shall be employed by a licensed limited electrical contractor whose license shall be covered by this category or electrical contractor, and his installations shall be limited to this category. The holder of such specialty limited license may ~~not only~~ countersign a limited electrical contractor's license application as a supervising ~~specialty journeyman except~~ limited electrical installer for work in ~~his specialty~~ this category. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)(    )

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three (3) phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

**08. Outside Wireman.** All *such* installation, maintenance, and repair not exempt under the provisions of Section 54-1016, Idaho Code, performed by individuals under this subsection shall be done in accordance with the applicable provisions of the National Electrical Code. ~~The licensee~~ A license holder in this category shall be employed by a licensed limited electrical contractor whose license shall be covered by this category or electrical contractor, and his installations shall be limited to this category. The holder of such specialty limited electrical license may ~~not only~~ countersign a limited electrical contractor's license application as a supervising ~~specialty journeyman except~~ limited electrical installer for work in ~~his specialty~~ this category. Applicants for this license ~~class~~ category shall provide documentation of having completed an electrical lineman apprenticeship program or similar program approved by the U.S. Department of Labor, Office of Apprenticeship. Any person currently licensed in this category may perform the following types of installations: (4-7-11)(    )

a. Overhead distribution and transmission lines in excess of six hundred (600) volts. (4-7-11)

b. Underground distribution and transmission lines in excess of six hundred (600) volts. (4-7-11)

c. Substation and switchyard construction in excess of six hundred (600) volts. (4-7-11)

**09. Solar Photovoltaic.** All *such* installation, maintenance, and repair not exempt under the provisions of Section 54-1016, Idaho Code, performed by individuals under this Subsection shall be done in accordance with the applicable provisions of the National Electrical Code. ~~The~~ A license holder in this category shall be employed by a licensed limited electrical contractor whose license shall be covered by this category or electrical contractor, and his installations shall be limited to this category. The holder of such specialty limited electrical license may ~~not only~~ countersign a limited electrical contractor's application as a supervising ~~specialty journeyman except~~ limited electrical installer for work in ~~his specialty~~ this category. Applicants for this license ~~class~~ category shall provide proof



of photovoltaic installer certification by the North American Board of Certified Energy Practitioners (NABCEP) or equivalent. Any person licensed in this category may perform the following types of installations: ~~(3-29-12)~~(\_\_\_\_)

a. Solar Photovoltaic DC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the inverter. (3-29-12)

b. Solar Photovoltaic micro-inverter/AC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the AC combiner box. (3-29-12)

**015. APPLICATIONS FOR ~~SPECIALTY LIMITED ELECTRICAL INSTALLER~~ LICENSES.**

An applications for ~~any of the above specialty~~ a ~~limited electrical installer~~ licenses may be obtained from the Division of Building Safety. The forms shall be returned with the application fee, as provided by Section 54-1014, Idaho Code, with proof of the required two (2) years of experience in the field of ~~specialty limited electrical category~~, and ~~all the~~ applications shall be signed and notarized. Upon receiving a passing grade, the applicant may remit the license fee for issuance of the license. ~~(3-29-12)~~(\_\_\_\_)

**016. LICENSURE PERIOD AND FEES.**

All original ~~specialty limited electrical~~ licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All specialty license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. ~~Specialty Limited electrical~~ licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve-month period following the expiration date will continue to have the original license anniversary date for the purposes of subsequent renewal. The license fee and renewal fee for each type of ~~specialty limited electrical~~ license shall be as provided for by Section 54-1014, Idaho Code, for other journeyman licenses. ~~(3-29-10)~~(\_\_\_\_)

**017. ~~SPECIALTY LIMITED ELECTRICAL~~ CONTRACTOR LICENSE.**

**01. Qualifications for Specialty Electrical Contractor.** Except as herein provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for a ~~specialty limited~~ electrical contractor license upon the condition that such applicant will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. The supervising ~~specialty journeyman electrician~~ ~~limited electrical installer~~ shall be available during working hours to carry out the duties of supervising ~~specialty journeyman~~ ~~limited electrical installer~~, as set forth herein. In addition, the applicant shall meet or have at least one (1) full-time employee who meets one (1) of the following criteria: ~~(3-30-01)~~(\_\_\_\_)

a. Holds a valid ~~specialty journeyman electrician~~ ~~limited electrical installer~~ license issued by the Division of Building Safety, in the same category as the ~~specialty limited electrical~~ contractor, and has held a valid ~~specialty journeyman electrician's~~ ~~limited electrical installer~~ license for a period of not less than two (2) years, during which time he was employed as a ~~specialty journeyman electrician~~ ~~limited electrical installer~~ for a minimum of four thousand (4,000) hours; ~~(3-29-12)~~(\_\_\_\_)

b. Holds a valid ~~specialty journeyman electrician~~ ~~limited electrical installer~~ license issued by the Division of Building Safety, in the same category as the ~~specialty limited electrical~~ contractor, and has at least four (4) years of experience in the ~~specialty limited~~ electrical category with a minimum of two (2) years practical experience in planning, laying out, and supervising electrical installations in ~~this specialty~~ ~~the~~ category. ~~(3-29-12)~~(\_\_\_\_)

**02. Modification to Qualifications.** Applicants for ~~specialty limited electrical~~ contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors and countersigning master, as set forth in the current ~~E~~lectrical ~~L~~aws ~~s~~tatutes and ~~R~~ules with the exception that an electrical contractor requires a master electrician to countersign as a supervising master whereas a supervising ~~specialty journeyman~~ ~~limited electrical installer~~ for a ~~specialty limited~~ electrical contractor must meet the requirements of Subsection 017.01 of these rules. ~~(4-2-08)~~(\_\_\_\_)

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

### **07.01.05 – RULES GOVERNING EXAMINATIONS**

**DOCKET NO. 07-0105-1801**

### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1003, 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology for electrical licensing and registration.

This rulemaking updates terminology for electrical licensing and registration in IDAPA 07.01.05. These updates align the terminology in IDAPA 07.01.05 with terminology in recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 38-39](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0105-1801  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

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

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**~~0047.~~ -- 010. (RESERVED)**

**011. EXAMINATIONS.**

The Electrical Board shall review and approve all versions of examinations prior to administration. (4-5-00)

**01. Frequency of Conducting of Examinations.** Examinations for all classifications under the Electrical Laws and Rules will be given a minimum of four (4) times each year in at least three (3) locations: One (1) to be in northern Idaho, one (1) to be in central Idaho, and one (1) to be in southern Idaho. The applicant will be notified in writing of the date, time, and location at which the examination will be given, following approval of the application. (4-5-00)

**02. Professional Testing Services.** In lieu of the administration by the Electrical Board of the examination for licenses pursuant to this rule, the Electrical Board may contract with a professional testing service to administer the examination and require license applicants to pay to the testing service the fee that they have set for the examination and to take such examination at the time set by such service. After taking such examination, an official copy of the test score shall be provided by the applicant to the Electrical Board before the license will be granted. If the examination is conducted in this fashion, the Electrical Board may charge and retain the application fee provided for by Section 54-1014, Idaho Code, to cover the cost of reviewing the applicant's application. (4-5-00)

**03. Required Scores.** The following scores are considered minimum for passing and are required to be achieved by the applicant prior to issuance of the appropriate license or certification.

|  |
|--|
| Journeyman Electrician - 70%   |
| <del>Specialty Journeyman Electrician</del><br><del>Limited Electrical Installer</del> - 70% |
| Electrical Contractor - 75%  |
| <del>Specialty Limited</del> Electrical Contractor - 70%                                     |
| Electrical Inspector - <del>70</del> 5%  |
| Master Electrician - 75%   |

~~(5-8-09)~~ ( )

**04. Failed Examinations.** (4-6-05)

- a.** An applicant receiving less than a passing score on a first or second examination attempt may be reexamined. (3-29-12)
- b.** Before being reexamined after failing an examination the third time, an applicant must: (4-6-05)

  - i.** Wait until the expiration of one (1) year from the date of the failed third examination; or (4-6-05)
  - ii.** Provide proof, satisfactory to the Electrical Board, of completion of a minimum of twenty-four (24) hours of Board-approved, related electrical training or continuing education since the date of the failed third examination. (4-6-05)
- c.** Before being reexamined after any further failures, an applicant for reexamination must: (4-6-05)

  - i.** Wait until the expiration of an additional one (1) year from the date of the failed examination; or (4-6-05)
  - ii.** Provide proof, satisfactory to the Electrical Board, of completion of thirty-two (32) hours of Board-approved, related electrical training or continuing education since the date of the failed examination. (4-6-05)

## IDAPA 07 – DIVISION OF BUILDING SAFETY

### 07.01.06 – RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

DOCKET NO. 07-0106-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1001, 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

NEC 2017 334.10(3) requires NM cables in structures other than one (1)-, two (2)-, and multi-family dwellings (other structures) to “be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15)-minute finish rating as identified in listings of fire-rated assemblies.” This rulemaking will clarify the Division of Building Safety’s (Division) interpretation that NM cables located in the attics and underfloor areas of other structures that are not designed to be occupied are considered concealed.

IDAPA 07.01.06.011.01.k.i. allows “[t]he use of gray HDPE water pipe rated at 250 PSI (e.g. SIDR-7 or DR-9) . . . for use as a chase” under certain circumstances. The Division has found that such pipe is not readily available. This rulemaking will allow the use of gray HDPE water pipe rated at two hundred (200) PSI, instead of two hundred fifty (250) PSI, for use as a chase under certain circumstances. Such pipe is more readily available than, substantially similar to, and will accomplish the same purpose as pipe rated at two hundred fifty (250) PSI.

This rulemaking will clarify the Division’s interpretation that cables located in the attics and underfloor areas of other structures that are not designed to be occupied are considered concealed. This rulemaking will also allow the use of gray HDPE water pipe rated at two hundred (200) PSI, instead of two hundred fifty (250) PSI, for use as a chase under certain circumstances.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 40-41](#).

**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:

National Electrical Code (NEC) 2017 Article 334.10(3) requires NM cables in structures other than one (1)-, two (2)-, and multi-family dwellings (other structures) to “be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15)-minute finish rating as identified in listings of fire-rated assemblies.” This rulemaking will clarify the Division of Building Safety’s (Division) interpretation that NM cables located in the attics and underfloor areas of other structures that are not designed to be occupied are considered concealed.

NEC Article 682.13, IDAPA 07.01.06.011.01.k.i., allows “[t]he use of gray HDPE water pipe rated at 250 PSI (e.g. SIDR-7 or DR-9) . . . for use as a chase” under certain circumstances. The Division has found that such pipe is not readily available. This rulemaking will allow the use of gray HDPE water pipe rated at two hundred (200) PSI, instead of two hundred fifty (250) PSI, for use as a chase under certain circumstances. Such pipe is more readily available than, substantially similar to, and will accomplish the same purpose as pipe rated at two hundred fifty (250) PSI.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0106-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

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

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**0047. -- 010. (RESERVED)**

**011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE.**

**01. Documents.** Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2017 Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2017, with the following amendments: (3-29-17)

**a.** Article 110.3(A) and 110.3(B) shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-18)

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

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

- d.** Article 210.8(D). Delete article 210.8(D). (3-20-14)
- e.** Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. (3-20-14)
- f.** Add a new Article 225.30(F) – One (1)- or Two (2)-Family Dwelling Unit(s). For a one (1)- or two (2)-family dwelling unit(s) with multiple feeders with conductors one aught (1/0) or larger, it shall be permissible to install not more than six (6) disconnects grouped at one (1) location where the feeders enter the building, provided that the feeder conductors originate at the same switchboard, panelboard, or overcurrent protective device location. (3-28-18)
- g.** Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-20-14)
- h.** Article 334.10(3). Delete Article 334.10(3) and replace with the following: Other structures permitted to be of Types III, IV, and V construction. Cables shall be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15)-minute finish rating as identified in listings of fire-rated assemblies. For the purpose of this section, cables located in attics and underfloor areas that are not designed to be occupied shall be considered concealed. ( )
- i.** Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (3-20-14)
- j.** Article 682.10 shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-18)
- k.** Article 682.11. Add the following exception to Article 682.11: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. (3-28-18)
- l.** Article 682.13. Add the following exceptions to Article 682.13: (3-28-18)
- i. Exception No 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater, and clearly marked at a minimum “Caution Electrical” to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the authority having jurisdiction. The use of gray HDPE water pipe rated at two hundred (250) PSI (e.g. SIDR-7 or DR-9) is suitable for use as a chase only when the following conditions are met: ~~(3-28-18)~~ ( )
- (1) When internal conductors are jacketed submersible pump cable. (3-28-18)
  - (2) When used in continuous lengths, directly buried, or secured on a shoreline above and below the water line. (3-28-18)
  - (3) When submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. (3-28-18)
- ii. Exception No 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than one quarter (.25) inches thick, such as heavy duty heat shrink or other equivalent method approved by the authority having jurisdiction. (Eg. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat)

the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. (3-28-18)

iii. Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. (3-28-18)

~~fm.~~ Article 682.14. Add the following additional exception to Article 682.14: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. (3-28-18)

~~fn.~~ Article 682.14(A). Add the following exception to Article 682.14(A): For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as “Emergency Pump Stop”, or “Emergency Stop” with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. (3-28-18)

~~fo.~~ Article 682.15. Add the following exceptions to Article 682.15: (3-28-18)

i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. (3-28-18)

ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. (3-28-18)

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

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

~~fr.~~ Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. Article 210.12 shall apply in full. Exception: In dwelling units Arc-Fault Circuit-Interrupter Protection shall only apply to all branch circuits and outlets supplying bedrooms. All other locations in dwelling units are exempt from the requirements of Article 210.12. (3-29-17)

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

**IDAPA 07 – DIVISION OF BUILDING SAFETY**  
**07.01.07 – RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS**  
**DOCKET NO. 07-0107-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1003 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 Electrical Board (Board) holds several regular meetings each year. In addition, the Board and Division of Building Safety conduct several negotiated rulemaking meetings each year. These meetings are not always well-attended by industry members. In order to get the electrical industry more involved in the meetings of the Board, the Board wants to allow licensees to obtain continuing education credit for attending meetings of the Board.

Further, IDAPA 07.01.07.011 requires journeymen and master electricians to complete twenty-four (24) hours of continuing education every three (3) years, including “eight (8) hours of code update . . . eight (8) hours of code-related training, and eight (8) hours of industry-related training.” IDAPA 07.01.07 does not define code-related programs. Additionally, industry members have expressed a desire not to be restricted to obtaining continuing education in certain categories other than code update.

This proposed rulemaking will allow licensees to obtain continuing education credit for attending meetings of the Board. This proposed rulemaking will also define code-related programs. This proposed rulemaking will also require journeymen and master electricians to obtain eight (8) hours of code update for every three (3) year cycle, but allow journeymen and master electricians to obtain the remaining sixteen (16) hours of their continuing education for every three (3) year cycle in any of the three (3) categories.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 42-43](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.



Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0107-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

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

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**007. -- 010. (RESERVED)**

**011. CONTINUING EDUCATION REQUIREMENTS.**

Journeyman and master electricians must complete at least twenty-four (24) hours of continuing education instruction in every three (3) year period between renewals of such licenses. The twenty-four (24) hours of instruction shall consist of eight (8) hours of code update covering changes included in the latest edition of the National Electrical Code, ~~eight (8)~~. The remaining sixteen (16) hours may consist of any combination of code-update training, code-related training, and eight (8) hours of or industry-related training. The Idaho Electrical Board will establish criteria for approval of instruction and instructors, and courses and instructors will be approved by the Division of Building Safety. Proof of completion of these continuing education requirements must be submitted to the Division of Building Safety prior to or with the application for license renewal by any such licensee in order to renew a journeyman or master electrician license for the code change year. ~~(4-11-15)~~ (4-11-15) ( )

**012. COURSE APPROVAL REQUIREMENTS.**

Continuing education courses for electricians must cover technical aspects of the electrical trade. For example, courses related to such as management, supervision, business practices, personal computer skills, or first aid will not be approved. Courses will be approved as either code update, code related or industry related based on the criteria as defined in this section. ~~(4-2-08)~~ (4-2-08) ( )

**01. General Course Requirements. (4-2-08)**

**a. Courses must be at least four (4) hours in length. (4-2-08)**

**b. Courses must be taught by an instructor approved by the Division of Building Safety. (4-11-15)**

**c. The presentation should be delivered orally with the assistance of power point or other means of visual media. Pre-taped video or audio shall be held to a minimum. (4-2-08)**



**d.** A course evaluation card shall be provided to all participants to evaluate course and presentation. The completed evaluation cards must be submitted to the Division of Building Safety. (4-11-15)

**e.** All programs are subject to audit by representatives of the Division of Building Safety or Idaho Electrical Board for content and quality without notice and at no charge. Course and instructor approval are subject to revocation if the minimum requirements of course content or instructor qualifications are not met. (4-2-08)

**f.** Credit will not be given to a licensee who attended a course prior to that course being approved by the Division of Building Safety. (4-2-08)

**02. Code-Update Programs.** Code-update programs must cover changes to the National Electrical Code utilizing pre-approved materials such as the NFPA-IAEI Analysis of Changes. (4-2-08)

**03. Code-Related Programs.** Code-related programs must cover portions of NFPA 70 other than changes to the National Electrical Code. ( )

**034. Industry-Related Programs.** Industry-related programs shall be technical in nature and directly related to the electrical industry. Electrical theory, application of the National Electrical Code, grounding, photovoltaic systems, programmable controllers, and residential wiring methods are examples of industry-related programs. (4-2-08)

**045. Program Approval Procedures.** (4-2-08)

**a.** Program approvals shall be effective for one (1) code cycle. Subsequent applications for the same program may incorporate by reference all or part of the original application. (4-2-08)

**b.** An application for course approval may be obtained from the Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. The application shall include: (4-11-15)

i. The title and general description of the program; (4-2-08)

ii. The name of the sponsor as it will appear on the completion certificate; (4-2-08)

iii. The address and contact person for the sponsor; (4-2-08)

iv. The names of the instructors and dates of approval by the Division of Building Safety or completed applications for the instructors; (4-2-08)

v. The hours of instruction to be presented – correspondence or on-line computer based courses must provide a minimum of twenty (20) questions to be answered by the student for each hour of credit requested for approval. For example four (4) hours of credit would require eighty (80) questions, eight (8) hours of credit would require one hundred and sixty (160) questions; (4-2-08)

vi. An outline of the program; (4-2-08)

vii. The cost of the program to the participant; (4-2-08)

viii. A schedule of classes, including locations, dates, and times; (4-2-08)

ix. A list or sample of materials to be used in the program; (4-2-08)

x. A copy of the quiz to be given to the participants, if applicable; (4-2-08)

xi. A copy or sample of the completion certificate; and (4-2-08)

xii. A copy of the evaluation card. (4-2-08)

- c. Certificates of Completion. Certificates of completion must contain the following: (4-2-08)
    - i. The date of the program; (4-2-08)
    - ii. The title of the program; (4-2-08)
    - iii. The location of the program; (4-2-08)
    - iv. The name of the sponsor; (4-2-08)
    - v. The number of hours of credit completed; (4-2-08)
    - vi. The name of the attendee; (4-2-08)
    - vii. The license number of the attendee; (4-2-08)
    - viii. The name of the instructor; and (4-2-08)
    - ix. The Idaho course approval number. (4-2-08)
  - d. Evaluation Cards. Evaluation cards or forms must be pre-addressed to the Division of Building Safety and must include the following: (4-2-08)
    - i. The date of the program; (4-2-08)
    - ii. The title of the program; (4-2-08)
    - iii. The location of the program; (4-2-08)
    - iv. The instructor's name; (4-2-08)
    - v. An evaluation of the course (for example: poor, fair, good, very good, excellent); and (4-2-08)
    - vi. An evaluation of the instructor's presentation skills. (4-2-08)
- 056. Appeals.** Appeals for courses that have been denied approval shall be submitted in writing and shall be presented to the Idaho Electrical Board within thirty (30) days for review. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) as an appeal from a final agency action in a contested case proceeding. (4-2-08)
- 067. Instructor Approval Procedures.** (4-2-08)
- a. Instructor approvals shall be effective for one (1) code cycle. (4-2-08)
  - b. An application for instructor approval may be obtained from the Division of Building Safety, 1090 E. Watertower Street, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. Documentation of the instructor qualifications must be included with the instructor application. The minimum qualification for an instructor shall be established by providing proof of one (1) of the following: (4-11-15)
    - i. Current and active master or journeyman electrician license; (4-2-08)
    - ii. An appropriate degree related to the electrical field; or (4-2-08)
    - iii. Other recognized experience or certification in the subject matter to be presented. (4-2-08)

c. Any person denied instructor approval may appeal to the Idaho Electrical Board within thirty (30) days. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) as an appeal from a final agency action in a contested case proceeding. (4-2-08)

**~~078.~~ Revocation of Approval.** (4-2-08)

a. The Idaho Electrical Board may revoke, suspend, or cancel the approval of any continuing education program or instructor if the Idaho Electrical Board determines that the program or instruction does not meet the intent of furthering the education of electricians. Grounds for revocation of approval shall include, but not be limited to: (4-2-08)

i. Failure of the instructor to substantially follow the approved course materials; (4-2-08)

ii. Failure to deliver instruction for the full amount of time approved for the course; or (4-2-08)

iii. Substantial dissatisfaction with the instructor's presentation or the content of the course or materials by the class attendees or representatives of the Division of Building Safety or Idaho Electrical Board. (4-2-08)

b. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code), as an appeal from a final agency action in a contested case proceeding. (4-2-08)

**~~089.~~ Requirements for Credit.** In order for a licensee to receive credit for attending a class, the following requirements must be met: (4-2-08)

a. The class must have prior approval by the Division of Building Safety or a state that is reciprocal with Idaho for continuing education; (4-11-15)

b. The instructors must be approved instructors for the program; (4-2-08)

c. The licensee must submit a copy of the certificate of completion to the Division of Building Safety; and (4-11-15)

d. The course provider must provide a roster of attendees to include the name, license number, and the number of hours to be credited. (4-2-08)

**10. Board and Negotiated Rulemaking Meetings.** Licensees may receive up to eight (8) hours of industry-related continuing education credits by attending eight (8) hours of board meetings or electrical negotiated rulemaking meetings. ( )

**~~091.~~ Schedule of Approved Classes.** The Division of Building Safety shall publish a list of approved classes at a minimum of once a year. This list shall be forwarded to all states that are members of the continuing education reciprocal agreement and shall be made available to any licensee via the Division of Building Safety's website or by mail. (4-11-15)

## IDAPA 07 – DIVISION OF BUILDING SAFETY

### 07.01.08 – RULES GOVERNING ELECTRICAL INSPECTION TAG APPEALS

DOCKET NO. 07-0108-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1005 and 54-1006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Many provisions in IDAPA 07.01.08 have not been updated to account for changes in technology, terminology and procedures used by the Division of Building Safety in issuing electrical permits and conducting electrical inspections. Further, recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology for conducting electrical inspections and issuing electrical permits.

This rulemaking updates procedures and terminology for and conducting electrical inspection appeals in IDAPA 07.01.08. These updates align IDAPA 07.01.08 with technology, terminology and procedures currently used by the Division of Building Safety in issuing electrical permits and conducting electrical inspections and with recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 44-45](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0108-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**IDAPA 07**  
**TITLE 01**  
**CHAPTER 08**

**07.01.08 – RULES GOVERNING ELECTRICAL INSPECTION TAG APPEALS**

**000. LEGAL AUTHORITY.**

The Idaho Electrical Board is authorized under Sections 54-1005 and 54-1006(5), Idaho Code, to adopt rules concerning the administrative appeals of electrical inspections ~~s tags~~ to the administrator of the Division of Building Safety. (7-1-98)( )

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 07.01.08, “Rules Governing Electrical Inspection ~~Tag~~ Appeals,” Division of Building Safety. The rules contained in this chapter govern the appeal of electrical inspections ~~performed tags issued~~ by the ~~Electrical Bureau~~ Division of Building Safety on electrical installations that do not meet the requirements of state law, the administrative rules promulgated by the Electrical Board, or the National Electrical Code NEPA 70 as adopted by Idaho law. (7-1-98)( )

**002. WRITTEN INTERPRETATIONS.**

This agency has no written interpretations of this chapter. The referenced code ~~may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101~~ is available at all Division of Building Safety offices. (7-1-98)( )

**003. EXEMPTION FROM ATTORNEY GENERAL’S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.**

Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, “Contested Cases,” of IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” Sections 100 through 799 do not apply to electrical inspections ~~s tag~~ appeals. (7-1-98)( )

**004. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL’S ADMINISTRATIVE PROCEDURE RULES.**

In order to protect consumers from unsafe electrical installations and to prevent unnecessary delays and increased costs in construction projects, the rules of procedure in this chapter are adopted to promote the ~~speedy~~ expedited resolution of contested cases involving electrical inspections ~~s tags~~. (7-1-98)( )

**005. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. ( )

**006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Division of Building Safety, Electrical Bureau, is in Meridian, Idaho. The office is located at 1090 E. Watertower Street, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, Electrical Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. ( )

**007. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

~~0058~~ -- 010. (RESERVED)

**011. APPEALS.**

In order to determine the suitability of materials and methods of wiring and to provide for interpretations of the provisions of the National Electrical Code NFPA 70, the creation of an electrical appeals board is hereby authorized by the administrator of the Division of Building Safety, to be composed of three (3) members of the Idaho Electrical Board, or an electrical supervisor and two (2) members of the Idaho Electrical Board, as determined and selected by the administrator upon receipt of a written notice of appeal as set forth below. (7-1-98)( )

**01. Notice of Appeal.** A person, firm, or corporation making an electrical installation subject to the provisions of Title 54, Chapter 10, Idaho Code, may appeal, to the administrator, a decision by the Electrical ~~Bureau~~ ~~chief, chief electrical inspector, Program Manager~~ or other electrical inspector, that a particular electrical installation is not in conformance with Idaho Code, these rules, or the National Electrical Code as adopted by Idaho law. An appeal must be lodged by filing a written notice of appeal with the administrator within ten (10) days of the date of issuance of a notice of ~~defects correction~~ issued pursuant to Section 54-1004, Idaho Code. The notice of appeal shall state in particular the reasons why the appellant contends that the notice of defects is incorrect. (7-1-98)( )

**02. Filing Date.** If mailed, the notice of appeal shall be considered filed as of the date of postmark. The mailing address for filing such notice of appeal shall be to the administrator, Division of Building Safety, ~~P.O. Box 83720, Boise~~ 1090 W. Watertower Street, Suite 150, Meridian, Idaho, ~~83720-0028~~ 83642. (7-1-98)( )

**03. Appeals Board.** The members of the Idaho Electrical Board and other persons appointed by the administrator to act as the appeals board, are authorized to hold hearings at the Division of Building Safety in ~~Boise~~ Meridian, Idaho, to determine the merits of an appeal filed pursuant to this rule. (7-1-98)( )

**04. Function of Appeals Board.** The members of the Idaho Electrical Board, acting as an appeals board, shall not have the authority to grant variances from the National Electrical Code; its sole function as an appeals board shall be to determine whether the materials or method of wiring utilized by the appellant meets the requirements of the National Electrical Code. (11-5-81)

**05. Appeals Hearing Fee.** An appeals hearing fee of one hundred dollars (\$100) shall be charged to an appellant for each appeal brought before the appeals board. The appeals hearing fee shall accompany the notice of appeal. When the appeal is found in favor of the appellant, the appeals hearing fee shall be returned to the appellant. (11-5-81)

**06. Conditions Disqualifying Board Member.** No Idaho Electrical Board member shall sit on an appeals board in which he or his employer, employee, business partner or any person related to him, is the appellant in the matter. or where he has a pecuniary interest in the outcome of the matter to be decided by the appeals board. (7-1-98)

**07. Rules of Evidence.** The rules of evidence for the hearing are governed by the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (11-5-81)

**08. Limitations of Appeal.** The filing of an appeal does not stay or discontinue a red tag, disconnect order, or notification to the power company not to connect or energize, in situations where the defect is of a nature so as to be an imminent threat to life or property. (11-5-81)( )

**09. Preliminary Order.** Within five (5) days of the conclusion of the administrative hearing, the appeals board shall issue a preliminary order. The preliminary order will become a final order without further notice unless reviewed by the administrator, or review is requested by any party to the inspection ~~tag~~ appeal, pursuant to the provisions of Section 67-5245, Idaho Code. When a preliminary order is reviewed by the administrator, the administrator will issue a final order pursuant to the requirements of Sections 67-5245 and 67-5246, Idaho Code. (7-1-98)( )

**10. Motions for Reconsideration.** Motions for reconsideration of the appeal board's preliminary order or of the administrator's final order are not allowed. (7-1-98)

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

### **07.01.11 – RULES GOVERNING CIVIL PENALTIES**

**DOCKET NO. 07-0111-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Recent amendments to Title 54, Chapter 10, Idaho Code, updated terminology for electrical facility accounts and electrical licensing and registration.

This rulemaking updates terminology for electrical facility accounts and electrical licensing and registration in IDAPA 07.01.11. These updates align the terminology in IDAPA 07.01.11 with terminology in recently passed amendments to Title 54, Chapter 10, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 46-47](#).

**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 Warren Wing, Electrical Program Manager, at (208) 332-7147.

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 26, 2018.

Dated this 1st day of August, 2018.

Ron Whitney, Deputy Administrator - Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840



**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0111-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**0047. -- 010. (RESERVED)**

**011. CIVIL PENALTIES.**

The following acts shall subject the violator to penalties based on the following schedule. (3-30-01)

**01. Electrical Contractor.** Except as provided by Section 54-1016, Idaho Code, any person who acts, or purports to act as an electrical contractor, as defined by Section 54-1003A, Idaho Code, without a valid Idaho state electrical contractor's license shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-01)

**02. Employees.** Any person, who knowingly employs a person who does not hold a valid Idaho state electrical license or registration as required by Section 54-1010, Idaho Code, and IDAPA 07.01.03, "Rules of Electrical Licensing and Registration," to perform electrical installations, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-01)

**03. License or Registration.** Except as provided by Section 54-1016, Idaho Code, any person performing electrical work as a journeyman electrician as defined by Section 54-1003A(2), Idaho Code, specialty electrician limited electrical installer as defined by Section 54-1003A(6), Idaho Code, apprentice electrician as defined by Section 54-1003A(3), Idaho Code, or a specialty limited electrical installer trainee as defined by Section 54-1003A(8), Idaho Code, without a valid license or registration shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (~~3-30-01~~)( )

**04. Journeyman to Apprentice Ratio.** Any electrical contractor or industrial facility account employing electricians in violation of the journeyman to apprentice ratio established by the Idaho Electrical Board shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (~~3-30-01~~)( )

**05. Supervision.** Any contractor failing to provide constant on-the-job supervision to apprentice electricians or trainees by a qualified journeyman electrician or limited electrical installer shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (~~3-30-01~~)( )

**06. Performance Outside Scope of License.** Any specialty limited electrical contractor or specialty limited electrical journeyman installer performing electrical installations, alterations or maintenance outside the scope of the specialty contractor's or installer's limited electrical license shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (~~3-30-01~~)( )

**07. Fees and Permits.** Any person failing to pay applicable fees or properly post an electrical permit shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-01)

**08. Corrections.** Any person who fails to make corrections in the time allotted in the notice on any



electrical installation as set forth in Section 54-1004, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-01)

**09. Failure to Disclose.** Any applicant for an electrical registration, license, or certificate of competency who upon request fails to disclose any required information including, but not limited to, their complete licensure history or the fact that they have been previously licensed as a journeyman or master electrician in any recognized jurisdiction, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (4-11-15)

**10. Gross Violation.** In the case of continued, repeated or gross violation of Title 54, Chapter 10, Idaho Code, or IDAPA 07.01.03, a license revocation shall be initiated for licensees under this chapter and nonlicensees shall be subject to prosecution by the appropriate jurisdiction under Idaho law. (3-30-01)

**11. Judicial Review.** Any party aggrieved by the final action of the Idaho Electrical Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-30-01)

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

### **07.10.01 – RULES GOVERNING THE DAMAGE PREVENTION BOARD DIVISION OF BUILDING SAFETY**

**DOCKET NO. 07-1001-1801**

#### **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 55-2203 and 55-2211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 Damage Prevention Board has authority under Idaho Code sections 55-2203 and 55-2211 to hear contested case appeals. The parties requesting these appeals often do not attend the appeal hearings or pay penalties imposed at significant cost to the Board and Division of Building Safety.

Idaho Code section 55-2203 requires the Board to “review complaints alleging violations . . . including, . . . inaccurate location of facilities [and] untimely location of facilities.” However, locators are not subject to civil penalties under IDAPA 07.10.01.

IDAPA 07.10.01.008 refers to underground “utility” owners in several places. However, Title 55, Chapter 22, Idaho Code, only refers to underground “facility” owners.

This rulemaking will require parties requesting appeals to pay an appeal bond of \$200 to appeal. This rulemaking will also change any reference to “underground utility owners” in IDAPA 07.10.01.008 to “underground facility owners.” Finally, this rulemaking will define locators and subject them to civil penalties.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 2, 2018 Idaho Administrative Bulletin, [Vol. 18-5, pages 51-52](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ron Whitney, Deputy Administrator - Administration, at (208) 332-7150.

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 26, 2018.

Dated this 3rd day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-1001-1801  
(Only Those Sections With Amendments Are Shown.)**

**003. ADMINISTRATIVE APPEALS.**

**01. Governing Procedural Requirements.** IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” Section 100, et seq., shall apply to contested cases, in addition to the provisions of Title 55, Chapter 22, Idaho Code. ~~(3-24-17)~~ ( )

**02. Appeal Bond.** Upon notice of the imposition of training or a civil penalty, the notified party may contest the imposition of such before the Damage Prevention Board in accordance with Section 018 of these rules. An appeal bond in the amount of two hundred dollars (\$200) shall accompany the request for hearing to contest the matter. In the case of training, the Division of Building Safety shall refund the bond if the contesting party appears at the hearing. In the case of a civil penalty, the Division shall refund any portion of the bond not used to satisfy the penalty imposed by the Board or the entire bond if the contesting party prevails at the hearing. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. DEFINITIONS.**

**01. Hand Digging.** Any excavation involving non-mechanized tools or equipment that when used properly will not damage underground facilities. Hand digging includes but is not limited to hand shovel digging, manual post hole digging, vacuum excavation, or soft digging. (3-28-18)

**02. Locator.** A person who identifies and marks the location of an underground facility owned or operated by an underground facility owner. ( )

**023. Soft Digging.** Any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation. (3-28-18)

**008. FUNDING OF BOARD ACTIVITIES.**

Each owner of an underground facility shall pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as required by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner shall be collected by the one-number notification service, and shall be payable to the board in accord with the following schedule: (3-24-17)

**01. Fee Assessed.** The fee shall be assessed on an underground facility owner for each notification issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. (3-24-17)

**02. Payment Submission.** The one-number notification service shall submit payment to the board for

all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground ~~utility~~ facility owner is received after the seventy-day (70) period, the one-number service shall include late payments in its next payment to the board. (3-24-17)(    )

**03. Notices Issued.** The one-number notification service shall also submit a detailed list of notices issued, including the facility owner's contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list shall be updated on a monthly basis to reflect the status of all past-due payments due from underground ~~utility~~ facility owners that have not been received. (3-24-17)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. CIVIL PENALTIES.**

The Idaho Damage Prevention Board is authorized under Section 55-2203(17), Idaho Code, to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section shall subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen (18) months from an earlier violation, and where facility damage has occurred. (3-28-18)

**01. Violations of Title 55, Chapter 22, Idaho Code.** The following acts shall subject a person to civil penalties: (3-28-18)

**a. Pre-marking Excavation Site.** Any person who fails to adequately pre-mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with Section 55-2205(1)(b), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**b. Notice of Excavation.** Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one-number notification service, or directly to a facility owner, as applicable within the prescribed time as required by Section 55-2205(1)(c), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**c. One-Number Notification to Facility Owner.** A one-number notification service that fails to provide notice of a scheduled excavation upon notification from an excavator shall be subject to a civil penalty. (3-28-18)

**d. Failure to Locate or Mark.** An underground facility owner, owner's agent, or locator who fails to locate or mark ~~its~~ underground facilities when responsible to do so in accordance with Section 55-2205(2), Idaho Code, or within the prescribed time provided therein, shall be subject to a civil penalty. (3-28-18)(    )

**e. Failure to Wait for Locate or Maintain Markings.** An excavator who commences excavation prior to waiting the time prescribed by Section 55-2205(2), Idaho Code, for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with Section 55-2205(2), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**f. Failure to Cease Excavation or Report Unidentified Facilities.** An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with Section 55-2205(4), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**g. Failure to Identify Facilities in Contract Documents.** Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with Section 55-2207, Idaho Code, shall be subject to a civil penalty. (3-28-18)

**h.**        **Precautions to Avoid Damage.** An excavator who does not engage in any of the activities required by Section 55-2207(2), Idaho Code, or use reasonable care to avoid damage to underground facilities shall be subject to a civil penalty. (3-28-18)

**i.**        **Reporting of Damage to Facility.** An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by Section 55-2208(1), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**j.**        **Reporting to the Board.** An excavator or underground facility owner who observes, suffers or causes damage to an underground facility or excavator downtime related to the failure of one (1) or more stakeholders to comply with the damage prevention regulations and fails to report such information to the board as required by Section 55-2208(5), Idaho Code, shall be subject to a civil penalty. (3-28-18)

**k.**        **Failure to Participate.** Any person who fails to participate or cooperate with a one-number notification service as required by Section 55-2206, Idaho Code, shall be subject to a civil penalty. (3-28-18)

**02.        Second Offense.** For the purpose of this section, a second offense shall be deemed to be any violation of Title 55, Chapter 22, Idaho Code, for which a civil penalty may be imposed in accordance with this section which occurs within eighteen (18) months of a previous violation of any provision. (3-28-18)

**03.        Multiple Violations.** Each day that a violation of Title 55, Chapter 22, Idaho Code, occurs for which a civil penalty may be imposed as provided herein shall constitute a separate offense. (3-28-18)

**04.        Judicial Review.** Any party aggrieved by the final action of the Idaho Damage Prevention Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-28-18)

**IDAPA 12 – DEPARTMENT OF FINANCE**  
**12.01.09 – RULES PURSUANT TO THE IDAHO CREDIT CODE**  
**DOCKET NO. 12-0109-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Idaho Code Section 28-46-104(1)(e).

**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 19, 2018.

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

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

The proposed rule incorporates by reference federal laws and regulations that are included within the federal Consumer Credit Protection Act and its implementing regulations.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature as it merely references incorporated federal laws and regulations.

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

Section 28-41-302, Idaho Code, defines the federal Consumer Credit Protection Act and its implementing regulations for incorporation into the Idaho Credit Code and the Rules Pursuant to the Idaho Credit Code. This proposed rule incorporates by reference the laws and regulations that are included within the federal Consumer Credit Protection Act, thereby promoting consistency in state and federal consumer financial services laws so that Idaho consumer financial service providers are not faced with an untenable requirement of complying with conflicting state and federal laws.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208) 332-8060. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 19th day of July, 2018.

Anthony Polidori  
Consumer Finance Bureau Chief  
800 Park Blvd.  
P.O. Box 83720  
Department of Finance  
Boise, ID 83720-0031  
Office: (208) 332-8060  
Fax: (208) 332-8099

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0109-1801  
(Only Those Sections With Amendments Are Shown)

**005. INCORPORATION BY REFERENCE (RULE 5).**

The “Rules Pursuant to the Idaho Credit Code.” incorporate by reference the full text of the federal Consumer Credit Protection Act, 15 U.S.C., Chapter 41, et seq., and regulations issued pursuant to that act, including the following: ( )

**01. The Truth in Lending Act.** Consumer Credit Cost Disclosure Act or “The Truth in Lending Act.” As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2019. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapI.htm>. ( )

**02. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2019. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml>. ( )

**03. Restrictions on Garnishment Act.** As set forth in 15 U.S.C. 1671, et seq., as amended to and including January 1, 2019. The Restrictions on Garnishment Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapII.htm>. ( )

**04. Credit Repair Organizations Act.** As set forth in 15 U.S.C. 1679, et seq., as amended to and including January 1, 2019. The Credit Repair Organizations Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapII-A.htm>. ( )

**05. Credit Reporting Agencies Act or “Fair Credit Reporting Act.”** As set forth in 15 U.S.C. 1681, et seq., as amended to and including January 1, 2019. The Fair Credit Reporting Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapIII.htm>. ( )

**06. Regulation V.** As set forth in 12 CFR 1022, et seq., as amended to and including January 1, 2019. Regulation V is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1022.xml>. ( )

**07. Equal Credit Opportunity Act.** As set forth in 15 U.S.C. 1691, et seq., as amended to and including January 1, 2019. The Equal Credit Opportunity Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapIV.htm>. ( )

**08. Regulation B.** As set forth in 12 CFR 1002, et seq., as amended to and including January 1, 2019. Regulation B is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1002.xml>. ( )

**09. Debt Collection Practices Act or “Fair Debt Collection Practices Act.”** As set forth in 15 U.S.C. 1692, et seq., as amended to and including January 1, 2019. The Fair Debt Collection Practices Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapV.htm>. ( )

**10. Electronic Funds Transfer Act.** As set forth in 15 U.S.C. 1693, et seq., as amended to and including January 1, 2019. The Electronic Funds Transfer Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapVI.htm>. ( )

**11. Regulation E.** As set forth in 12 CFR 1005, et seq., as amended to and including January 1, 2019. Regulation E is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR->

[2018-title12-vol8-part1005.xml](#)

( )

**12. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules.

( )

**0056. REFINANCING OF BALLOON PAYMENTS (RULE 56).**

Pursuant to the provisions of Section 28-43-307(2)(c), Idaho Code, this rule defines a class of transactions not requiring the protection of the debtor's right to refinance a balloon payment in a regulated consumer credit transaction, as otherwise provided in Section 28-43-307, Idaho Code. The creditor will not be obligated to refinance the balloon payment on the same terms if the creditor makes available to the debtor at least all of the following four (4) options: (7-1-93)

**01. Collateral Sale.** The debtor is permitted to sell the collateral, applying the proceeds to the outstanding balance owed to the creditor, and retain any excess proceeds; or (7-1-93)

**02. Collateral Return.** The debtor returns the collateral pursuant to a predetermined written agreement and is released from further liability or obligation on the balloon payment; or (7-1-93)

**03. Payment.** The debtor is permitted to pay off the balloon payment and keep the collateral; or (7-1-93)

**04. Refinance.** If creditworthy, the debtor is permitted to refinance the balloon payment with the creditor at the prevailing terms at that time. However, the interest rate on the refinancing may not exceed, by more than five (5) points, the interest rate charged on the original consumer credit transaction. (7-1-93)

**0067. -- 999. (RESERVED)**



## IDAPA 12 – DEPARTMENT OF FINANCE

### 12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-31-103(2)(b), 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

The proposed rule updates the versions of the federal laws and regulations that are incorporated by reference, as well as standards adopted by a nationally recognized organization (Truth in Lending and Regulation Z, Real Estate Settlement Procedures Act and Regulation X, and the NMLS Policy Guidebook).

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature as it merely updates references to incorporated federal laws, regulations, and standards adopted by a nationally recognized organization.

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

Section 26-31-102, Idaho Code, defines Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act for incorporation into the Idaho Residential Mortgage Practices Act and Idaho Mortgage Rules pursuant to that Act. This proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws. Furthermore, the proposed rule updates references to the NMLS Policy Guidebook, thereby promoting consistency in nationwide licensing standards for mortgage licensees.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208) 332-8060. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 19th day of July, 2018.

Anthony Polidori  
Consumer Finance Bureau Chief  
800 Park Blvd.  
P.O. Box 83720  
Department of Finance  
Boise, ID 83720-0031  
Office: (208) 332-8060  
Fax: (208) 332-8099

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1801  
(Only Those Sections With Amendments Are Shown)

**005. INCORPORATION BY REFERENCE (RULE 5).**

The “Rules Pursuant to the Idaho Residential Mortgage Practices Act,” incorporate by reference the full text of the following: (4-4-13)

**01. The Real Estate Settlement Procedures Act.** As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 201~~8~~<sup>9</sup>. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm>. ~~(3-28-18)~~( )

**02. Regulation X.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 201~~8~~<sup>9</sup>. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml>. ~~(3-28-18)~~( )

**03. The Truth in Lending Act.** As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 201~~8~~<sup>9</sup>. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm>. ~~(3-28-18)~~( )

**04. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 201~~8~~<sup>9</sup>. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml>. ~~(3-28-18)~~( )

**05. NMLS Policy Guidebook.** The Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators NMLS Policy Guidebook for Licensees, published by the Nationwide Mortgage Licensing System and Registry as of ~~July 23, 2012~~ February 2, 2018, and available at <https://mortgage.nationwidelicencingssystem.org/slr/common/policy/Pages/default.aspx>. ~~(4-4-13)~~( )

**06. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (4-4-13)

## IDAPA 12 – DEPARTMENT OF FINANCE

### 12.01.11 – RULES PURSUANT TO THE IDAHO COLLECTION AGENCY ACT

#### DOCKET NO. 12-0111-1801 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-2228(4) and 26-2248, 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 19, 2018.

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

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

The proposed rule incorporates by reference federal law (the federal Fair Debt Collection Practices Act).

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature as it merely references incorporated 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:

Section 26-2229A, Idaho Code, incorporates the provisions of the federal Fair Debt Collection Practices Act into the Idaho Collection Agency Act. This proposed rule incorporates the federal Fair Debt Collection Practices Act by reference, thereby promoting consistency in state and federal debt collection laws so that Idaho collection agency licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208) 332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 19th day of July, 2018.

Anthony Polidori  
Consumer Finance Bureau Chief  
800 Park Blvd.  
P.O. Box 83720  
Department of Finance  
Boise, ID 83720-0031  
Office: (208) 332-8060  
Fax: (208) 332-8099

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0111-1801**  
**(New Chapter)**

**IDAPA 12**  
**TITLE 01**  
**CHAPTER 11**

**12.01.11 – RULES PURSUANT TO THE IDAHO COLLECTION AGENCY ACT**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is promulgated pursuant to Sections 26-2228(4) and 26-2248, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

The title of this chapter is “Rules Pursuant to the Idaho Collection Agency Act,” which rules are administered by the Idaho Department of Finance, and may be cited as IDAPA 12.01.11. These rules interpret the Idaho Collection Agency Act, Title 26, Chapter 22, Idaho Code. ( )

**002. WRITTEN INTERPRETATIONS – AGENCY ACCESS – FILINGS (RULE 2).**

Written interpretations of these rules are available by mail from the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Idaho Department of Finance, 800 Park Boulevard, Suite 200, Boise, Idaho 83712. The telephone numbers of the agency are (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The telephone number of the facsimile machine for the Consumer Finance Bureau is (208) 332-8096. All filings with the Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and shall include an original and one (1) copy. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

Administrative appeals are not available within the agency. ( )

**004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).**

All rules contained in this chapter are public records. ( )

**005. INCORPORATION BY REFERENCE (RULE 5).**

The “Rules Pursuant to the Idaho Collection Agency Act,” incorporate by reference the full text of the following: ( )

**01. Fair Debt Collection Practices Act.** As set forth in 15 U.S.C. 1692, et seq., as amended to and including January 1, 2019. Fair Debt Collection Practices Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapV.htm>. ( )

**02. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. ( )

**006. -- 999. (RESERVED)**

## **IDAPA 13 – IDAHO FISH AND GAME COMMISSION**

### **13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO**

**DOCKET NO. 13-0108-1701AAP**

#### **NOTICE OF AMENDED PROCLAMATION**

**AUTHORITY:** In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by amended proclamation adjustments to the 2018 season for hunting gray wolf and the 2018-2019 season for trapping gray wolf, as previously adopted by proclamation for 2017-2018 Big Game Seasons.

The amendments to the Proclamation extend hunting seasons for gray wolf in all or portions of multiple game management units; expand the trapping area for gray wolf in Game Management Unit 2; extend or open trapping seasons for foothold traps only in all or portions of Game Management Units 4, 4A, 32A, 33, 39 (Boise and Elmore Counties only), 43, 44, 66 and 69; and allow snares on private lands during part of the trapping seasons in Game Management Units 32A, 33, 66, and 69.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the amended proclamation, contact Kathleen Trever at (208) 334-3715.

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.10 – RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-103, 36-104, 36-501 and 36-504, 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 19, 2018.

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:

It is being proposed that IDAPA 13.01.10 be changed to not approve possession, importation, transport, sale, barter, or trade of wild elk, moose, mule deer, white-tailed deer, fallow deer or muntjac deer because of concerns about transmission of Chronic Wasting Disease.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol.18-6, Page 49](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Toby Boudreau, (208) 334-2920. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 7th day of August, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208)334-2920  
Fax: (208)334-2114

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0110-1801  
(Only Those Sections With Amendments Are Shown.)

**700. LIST OF SPECIES APPROVED FOR IMPORTATION INTO IDAHO.**

The following species are generally approved to be possessed, imported into or transported, sold, bartered or traded within Idaho. (7-1-99)

**01. Approved License Required.** No person shall import any species of live wildlife without a license approved by the director or his designee. (7-1-99)

**02. Species Allowed for Importation.** The following species have been approved for importation into Idaho (a license is still required): (7-1-99)

- ~~a.~~ ~~Rocky Mountain Elk. *Cervus elaphus canadensis*.~~ (7-1-93)
- ~~b.~~ ~~Roosevelt Elk. *Cervus elaphus roosevelti*.~~ (7-1-93)
- ~~c.~~ ~~Manitoba Elk. *Cervus elaphus manitobensis*.~~ (7-1-93)
- ~~d.~~ Reindeer/Caribou. *Rangifer tarandus* spp. Only allowed south of the Salmon River. (7-1-93)
- ~~e.~~ ~~Rocky Mountain Mule Deer. *Odocoileus hemionus hemionus*.~~ (7-1-93)
- ~~f.~~ Pronghorn/Antelope. *Antilocapra americana americana*. (7-1-93)
- ~~g.~~ Bison/Buffalo. *Bison bison*. (7-1-93)
- ~~h.~~ ~~Fallow Deer. *Dama dama* spp.~~ (7-1-93)
- ~~i.~~ ~~Muntjac Deer. *Muntiacus muntjak* spp.~~ (7-1-93)
- ~~j.~~ Wild Turkey (Merriams, Rio Grande And Eastern). *Melagris gallapavo* spp. (7-1-93)
- ~~k.~~ Pheasants. All species. (7-1-93)
- ~~l.~~ Columbian Sharp-Tailed Grouse. *Pedioecetes phasianellus*. (7-1-93)
- ~~m.~~ Gray/Hungarian Partridge. *Perdix perdix*. (7-1-93)
- ~~n.~~ Chukar Partridge. *Alectoris graeca*. (7-1-93)
- ~~o.~~ Blue Grouse. *Dendrogapus obscurus*. (7-1-93)
- ~~p.~~ Spruce Grouse. *Canochites canadensis*. (7-1-93)
- ~~q.~~ Ruffed Grouse. *Bonasa umbellus*. (7-1-93)
- ~~r.~~ Wild Quail (Northern Bobwhite, California, Mountain And Gambel's). *Colinus virginianus*, *Callipepla californica*, *Oreortyx pictus* and *Callipepla gambelii*. (7-1-93)

**03. Fur Farms, Fish Farms, Domestic Cervidae, and Bona Fide Pet Stores.** ~~The Idaho Department of Agriculture regulates fur farms, fish farms, domestic cervidae, and bona fide pet stores are regulated by the Idaho Department of Agriculture.~~ However, a license to import those animals into the state shall be obtained

from the Idaho Department of Fish and Game prior to importation.

(7-1-99)( )

**04. All Other Species.** All species of live wildlife not listed above in this section as generally approved for importation will be considered on a case-by-case basis. Application shall be made on a department-prepared form and comply with the procedures of Section 101 of these rules. The decision on whether to approve import and possession will be allowed shall be in the director's discretion, based on the protection of Idaho's wildlife from habitat degradation, genetic contamination, competition, or disease. Because of concerns about transmission of Chronic Wasting Disease and other infectious diseases, the department will generally not approve possession, importation, transport, sale, barter, or trade of elk (wild), moose, mule deer, white-tailed deer, fallow deer, or muntjac deer.

(7-1-99)( )



**IDAPA 13 – IDAHO FISH AND GAME COMMISSION**

**13.01.11 – RULES GOVERNING FISH**

**DOCKET NO. 13-0111-1805P**

**NOTICE OF PROPOSED PROCLAMATION**

**AUTHORITY:** In compliance with Section 36-105(3), Idaho Code, notice is hereby given that the agency has adopted by proclamation the 2018 Chinook Salmon Fall Fishing Season, establishing seasons and limits for fishing in Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proclamation, contact Kathleen Trever at (208) 334-3715.

**IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME**

**13.01.17 – RULES GOVERNING THE USE OF BAIT AND TRAPPING  
FOR TAKING BIG GAME ANIMALS**

**DOCKET NO. 13-0117-1802**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 26, 2018.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104 and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

It is being proposed that IDAPA 13.01.17.100 be changed to only allow synthetic liquid scent to attract deer and elk as a measure to reduce risk of Chronic Wasting Disease entering Idaho.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)c, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Implementation of this rule to affect the 2018 hunting season confers a risk reduction benefit relative to managing the risk of Chronic Wasting Disease entering Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated 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: There is no negative fiscal impact to the state general fund that is estimated to be greater than ten thousand dollars (\$10,000) during the fiscal year.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol.18-6, Page 52](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This temporary and proposed rules does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau, (208) 334-2920.

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 26, 2018.

Dated this 7th day of August, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25, Boise, ID 83707  
Phone: (208) 334-2920 / Fax: (208) 334-2114

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0117-1802  
(Only Those Sections With Amendments Are Shown.)**

**100. USE OF BAIT FOR HUNTING.**

Bait for hunting is defined as any substance placed to attract big game animals, except **synthetic** liquid scent for deer and elk. Bait may be used to hunt **ONLY** black bear and **ONLY** under the following conditions, **EXCEPT** gray wolf may be taken incidentally to bear baiting. ~~(4-4-13)~~(7-26-18)T

**01. Time. (7-1-93)**

**a.** No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season **EXCEPT** bait may be placed one (1) week prior to the opening of bear season in Units 10, 12, 16A, 17, 19, 20, 20A, 26 and 27. (4-4-13)

**b.** All bait, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season (spring, fall, or black bear dog training); **EXCEPT** bait, bait containers, and materials may remain in Units 10 and 12 between the dog training season and the fall hunt. (4-4-13)

**02. Location. (7-1-93)**

**a.** No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream). (3-29-17)

**b.** In all regions except the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) yards from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles; in the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) feet from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles. (3-29-17)

**c.** No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

**03. Types. (7-1-93)**

**a.** No person shall use any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent. (4-7-11)

**b.** The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

**c.** No person shall use salt in any form (liquid or solid) for bait. (3-29-10)

**04. Containers. (7-1-93)**

**a.** No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

**b.** No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

**05. Establishment of Bait Sites. (7-1-93)**

**a.** Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be

removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (3-29-10)

**b.** All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.18 – RULES GOVERNING EMERGENCY FEEDING OF ANTELOPE, ELK, AND DEER OF THE IDAHO FISH AND GAME COMMISSION

DOCKET NO. 13-0118-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-103, 36-104, 36-105 and 36-111, 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 19, 2018.

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:

It is being proposed that IDAPA 13.01.18 be changed to integrate risk of Chronic Wasting Disease (CWD) into the conditions and criteria considered by Idaho Department of Fish and Game for emergency winter feeding of deer and elk, prohibit private feeding of deer and elk within any CWD Management Zone and to make a technical correction to the chapter title.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule addresses conditions and criteria considered by Idaho Department of Fish and Game regarding emergency winter feeding that the agency may conduct.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Toby Boudreau, (208) 334-2920. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 6th day of August, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0118-1101  
(Only Those Sections With Amendments Are Shown.)

13.01.18 – RULES GOVERNING EMERGENCY FEEDING OF **PRONGHORN** ANTELOPE, ELK,  
AND DEER ~~OF THE IDAHO FISH AND GAME COMMISSION~~

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized to adopt rules concerning the administration of the wildlife policy of the state of Idaho in accordance with the Idaho fish and game code under Sections 36-103(b), 36-104(b), and 36-105(1), Idaho Code, and specifically concerning emergency feeding of pronghorn antelope, elk, and deer under Section 36-111(1), Idaho Code. (4-3-95)( )

**001. TITLE AND SCOPE.**

The title of this chapter is “Rules Governing Emergency Feeding of Pronghorn Antelope, Elk, and Deer ~~of the Idaho Fish and Game Commission~~.” These rules govern winter emergency feeding operations, and establish the criteria for determining a feeding emergency, and prohibit private feeding within a designated CWD Management Zone. (4-3-95)( )

(BREAK IN CONTINUITY OF SECTIONS)

**100. INTENT.**

The Idaho Fish and Game Commission recognizes ~~that~~ the importance of maintaining big game populations ~~should be maintained~~ under natural conditions and by naturally available forage. Winter forage is the major limiting factor which determines the basic size of the big game populations, and it must be maintained if the animals are to prosper and propagate. ~~In order to~~ To maintain these winter ranges, big game numbers must be controlled through adequate harvest. The Commission does not sanction ~~any~~ widespread supplemental winter feeding programs. Additionally, ~~big game animals, especially elk, when concentrated by~~ supplemental feeding are concentrates big game animals, making deer and elk very susceptible to spreading or contracting Chronic Wasting Disease (CWD) as well as other infectious diseases which that can be transmitted to livestock. The risk of disease transmission may factor into making a supplemental feeding decision. However, bBig game harvests and weather vary from year to year throughout the state. In most years and areas, snow depths, temperatures, and animal body condition do not create adverse conditions for wintering animals. Unusual weather conditions, limited winter forage, or other circumstances may create critical periods of stress for animals or force them into areas involving public safety. The Commission is unable to manage the big game populations for extreme weather. Therefore, emergency feeding of big game is appropriate under certain criteria. (4-3-95)( )

(BREAK IN CONTINUITY OF SECTIONS)

**102. EMERGENCY FEEDING CRITERIA.**

**01. Declaration of Feeding Emergency.** A feeding emergency may be declared if one (1) or more of the following criteria are met: (4-3-95)

- a. Actual or imminent threat of depredation to private property. (4-3-95)
- b. Threat to public safety, including traffic hazards. (4-3-95)

- c. Excessive mortality which would affect the recovery of the herd. (4-3-95)
- d. Limited or unavailable winter forage caused by fire or unusual weather. (4-3-95)

**02. Additional Guidelines.** The Regional Supervisors may develop additional guidelines on emergency feeding within the listed criteria based on risk of disease transmission local conditions and local public input. (4-3-95)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. -- ~~91~~99. (RESERVED)**

**200. PROHIBITION ON PRIVATE FEEDING OF DEER AND ELK WITHIN DESIGNATED CWD MANAGEMENT ZONE.**

**01. Prohibition.** It is unlawful to purposely or knowingly provide supplemental feed to deer and elk within any CWD Management Zone designated by the Idaho Fish and Game Commission, except supplemental or emergency feeding activities conducted or authorized by the Idaho Department of Fish and Game. ( )

**02. Incidental Grazing.** Incidental grazing by big game animals on private rangeland forage, standing agricultural crops, or agricultural crop residue left on the ground following typical harvest practices is not a violation of this section. ( )

**03. Incidental Feeding.** Incidental feeding of big game animals during the normal practice of providing feed to livestock in the winter is not a violation of this section. ( )

**201. – 999. (RESERVED)**

# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.02.08 – VITAL STATISTICS RULES

### DOCKET NO. 16-0208-1802

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-242, 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 19, 2018.

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 Temporary Rule passed by the Board of Health and Welfare in response to the court order requires that a replacement certificate be established when an individual changes the indicator of gender on their birth certificate to reflect their gender identity. IDAPA 16.02.08.251.05.c. sets the fee for a list of actions that result in the establishment of a replacement certificate. The change being proposed eliminates the list so that any circumstance resulting in a replacement certificate will result in a fee being charged.

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. The fee for changing birth certificates is currently being charged. The only costs have been personnel time to change forms, the website, etc.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is clarifying language regarding fees for changing birth certificates.

**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 James Aydelotte, (208) 334-4969.

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 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0208-1802  
(Only Those Sections With Amendments Are Shown.)

251. FEES FOR COPIES, SEARCHES, AND OTHER SERVICES.

**01. Certified Copies.** The fee for the issuance of a certified copy of a certificate of death is sixteen dollars (\$16) per copy. This fee incorporates the additional one dollar (\$1) coroner training and education fund fee in accordance with Section 39-252(2), Idaho Code. The fee for the issuance of a certified copy of any other vital record is sixteen dollars (\$16) per copy. (7-1-15)

**02. Searches.** The fee for a search of the files for a record of any vital event when no record is found, no copy is made, or a special document search is requested, is sixteen dollars (\$16). (7-1-15)

**03. Verifications.** (7-1-15)

**a.** Except for Idaho state agencies and public health districts, the fee for manual or written verification of data from a certificate is ten dollars (\$10). (7-1-15)

**b.** The fees for electronic verification by the Department's automated systems of data from a certificate of any vital event are based on the national pricing model as follows:

| Fees for Electronic Verification    |  |
|-------------------------------------|--|
| National Monthly Transaction Volume | Charge per Verification Match Provided to Vital Records Agency |
| 1 - 100,000                         | \$1.35   |
| 100,000 - 500,000                   | \$1.15   |
| 500,000 - 1,200,000                 | \$1.03   |
| 1,200,000+                          | \$0.87   |

(7-1-15)

~~**c.** The fee for electronic fact of death verification by the Department's automated systems is three dollars (\$3). Fact of death verification involves comparing administrative data to Idaho death data and returning an indication of death. (7-1-15)~~

**04. Statistical, Research, or Public Health Services.** The State Registrar assesses the fee for statistical, research or public health services. The costs are calculated based upon the costs of retrieving the data and the costs of compiling, organizing, and printing the data. Cost may be reduced on a prorated basis to reflect the number of expected requests for the same information or service. (4-7-11)

**05. Fees for Other Services.** (4-7-11)

**a.** The fee for filing a report, certificate, or decree of adoption is twenty dollars (\$20). (7-1-15)

**b.** The fee for establishing a delayed certificate of any vital event is twenty-five dollars (\$25). (7-1-15)

c. ~~For any vital event, the fee for establishing a new or amended certificate of any vital event due to a court order, a paternity affidavit or rescission, or a subsequent marriage affidavit replacement certificate, or an amended certificate is twenty dollars (\$20), except as specified under Subsection 251.05.g.ii. of this rule.~~ (7-1-15)( )

d. A service fee of three dollars (\$3), in addition to the sixteen dollars (\$16) for a certified copy of a death or stillbirth certificate, must be paid to the local deputy state registrar for securing each expedited certified copy of a vital record. (7-1-15)

e. The fee for filing a copy of "Request and Consent for Artificial Insemination" as required by Section 39-5403, Idaho Code, is ten dollars (\$10). (4-7-11)

f. The fee for a copy of a certificate of any vital event provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is sixteen dollars (\$16). (7-1-15)

g. Fees for correction of a certificate of any vital event. (7-1-15)

i. The fee for a replacement certified copy of a certificate of any vital event when the incorrect certified copy is returned for exchange within sixty (60) days of a correction of an error is five dollars (\$5) per certified copy. (7-1-15)

ii. There is no charge for a correction of an error or errors on a certificate of any vital event when the required documentation is received within the first year after the date of the event. (7-1-15)

iii. The fee for correction of an error or errors on a certificate of any vital event, when the required documentation is received one (1) year or more after the date of the event, is twenty dollars (\$20) per submitted correction request. (7-1-15)

h. Fees for priority processing or special handling. (7-1-15)

i. A service fee of ten dollars (\$10) per certificate or document will be added for priority processing or special handling of a request for a certified copy or copies of a certificate of any vital event, a request for a disinterment permit, a request to file a registry form, or a request regarding another vital event related form or document, other than those identified in Subsection 251.05.h.ii. of this rule. This fee will be in addition to the current fee or fees for each certified copy, search, or filing requested, or any combination thereof. This fee is forfeited and a new service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information, or documentation, or both. (7-1-15)( )

ii. A service fee of twenty-five dollars (\$25) per certificate will be added for priority processing to establish a new or amended certificate of any vital event due to a report, certificate or decree of adoption, delayed certificate filing, a court order, a paternity affidavit or rescission, a subsequent marriage affidavit or a correction of a certificate. This fee is in addition to the current fee or fees for the legal amendment processing or request for a certified copy or copies, or both. This fee is forfeited and a new legal amendment service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information or documentation or both. (7-1-15)( )

iii. A hard copy fee of five dollars (\$5) per certificate will be added to the certified copy fee for issuance of a non-computer generated certified photocopy of a certificate of any vital event. Additional certified photocopies of the same certificate requested at the same time will be issued at the sixteen dollar (\$16) certified copy fee. (7-1-15)

**06. Waiver of Fee Requirement.** Fees may be waived for Idaho state agency and public health district administrative use requests. Statistical information prepared for public health planning purposes may be published and distributed without charge whenever the Director determines that the publication and distribution is in the public interest. (7-1-15)

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

**16.02.15 – IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN**

**DOCKET NO. 16-0215-1802**

**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 39-4801 and 39-4802, Idaho Code.

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

**PUBLIC HEARING**  
**Monday, September 17, 2018 - 9:30 a.m. (MDT)**

**Meridian Courtyard by Marriott**  
**Balboa Meeting Room**  
**1789 S. Eagle Road**  
**Meridian, ID 83642**

**TELECONFERENCE CALL-IN**  
**(Same date and time as above)**

**Toll Free: 1-877-820-7831**  
**Participant Code: 137508**

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

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

A second dose (booster) of the meningococcal (MenACWY) vaccination is recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) for children aged 16 years and older who received the 1st dose of vaccine as recommended at 11-12 years of age. Idaho does not currently require the booster dose for school entry. Requiring Idaho students receive a second dose of meningococcal (MenACWY) vaccine before entry into the 12th grade, or receive the vaccination before entry into 12th grade for those children who did not receive the recommended first dose, would help to prevent potential cases of meningococcal disease among young people in Idaho. A second vaccination (booster) received before the 12th grade helps to ensure immunity from meningococcal disease in young people as the immunity gained from the first dose of Meningococcal (MenACWY) vaccine has been shown to fade after five years.

This rulemaking adds a new school entry immunization requirement to require a second dose of meningococcal (MenACWY) vaccination before a student enters the 12th grade in Idaho, starting with school year 2020-2021. If a student received their first dose of meningococcal (MenACWY) vaccine at 16 years of age or older, they will not be required to receive the second dose before entry into the 12th grade.

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes travel for negotiated rulemaking, printing, and publication.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, pages 91 and 92](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rafe Hewett at (208) 334-5942.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0215-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**100. IMMUNIZATION REQUIREMENTS.**

All immunizations listed in Subsections 100.01 through 100.04~~5~~ of this rule, are required of ~~children~~ **students** upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Upon admission to preschool, ~~children~~ **students** must be age appropriately immunized with all immunizations listed in Subsections 100.01 through 100.03 of this rule. Immunizations must be administered according to the “ACIP Recommended Schedule,” incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department. Exemptions from these immunization requirements are provided in Section 110 of these rules. ~~(4-7-H)~~(    )

**01. ~~Child Student~~ Born on or Before September 1, 1999.** A ~~child student~~ born on or before September 1, 1999, must meet the following minimum immunization requirements prior to admission for these vaccines: one (1) dose of Measles, Mumps, and Rubella (MMR), four (4) doses of Diphtheria, Tetanus, Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. ~~(4-7-H)~~(    )

**02. ~~Child Student~~ After September 1, 1999 Through September 1, 2005.** A ~~child student~~ born after September 1, 1999, through September 1, 2005, must meet the following minimum immunization requirements prior to admission for these vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of Diphtheria, Tetanus, and Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. ~~(4-7-H)~~(    )

**03. ~~Child Student~~ After September 1, 2005.** A ~~child student~~ born after September 1, 2005, must meet the following minimum immunization requirements prior to admission for the following vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of Diphtheria, Tetanus, and Pertussis (DTaP), four (4) doses of Polio, three (3) doses of Hepatitis B, two (2) doses of Hepatitis A, and two (2) doses of Varicella. ~~(4-7-H)~~(    )

**04. Seventh Grade Immunization Requirements.** Effective with the 2011-2012 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.03 of this rule, a child student must meet the following minimum immunization requirements prior to admission into the seventh (7th) grade for these vaccines: one (1) dose of Tetanus, Diphtheria, Pertussis Booster (Tdap), and one (1) dose of Meningococcal. This requirement will be extended to: 7th - 8th grade students in 2012, 7th - 9th grade students in 2013, 7th - 10th grade students in 2014, 7th - 11th grade students in 2015, and 7th - 12th grade students in 2016. (4-7-11)( )

**05. Twelfth Grade Immunization Requirements.** Effective at the start of the 2020-2021 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.04 of this rule, students must meet the following minimum immunization requirements prior to admission into the twelfth (12th) grade: ( )

**a.** Students who received their first dose of Meningococcal (MenACWY) vaccine before the age of sixteen (16) must have two (2) doses of Meningococcal (MenACWY) vaccine. ( )

**b.** Students who received their first dose of Meningococcal (MenACWY) vaccine at sixteen (16) years of age and older, or those who have never received a dose, must have one (1) dose of Meningococcal (MenACWY) vaccine. ( )

**056. Summary of Immunization Requirements.** (4-7-11)

**a.** Immunization requirements.

| TABLE 100.056.a. SUMMARY OF IMMUNIZATION REQUIREMENTS |  |  |   |
|---|--|--|---|
| Immunization Requirement*                             | <u>Child Student</u> born on or before September 1, 1999 | <u>Child Student</u> born after September 1, 1999, through September 1, 2005 | <u>Child Student</u> born after September 1, 2005 |
| Measles, Mumps, and Rubella (MMR)                     | 1 dose   | 2 doses  | 2 doses   |
| Diphtheria, Tetanus, Pertussis                        | 4 doses  | 5 doses  | 5 doses   |
| Polio   | 3 doses  | 3 doses  | 4 doses   |
| Hepatitis B   | 3 doses  | 3 doses  | 3 doses   |
| Hepatitis A   | 0 doses  | 0 doses  | 2 doses   |
| Varicella   | 0 doses  | 0 doses  | 2 doses   |

\* Exemptions for immunization requirements are found in Section 110 of these rules.

(4-7-11)( )

**b.** Seventh grade immunization requirements.

| TABLE 100.056.b SUMMARY OF SEVENTH GRADE IMMUNIZATION REQUIREMENTS                  |   |  |
|---|---|--|
| Immunization Requirement*   | <i>Child Student</i> admitted to 7th grade prior to 2011-2012 school year | <i>Child Student</i> admitted to 7th grade during 2011-2012 school year and each year thereafter |
| Tetanus, Diphtheria, Pertussis (Tdap)   | 0 doses   | 1 dose   |
| Meningococcal ( <u>MenACWY</u> )  | 0 doses   | 1 dose   |
| * Exemptions for immunization requirements are found in Section 110 of these rules. |   |  |

(4-7-11)( )

**c.** Twelfth grade immunization requirements.

| TABLE 100.06.c. SUMMARY OF TWELFTH GRADE IMMUNIZATION REQUIREMENTS                         |  |   |   |
|--|--|---|---|
| <u>Immunization Requirement*</u>   | <u>Student admitted to 12th grade prior to the 2020-2021 school year</u> | <u>Student admitted to 12th grade during 2020-2021 school year and each year thereafter, if student received their first dose of Meningococcal (MenACWY) vaccine at 16 years of age or older, or if student has never received a dose</u> | <u>Student admitted to 12th grade during 2020-2021 school year and each year thereafter, if student received their first dose of Meningococcal (MenACWY) vaccine before the age of 16</u> |
| <u>Meningococcal (MenACWY)</u>   | <u>1 dose</u>  | <u>1 dose</u>   | <u>2 doses</u>  |
| <u>* Exemptions for immunization requirements are found in Section 110 of these rules.</u> |  |   |   |

( )

**101. COMPLIANCE.**

The parent, custodian, or guardian of any *child student* who is to attend any public, private, or parochial school in Idaho must comply with the provisions contained in this chapter at the time of admission and before attendance.

(4-7-11)( )

**102. EVIDENCE OF IMMUNIZATION STATUS.**

**01. Immunization Record.** Within the deadlines established in Section 101 of these rules, a parent, custodian, or guardian of each *child student* must present to school authorities an immunization record.

(4-7-11)( )

**02. Schedule of Intended Immunizations Form.** A *child student* who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may be conditionally admitted. School authorities, at the time of admission and before attendance, must have a schedule of intended immunizations form completed by a parent, custodian, or guardian for any *child student* who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. A form provided by the Department, or one similar, must include the following information:

(4-7-11)( )

- a. Name and date of birth of *child student*; ~~(4-7-11)~~( )
- b. School and grade *child student* is enrolled in and attending; ~~(4-6-05)~~( )
- c. Types, numbers, and dates of scheduled immunizations to be administered; (4-7-11)
- d. Signature of the parent, custodian, or guardian; and (4-7-11)
- e. Signature of a licensed health care professional providing care to the *child student*. ~~(4-7-11)~~( )

**03. ~~Children~~ Students Admitted to School and Failing to Continue the Schedule of Intended Immunizations.** A *child student*, who does not receive the required immunizations as scheduled in Subsection 102.02 of this rule, will be excluded by school authorities until documentation of the administration of the required immunizations is provided to school authorities by the *child's student's* parent, custodian, or guardian.

~~(4-7-11)~~( )

**103. -- 104. (RESERVED)**

**105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities at the time of admission and before attendance, a *child student* who meets one (1) or both of the following conditions, will not be required to receive the required immunizations in order to attend school.

~~(4-7-11)~~( )

**01. Laboratory Proof.** Laboratory proof of immunity to any of the childhood diseases listed in Section 100 of these rules, will not be required to receive the immunization for that disease for which the *child student* is immune.

~~(4-7-11)~~( )

**02. Disease Diagnosis.** A *child student* who has a statement signed by a licensed health care professional stating that the *child student* has had varicella (chickenpox) disease diagnosed by a licensed health care professional upon personal examination, will not be required to receive the immunization for the diagnosed disease.

~~(4-7-11)~~( )

**03. Suspension of Requirement.** The Regulatory Authority may temporarily suspend one (1) or more of the immunization requirements listed in Section 100 of these rules, if the Regulatory Authority determines that suspension of the requirement is necessary to address a vaccine shortage or other emergency situation in the state. The Regulatory Authority will suspend a requirement for the length of time needed to remedy the vaccine shortage or emergency situation.

(4-7-11)

**106. -- 109. (RESERVED)**

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a *child student* who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to receive the required immunizations.

~~(4-7-11)~~( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the *child's student's* life or health would be endangered if any or all of the required immunizations are administered.

~~(4-7-11)~~( )

**02. Religious or Other Objections.** A signed statement of the parent, custodian, or guardian on a form provided by the Department, that includes the following:

(4-7-11)

- a. Name of *child student*, date of birth; and ~~(4-7-11)~~( )
- b. A statement of objection on religious or other grounds. (1-25-79)

111. -- 149. (RESERVED)

**150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. Noncompliance.** Any child student not in compliance with this chapter upon admission to any Idaho public, private, or parochial school, will be denied attendance by school authorities, unless the child student is excepted or exempted from these immunization requirements as provided in Sections 105 and 110 of these rules. The regulatory authority may exclude any child student who does not meet the requirements in this chapter and who has not been excluded from school. (4-7-11)( )

**02. Length of Exclusion.** Any child student denied attendance in accordance with Subsection 150.01 of this rule, will not be allowed to attend any Idaho public, private or parochial school until the child student is in compliance with the requirements of this chapter. (4-2-08)( )

**03. Exempted Children Students.** A child student exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." (4-7-11)( )

151. -- 199. (RESERVED)

**200. REPORTS BY SCHOOL AUTHORITIES.**

**01. Responsibility and Timeliness.** School authorities must submit a report of each school's immunization status, by grade, to the Department on or before the first day of November each year. (4-6-05)

**02. Form and Content of Report.** Each school report must include the following information and be submitted on a Department form or electronically: (4-7-11)

- a. Inclusive dates of reporting period; (10-13-92)
- b. Name and address of school, school district and county; (4-6-05)
- c. Grade being reported and total number of children students enrolled in the grade; (4-6-05)( )
- d. The name and title of the person completing the report form. (4-6-05)
- e. Number of children students who meet all of the required immunizations listed in Section 100 of these rules; (4-6-05)( )
- f. Number of children students who do not meet all of the required number of immunizations listed by specific immunization type; (4-6-05)( )
- g. Number of children students who do not meet the immunization requirement, but are in the process of receiving the required immunizations; and (4-6-05)( )
- h. Number of children students who claimed exemption to the required immunizations as allowed in Section 110 of these rules. (4-6-05)( )



# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1802

### 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), 56-264, and 56-1610, Idaho Code.

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

| <b>Tuesday, September 11, 2018<br/>1:00 pm (PDT)</b>  | <b>Tuesday, September 11, 2018<br/>2:00 pm (MDT)</b>   | <b>Thursday, September 13, 2018<br/>2:00 pm (MDT)</b>  |
|---|--|--|
| <b>Lewiston State Office Bldg.<br/>1118 F Street<br/>3rd Floor Conf. Rm.<br/>Lewiston, ID 83501</b> | <b>Idaho Falls State Office Bldg.<br/>150 Shoup Avenue<br/>2nd Floor Large Conf. Rm.<br/>Idaho Falls, ID 83402</b> | <b>Medicaid Central Office<br/>3232 Elder Street<br/>Conf. Rm. D West/East<br/>Boise, ID 83705</b> |

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

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

The Idaho Home Choice Program, operating through Money Follows the Person (MFP) Demonstration Grant, authorized through Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and Section 2403 of the 2010 Patient Protection and Affordable Care Act (P.L. 111-148), is scheduled to end September 30, 2020. To sustain the grant benefits, modifications to IDAPA, and the 1915(c) Home-Community Based Services (HCBS) Waivers is necessary.

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

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

This program provides support to move participants who are living in institutional settings like nursing facilities to live in community settings. Fully utilizing Transition Management and Transition Services will have an initial one-time cost of a maximum of \$5,481.92 per person.

However, transitioning these folks to community settings, authorized under the Aged and Disabled and Adult Developmental Disabilities Waivers, will generate an overall monthly ongoing cost savings of \$4,327.10 per participant. The Department anticipates that approximately 100 individuals will transition from institutional settings to community settings during state fiscal year 2020. Based on this estimate, it is anticipated that the overall savings would be \$432,709.99 (\$125,585.42 SGF and \$307,124.57 Federal funds).

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 57-58](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Katie Davis, (208) 364-1933.

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 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**326. AGED AND DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. (4-4-13)

**02. Adult Residential Care Services.** Adult residential care services consist of a range of services provided in a homelike, non-institutional setting that include residential care or assisted living facilities and certified family homes. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep and improvement. (4-4-13)

**a.** Adult residential care services consist of a range of services provided in a congregate setting licensed under IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho,” that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (3-19-07)
- iii. Meals, including special diets; (3-19-07)
- iv. Housekeeping; (3-19-07)
- v. Laundry; (3-19-07)
- vi. Transportation; (3-19-07)
- vii. Opportunities for socialization; (3-19-07)
- viii. Recreation; and (3-19-07)

- ix. Assistance with personal finances. (3-19-07)
- x. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)
- xi. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)
- b.** Adult residential care services also consist of a range of services provided in a setting licensed under IDAPA 16.03.19, "Rules Governing Certified Family Homes," that include: (4-4-13)
  - i. Medication assistance, to the extent permitted under State law; (4-4-13)
  - ii. Assistance with activities of daily living; (4-4-13)
  - iii. Meals, including special diets; (4-4-13)
  - iv. Housekeeping; (4-4-13)
  - v. Laundry; (4-4-13)
  - vi. Transportation; (4-4-13)
  - vii. Recreation; and (4-4-13)
  - viii. Assistance with personal finances. (4-4-13)
  - ix. Administrative oversight must be provided for all services provided or available in this setting. (4-4-13)
  - x. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (4-4-13)
- 03. Specialized Medical Equipment and Supplies.** (4-4-13)
  - a.** Specialized medical equipment and supplies include: (4-4-13)
    - i. Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)
    - ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)
  - b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)
- 04. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)
  - a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)
  - b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-19-07)

**05. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. (4-4-13)

**06. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: (4-4-13)

**a.** Intermittent assistance may include the following. (4-4-13)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

**b.** Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

**c.** These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (4-4-13)

**d.** In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

**07. Companion Services.** Companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the primary responsibility is to provide companionship and be there in case they are needed. (4-4-13)

**08. Consultation.** Consultation services are services to a participant or family member. Services are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance

possible for the participant and the participant's family. Services include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to the participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

- a.** Rents or owns a home; (4-4-13)
- b.** Is alone for significant parts of the day; (4-4-13)
- c.** Has no caregiver for extended periods of time; and (4-4-13)
- d.** Is unable to prepare a meal without assistance. (4-4-13)

**10. Homemaker Services.** Homemaker services consist of performing for the participant, or assisting him with, or both, the following tasks: laundry, essential errands, meal preparation, and other routine housekeeping duties if there is no one else in the household capable of performing these tasks. (4-4-13)

**11. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**12. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

- a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)
- b.** Are alone for significant parts of the day; (3-19-07)
- c.** Have no caregiver for extended periods of time; and (4-4-13)
- d.** Would otherwise require extensive, routine supervision. (3-19-07)

**13. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, a certified family home, a developmental disabilities agency, a residential care or assisted living facility, or an adult day health facility. (4-4-13)

**14. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. (4-4-13)

**15. Habilitation.** Habilitation services assist the participant to reside as independently as possible in the community, or maintain family unity. (4-4-13)

**a. Residential habilitation.** Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) are unable to accomplish on his or her own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (4-4-13)

**b. Day habilitation.** Day habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day habilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-4-13)

**16. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

**a.** Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (4-4-13)

**b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of a supported employment program, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (4-4-13)

**17. Transition Services.** Transition services include goods and services that enable a participant residing in a nursing facility, hospital, IMD, or ICF/ID to transition to a community-based setting. A participant is eligible to receive transition services immediately following discharge from a qualified institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ( )

**a. Qualified Institutions include the following:** ( )

**i. Skilled, or Intermediate Care Facilities;** ( )

**ii. Nursing Facility;** ( )

**iii. Licensed Intermediate Care Facility for the Persons with Intellectual Disabilities (ICF/ID);** ( )

**iv. Hospitals; and** ( )

**v. Institutions for Mental Diseases (IMD).** ( )

**b. Transition services may include the following goods and services:** ( )

**i. Security deposits that are required to obtain a lease on an apartment or home;** ( )

**ii. Cost of essential household furnishings, including furniture, window coverings, food preparation items, bed/bath linens, and second-hand kitchen appliances;** ( )

**iii. Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;** ( )

**iv. Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy;** ( )

**v. Moving expenses; and** ( )

**vi. Activities to assess need, arrange for and procure transition services.** ( )

**c. Excluded goods and services.** Transition services do not include ongoing expenses, real property, ongoing utility charges, décor, or diversion/recreational items such as televisions, DVDs, and computers. ( )

**d. Service limitations.** Transition services are limited to a total cost of two thousand dollars (\$2,000) per participant and can be accessed every two (2) years, contingent upon a qualifying transition from an institutional

setting. Transition services are furnished only to the extent that the person is unable to meet such expense or when the support cannot be obtained from other sources. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

**e.** To pay personal assistants and other waiver service providers for service; (3-19-07)

**f.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

**g.** To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

**h.** To maintain liability insurance coverage; (5-8-09)

**i.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

**j.** To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

**03. Provider Qualifications.** All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (4-4-13)

**a.** A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

**b.** For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)



c. Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**04. Quality Assurance.** Providers of Aged and Disabled waiver services are responsible for ensuring that they provide quality services in compliance with applicable rules. (7-1-16)

a. The results of a quality assurance review conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (7-1-16)

b. The provider must respond to the quality assurance review within forty-five (45) days after the results are received from the Department. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (7-1-16)

c. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. (7-1-16)

**05. HCBS Setting Compliance.** Providers of Aged and Disabled waiver services are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 311 through 318 of these rules, as applicable, and must comply with associated Department quality assurance activities. (7-1-16)

**06. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**07. Skilled Nursing Service.** Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**08. Consultation Services.** Consultation services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (4-4-13)

**09. Adult Residential Care.** Adult residential care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," or IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**10. Home Delivered Meals.** Providers of home delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

b. Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

c. Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (4-4-13)

d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments"; (4-4-13)

e. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

f. Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (4-4-13)

**11. Personal Emergency Response Systems.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. (4-4-13)

**12. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

a. Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (4-4-13)

b. Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

c. Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

d. Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

e. Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

f. Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

g. All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**13. Non-Medical Transportation Services.** Providers of non-medical transportation services must: (4-4-13)

a. Possess a valid driver's license; (4-4-13)

b. Possess valid vehicle insurance; and (4-4-13)

c. Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**14. Attendant Care.** Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**15. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and

background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**16. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)

**17. Residential Habilitation Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies,” and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-30-07)
  - i. Be at least eighteen (18) years of age; (3-30-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii. Have current CPR and First Aid certifications; (3-30-07)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” (4-4-13)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (4-4-13)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (4-4-13)
  - i. Purpose and philosophy of services; (3-30-07)
  - ii. Service rules; (3-30-07)
  - iii. Policies and procedures; (3-30-07)
  - iv. Proper conduct in relating to waiver participants; (3-30-07)
  - v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
  - vi. Participant rights; (3-30-07)

- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
  - iii. Feeding; (3-30-07)
  - iv. Communication; (3-30-07)
  - v. Mobility; (3-30-07)
  - vi. Activities of daily living; (3-30-07)
  - vii. Body mechanics and lifting techniques; (3-30-07)
  - viii. Housekeeping techniques; and (3-30-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (4-4-13)

**18. Day Habilitation.** Providers of day habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

- 19. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a.** Have received care giving instructions in the needs of the person who will be provided the service; (4-4-13)
  - b.** Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c.** Be free of communicable disease; and (4-4-13)
  - d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**20. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meet State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a

traumatic brain injury training course approved by the Department. (4-4-13)

**21. Chore Services.** Providers of chore services must meet the following minimum qualifications: (4-4-13)

**a.** Be skilled in the type of service to be provided; and (4-4-13)

**b.** Demonstrate the ability to provide services according to a plan of service. (4-4-13)

**c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**d.** Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**22. Transition Services.** Transition managers as described in Section 350 of these rules are responsible for administering transition services. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

331. -- **349. (RESERVED)**

**350. TRANSITION MANAGEMENT.**

Transition management provides relocation assistance and intensive service coordination activities to assist nursing facility, hospital, IMD and ICF/ID residents to transition to community settings of their choice. Transition managers provide oversight and coordination activities for participants during a transitional period up to twelve (12) months following a return to the community. This provider type will function as a liaison between the participant, institutional or facility discharge staff, and the Department to support a successful and sustainable transition to the community. A participant is eligible to receive transition management when planning to discharge from a qualifying institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ( )

**01. Provider Qualifications.** Transition managers must: ( )

**a.** Satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; ( )

**b.** Have documented successful completion of the Department approved Transition Manager training prior to providing any transition management and transition services; ( )

**c.** Have a Bachelor's Degree in a human services field from a nationally accredited university or college; or three (3) years' supervised work experience with the population being served; and ( )

**d.** Be employed with a provider type approved by the Department. ( )

**02. Service Description.** Transition management includes the following activities: ( )

**a.** A comprehensive assessment of health, social, and housing needs; ( )

**b.** Development of housing options with each participant, including assistance with housing choices, applications, waitlist follow-up, roommate selection, and introductory visits; ( )

**c.** Assistance with tasks necessary to accomplish a move from the institutional setting; ( )

d. Secure Transition Services in accordance with Subsection 326.17 or Subsection 703.15 of these rules in order to make arrangements necessary to move, including: ( )

i. Obtaining durable medical equipment, assistive technology, and medical supplies, if needed:( )

ii. Arranging for home modifications, if needed: ( )

iii. Applying for public assistance, if needed: ( )

iv. Arranging household preparations including scheduling moving and/or cleaning services, utility set-up, purchasing furniture, and household supplies, if needed: ( )

e. Coordinate with others involved in plan development for the participant to ensure successful transition and establishment in a community setting: ( )

f. Provide post-transition support, including assistance with problem solving, dependency and isolation concerns, consumer-directed services and supports, Medicaid Enhanced Plan Benefits when applicable, and community inclusion. ( )

03. Service Limitations. Transition management is limited to seventy-two (72) hours per participant per qualifying transition. ( )

351. -- 449. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

**iv.** Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities that are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services that consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

b. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

c. Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home or to provide a clean, sanitary, and safe environment. (4-4-13)

a. Intermittent Assistance may include the following: (4-4-13)

i. Yard maintenance; (4-4-13)

ii. Minor home repair; (4-4-13)

iii. Heavy housework; (4-4-13)

iv. Sidewalk maintenance; and (4-4-13)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

b. Chore activities may include the following: (4-4-13)

i. Washing windows; (4-4-13)

ii. Moving heavy furniture; (4-4-13)

iii. Shoveling snow to provide safe access inside and outside the home; (4-4-13)

iv. Chopping wood when wood is the participant's primary source of heat; and (4-4-13)

v. Tacking down loose rugs and flooring. (4-4-13)

c. These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (4-4-13)

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

**03. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature.

Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a developmental disabilities agency, or an adult day health facility. (4-4-13)

**04. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (4-4-13)

**a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (4-4-13)

**b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that are not directly related to a waiver participant's supported employment program. (4-4-13)

**05. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)

**a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)

**b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (4-4-13)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**07. Specialized Medical Equipment and Supplies.** (4-4-13)

**a.** Specialized medical equipment and supplies include: (4-4-13)

**i.** Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

**ii.** Items necessary for life support, ancillary supplies and equipment necessary for the proper



functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

**b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

**08. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable “help” button to allow for mobility. The system is connected to the participant’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

**a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)

**b.** Are alone for significant parts of the day; (4-4-13)

**c.** Have no caregiver for extended periods of time; and (4-4-13)

**d.** Would otherwise require extensive, routine supervision. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to a participant’s home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

**a.** Rents or owns a home; (4-4-13)

**b.** Is alone for significant parts of the day; (4-4-13)

**c.** Has no caregiver for extended periods of time; and (4-4-13)

**d.** Is unable to prepare a meal without assistance. (4-4-13)

**10. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse licensed to practice in Idaho. (4-4-13)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services that provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy and occupational therapy. (4-4-13)

**13. Self-Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, “Consumer Directed Services.” (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in home and community settings as described in Section 312 of these rules. Approved places of services include the participant's personal residence, a

certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (7-1-16)

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**15. Transition Services. Transition Services as defined in Subsection 326.17 of these rules. ( )**

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation -- Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and must supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii. Have current CPR and First Aid certifications; (3-19-07)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (4-4-13)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-19-07)
- b. All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-29-12)

- i. Purpose and philosophy of services; (3-19-07)
- ii. Service rules; (3-19-07)
- iii. Policies and procedures; (3-19-07)
- iv. Proper conduct in relating to waiver participants; (3-19-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
- vi. Participant rights; (3-19-07)
- vii. Methods of supervising participants; (3-19-07)
- viii. Working with individuals with developmental disabilities; and (3-19-07)
- ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
  - iii. Feeding; (3-19-07)
  - iv. Communication; (3-19-07)
  - v. Mobility; (3-19-07)
  - vi. Activities of daily living; (3-19-07)
  - vii. Body mechanics and lifting techniques; (3-19-07)
  - viii. Housekeeping techniques; and (3-19-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- 02. Residential Habilitation -- Certified Family Home (CFH). (3-29-12)**
  - a.** An individual who provides direct residential habilitation services in his own home must be certified by the Department to operate a certified family home under IDAPA 16.03.19, "Rules Governing Certified Family Homes," and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (3-29-12)
  - b.** CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (3-29-12)
    - i. Be at least eighteen (18) years of age; (3-29-12)
    - ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to

- a plan of service; (3-29-12)
- iii. Have current CPR and First Aid certifications; (3-29-12)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (3-29-12)
  - vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” and (3-29-12)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-29-12)
- c.** All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- d.** Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (3-29-12)
- i. Purpose and philosophy of services; (3-29-12)
  - ii. Service rules; (3-29-12)
  - iii. Policies and procedures; (3-29-12)
  - iv. Proper conduct in relating to waiver participants; (3-29-12)
  - v. Handling of confidential and emergency situation that involve the waiver participant; (3-29-12)
  - vi. Participant rights; (3-29-12)
  - vii. Methods of supervising participants; (3-29-12)
  - viii. Working with individuals with developmental disabilities; and (3-29-12)
  - ix. Training specific to the needs of the participant. (3-29-12)
- e.** Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (3-29-12)
- i. Instructional Techniques: Methodologies for training in a systematic and effective manner; (3-29-12)
  - ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors; (3-29-12)
  - iii. Feeding; (3-29-12)
  - iv. Communication; (3-29-12)

- v. Mobility; (3-29-12)
  - vi. Activities of daily living; (3-29-12)
  - vii. Body mechanics and lifting techniques; (3-29-12)
  - viii. Housekeeping techniques; and (3-29-12)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-29-12)
  - f. The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-29-12)
- 03. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
- a. Be skilled in the type of service to be provided; and (3-19-07)
  - b. Demonstrate the ability to provide services according to a plan of service. (3-19-07)
  - c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 04. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a. Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
  - b. Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c. Be free of communicable disease; and (4-4-13)
  - d. Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 05. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meets State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
- 06. Non-Medical Transportation.** Providers of non-medical transportation services must: (4-4-13)
- a. Possess a valid driver's license; and (3-19-07)
  - b. Possess valid vehicle insurance. (3-19-07)
- 07. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)
- 08. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment

and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**09. Personal Emergency Response System.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards. (4-4-13)

**10. Home Delivered Meals.** Providers of home-delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

**a.** Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

**b.** Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

**c.** A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

**d.** The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (4-4-13)

**11. Skilled Nursing.** Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**12. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (4-4-13)

**b.** Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)

**c.** Be a licensed pharmacist; or (3-19-07)

**d.** Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)

**e.** Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)

**f.** Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**13. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

**a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; (4-4-13)

**b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes"; (4-4-13)

**c.** Adult day health providers who provide direct care or services must satisfactorily complete a

criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks”; (4-4-13)

**d.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant’s primary residence. The adult day health provider must provide care and supervision appropriate to the participant’s needs as identified on the plan. (4-4-13)

**e.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

**14. Service Supervision.** The plan of service that includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

**15. Transition Services.** Transition managers as described in Section 350 of these rules are responsible for administering transition services. ( )

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

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1803**

**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) and 56-264, Idaho Code.

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

|  |
|--|
| <b>Tuesday, September 11, 2018<br/>1:30 p.m. - 2:30 p.m. MDT</b>   |
| <b>Idaho Department of Health and Welfare<br/>Medicaid Central Office<br/>Conference Room D-East<br/>3232 Elder Street<br/>Boise, ID 83705</b> |
| <b>WebEx INFORMATION</b>   |
| <b>Meeting Number (access code): 806 492 649<br/>Meeting Password: 5SdNeddP<br/>(if calling from phone for audio, 57363337)</b>                |
| <b>Conference Call INFORMATION</b>   |
| <b>Call In Only (not viewing meeting online): 1-240-454-0879<br/>Call In Only Password: 57363337</b>   |

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

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

Medicaid staff currently process special rates for participants receiving tracheostomy or ventilator care manually. A Nursing Facility (NF) must submit documentation before or on the date the special rate is to take effect. Most ventilator and tracheostomy rates are similar in supplies and staffing and an average rate could be used instead. This would reduce administrative burden and reduce NF risk of nonpayment due to late special rate requests, allowing NF to receive timely and ongoing add-on rates for these participants. Rules are needed to simplify and streamline the current ventilator and tracheostomy special rate process to allow for less administrative burden, and to allow rates to start on the day of admission and with no semi-annual renewals.

The ventilator and tracheostomy rates will be adjusted to allow for a fixed add-on rate, incorporating supplies, nursing and CNA hours. The rates will be updated on a yearly basis to reflect the changing costs of supplies and the Weighted Average Hourly Rate (WAHR) for nursing and CNA hours. Ventilator and tracheostomy rates do not vary significantly in requested supplies and the amount of nursing and/or CNA hours. Providing a fixed rate will allow for facilities to submit a request for a ventilator or tracheostomy add-on rate for a participant that can be effective from the date of admission or when the rate is needed. It will enable providers to bill for the participant's entire length of stay without the need to submit documentation and renewal requests throughout the year. It will reduce the burden and risk for facilities and enhance the efficiency of Medicaid staff time.

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



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

The fiscal impact of this rulemaking is not expected to increase the Department's claims expenditures for special rates in nursing facilities. During state fiscal year (SFY) 2016, the Department paid \$2.4 million in claims (approximately \$1.68 million in federal funds and \$720,000 in state general funds) to provide special ventilator and tracheostomy care. The objective of a special rate for ventilator and tracheostomy care is to compile the costs of specialty supplies and additional nursing hours for this type of care. Historical data indicates that supplies and additional nursing hours have not varied significantly between participants or providers.

The Department proposes to implement fixed special rates based on the average of specialty supplies and additional nursing hours from the last fiscal year. Costs for supplies and nursing care have been and will remain subject to annual readjustment based on findings from the Weighted Average Hourly Rate (WAHR) survey and inflation adjustments for supplies.

Using the average of the historical rates is not expected to impact claims expenditures for the Department.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018, Idaho Administrative Bulletin, **Vol. 18-6, pages 59 and 60.**

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alex Childers-Scott at (208) 364-1891.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**270. NURSING FACILITY: SPECIAL RATES.**

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated. This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions in these rules. (4-4-13)

**01. Determination.** The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than thirty (30) days. (3-4-11)

**02. Effective Date.** Upon approval, a special rate is effective on the date the application was received. (3-4-11)

**03. Reporting.** Costs equivalent to payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. (3-19-07)

**04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)

**05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of this rule provide clarification of how special rates are paid under the prospective payment system. (4-4-13)

**06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.c. of this rule. (4-4-13)

**a.** One Hundred Percent (100%) Special Care Facility Existing July 1, 2000. If on July 1, 2000, an entire facility was a special care unit that included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)

**b.** Equipment and Non-Therapy Supplies. Equipment and non-therapy supplies not addressed in Section 225 of these rules as determined by the Department, are reimbursed in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. (4-4-13)

**c.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. Nursing facilities providing care to residents who are ventilator-dependent or who receive tracheostomy care are eligible to submit requests for the fixed add-on amount, in addition to the facility's rate for residents receiving this type of care. Approved requests are effective the date the type of care is needed by the participant, or no earlier than sixty (60) days prior to the date the request is received by the Department. The rate includes the cost for equipment and supplies and for additional registered nurse and certified nursing assistant hours, as appropriate for each type of care. Costs for equipment and supplies will be adjusted annually for inflation, and registered nurse and certified nursing assistant costs will be adjusted according to the annual Weighted Average Hourly Rates (WAHR) survey results. ( )

**i.** Approved add-on rates for ventilator-dependent residents and residents receiving tracheostomy care are subject to annual reviews by the Department to ensure that the add-on rate remains necessary for the type of care needed by the resident. ( )

**ii.** The provider must inform the department if an approved add-on rate is no longer needed or if the resident requires a change from one type of care to another. ( )

**ed.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care in Out-of-State Nursing Facilities. In the case of For residents who are ventilator-dependent and who or receive tracheostomy care in an out-of-state facility, the special add-on amount to the facility's rate for approved residents receiving this care, is determined by combining the following two (2) components is effective the date this type of care is needed by the participant or no earlier than sixty (60) days prior to the date the request is received by the Department. The add-on rate will include: (4-4-13)( )

**i.** Calculation of a staffing add-on for the cost, if any, for additional direct care staff required in meeting the exceptional needs of these residents. The hourly add-on rate is equal to the current WAHR CNA or current WAHR RN wage rate plus a benefits allowance based on annual cost report data, then weighted to remove the CNA minimum daily staffing time adjusted for the appropriate skill level of care staff; and (4-4-13)

ii. Calculation of an add-on for equipment and non-therapy supplies following the provisions in Subsection 270.06.b. of this rule. (4-4-13)

**07. Treatment of the Special Rate Cost for Future Rate Setting Periods.** Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains special rate costs, an adjustment is made to “offset,” or reduce costs by an amount equal to total incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. No related adjustment is made to the facility's CMIs. (4-4-13)

**08. Special Rate for Providers that Change Ownership or Close.** When a facility changes ownership or closes, a closing cost report is not required. Special rate payments made in the closing cost reporting period may be reviewed by the Department. (4-4-13)

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

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1804**

**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), Idaho Code.

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

|  |
|--|
| <b>PUBLIC HEARING</b>  |
| <b>Monday, September 24, 2018 - 10:00 a.m. (MDT)</b>   |
| <b>Department of Health &amp; Welfare<br/>Medicaid Central Office<br/>3232 Elder Street<br/>Conference Room D-West<br/>Boise, ID 83705</b> |
| <b>TELECONFERENCE CALL-IN</b>  |
| <b>Toll Free: 1-877-820-7831<br/>Participant Code: 701700</b>  |

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

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

Currently, IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits” specifies a list of covered organ transplants. As medical science has advanced, the procedures accepted as standard treatment have surpassed what rule allows. Section 56-255, Idaho Code, requires Medicaid to cover medically necessary services, and coverage has been approved under the allowance in IDAPA 16.03.09, “Medicaid Basic Plan Benefits” for coverage of investigational services for life-threatening medical conditions without other treatment options, or through Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) services for children under 21. This rulemaking aligns these rules with statute.

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

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

The fiscal impact of expanding lung organ transplants to include participants over the age of 21, and covering liver transplants from live donors would be cost neutral as current requests are paid under investigational services.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 61 and 62](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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 Wednesday, September 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1804  
(Only Those Sections With Amendments Are Shown.)

SUB AREA: ENHANCED HOSPITAL SERVICES  
(Sections 090 - 099)

090. ORGAN TRANSPLANTS.

The Department ~~may will~~ reimburse for organ transplant services ~~for bone marrows, kidneys, hearts, intestines, and livers as detailed in the Idaho Medicaid Provider Handbook, when medically necessary and~~ provided by hospitals approved by the Centers for Medicare and Medicaid for the Medicare program that have completed a provider agreement with the Department. ~~The Department may reimburse for cornea transplants for conditions where such transplants have demonstrated efficacy.~~ (3-19-07)(    )

091. -- 092. (RESERVED)

093. ORGAN TRANSPLANTS: COVERAGE AND LIMITATIONS.

01. ~~Kidney Transplants Coverage Limitations.~~ Kidney transplant surgery ~~No organ transplant~~ will be covered ~~only in a renal transplantation facility participating in the Medicare program after meeting the criteria specified in 42 CFR 405 Subpart U. Facilities performing kidney transplants must belong to one (1) of the End Stage Renal Dialysis (ESRD) network area's organizations designated by the Secretary of Health and Human Services for Medicare certification by the Medical Assistance Program unless prior authorized by the Department, or its designee. Coverage is limited to organ transplants performed for the treatment of medical conditions in accordance with evidence-based standards of care.~~ (3-19-07)(    )

02. Living Kidney Donor Costs. The transplant costs for actual or potential living ~~kidney~~ donors are fully covered by Medicaid and include all ~~reasonable~~ medically necessary preparatory, operation, and post-operation recovery expenses associated with the donation. Payments for post-operation expenses of a donor will be limited to the period of actual recovery. (3-19-07)(    )

~~03. Intestinal Transplants. Intestinal transplant surgery will be covered only for patients with irreversible intestinal failure, and who have failed total parenteral nutrition.~~ (3-19-07)

- ~~04. Coverage Limitations. (3-19-07)~~
- ~~a. Multi-organ transplants may be covered when: (3-19-07)~~
- ~~i. The primary organ defect caused damage to a second organ and transplant of the primary organ will eliminate the disease process; and (3-19-07)~~
- ~~ii. The damage to the second organ will compromise the outcome of the transplant of the primary organ. (3-19-07)~~
- ~~b. Each kidney or lung is considered a single organ for transplant; (3-19-07)~~
- ~~c. Re-transplants will be covered only if the original transplant was performed for a covered condition and if the re-transplant is performed in a Medicare/Medicaid approved facility; (3-19-07)~~
- ~~d. A liver transplant from a live donor will not be covered by the Medical Assistance Program; (3-19-07)~~
- ~~e. No organ transplants covered by the Medical Assistance Program unless prior authorized by the Department, and performed for the treatment of medical conditions where such transplants have a demonstrated efficacy. (3-19-07)~~
- ~~05. Follow Up Care. Follow up care to a participant who received a covered organ transplant may be provided by a Medicare/Medicaid participating hospital not approved for organ transplantation. (3-19-07)~~

094. -- 095. (RESERVED)

**096. ORGAN TRANSPLANTS: PROVIDER REIMBURSEMENT.**

Organ transplant, and procurement services, and follow-up care by facilities approved for kidneys, bone marrow, liver, or heart will be reimbursed the lesser of ninety-six and a half percent (96.5%) of reasonable costs under Medicare payment principles or customary charges as specified in the provider agreement. Follow-up care provided to an organ transplant patient by a provider not approved for organ transplants will be reimbursed at the provider's normal reimbursement rates. Reimbursement to Independent O for organ Pprocurement Agencies and Independent Hhistocompatibility Llaboratoriesy tests will not be covered made to the facility performing the transplant. (3-19-07)( )

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.14 – RULES AND MINIMUM STANDARDS FOR HOSPITALS IN IDAHO**  
**DOCKET NO. 16-0314-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-1307, 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 19, 2018.

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 docket proposes changes to the “Rules and Minimum Standards for Hospitals in Idaho” related to the use of restraint and seclusion, including which licensed medical professionals are permitted to order restraints or seclusion. The Department is also proposing changes in this docket that will strengthen patient rights. Other changes to this chapter are being made to meet the formatting requirements in IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator.”

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. Feedback from stakeholders indicate the rule changes will not result in additional costs to their operations.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 63-64](#).

**INCORPORATION BY REFERENCE:** There are no materials being incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dennis Kelly at (208) 334-6626.

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 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0314-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter, or to the documentation of compliance with these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter of rules. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – TELEPHONE NUMBER – INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ( )

**02. Mailing Address.** ( )

**a.** The mailing address of the Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**b.** The mailing address of the Division of Licensing and Certification, P.O. Box 83720, Boise, Idaho 83720-0009. ( )

**c.** The e-mail address for Facility Standards is: [fsb@dhw.idaho.gov](mailto:fsb@dhw.idaho.gov). ( )

**03. Street Address.** ( )

**a.** The street address of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**b.** The street address of the Division of Licensing and Certification is located at 3232 Elder Street, Boise, Idaho 83705. ( )

**04. Telephone.** ( )

**a.** The telephone number of the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**b.** The telephone number of the Division of Licensing and Certification, Bureau of Facility Standards is (208) 334-6626. ( )

**05. Internet Websites.** ( )

**a.** The Department internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The Division of Licensing and Certification, Bureau of Facility Standards internet website is found



at <http://www.facilitystandards.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality of Records.** Any disclosure of confidential information used or disclosed in the course of the Department's business is subject to the restrictions in state or federal law, and must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Public Records Act.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**03. Public Availability of Survey Reports.** The Department will post on the Division of Licensing and Certification's website, survey reports and findings of complaint investigations relating to a facility at <http://www.facilitystandards.idaho.gov>. ( )

~~007. -- 009.~~ (RESERVED)

**00210. DEFINITIONS AND ABBREVIATIONS -- A THROUGH M.**  
For the purposes of this chapter, the following terms and definitions apply.

**01. Anesthesiologist.** A physician who meets the requirements for certification by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology. (10-14-88)

**02. Anesthetist.** A person who is: (12-31-91)

**a.** A dentist who has successfully completed a three (3) year residency in anesthesiology approved by the American Medical Association. (10-14-88)

**b.** A physician whose competence in the practice of anesthesiology is approved by the medical staff, of the hospital in which he works. (10-14-88)

**c.** A licensed registered nurse who meets the requirements for certification (CRNA) by the Council on Certification of the American Association of Nurse Anesthetists. (10-14-88)

**03. Approved Drugs and Biologicals.** Only such drugs and biologicals as are: (10-14-88)

**a.** Included (or approved for inclusion) in the United States Pharmacopoeia, National Formulary, or United States Homoeopathic Pharmacopoeia. (10-14-88)

**b.** Approved by the pharmacy and therapeutics committee (or equivalent) of the hospital that approves such drugs and biologicals for use in the hospital. (10-14-88)

**c.** Those drugs approved by the State Title XIX Agency. (10-14-88)

**04. Board.** The Idaho State Board of Health and Welfare. (12-31-91)

~~05. **Chemical Restraint.** The use of drugs that prevents the patient from doing what he might do voluntarily on his own. (10-14-88)~~

~~06. **Chief Executive Officer or Administrator.** The person appointed by the governing body to act in its behalf in the overall management of the hospital. (10-14-88)~~

~~07. **Clinical Privileges.** Permission to render patient care, granted by the hospital governing body on recommendation of the medical staff, within well defined limits based upon the applicant's professional license, experience, competence, and judgment. (10-14-88)~~

- ~~087.~~ **Dentist.** A person currently licensed by the state of Idaho to practice dentistry. (10-14-88)
- ~~098.~~ **Department.** The Department of Health and Welfare of the state of Idaho. (12-31-91)
- ~~109.~~ **Dietetic Service Supervisor.** A person who: (12-31-91)
- a. Is a ~~registered~~ **licensed** dietitian; or (~~10-14-88~~)( )
- b. Is a graduate of a dietetic technician or dietetic assistant educational program class or correspondence school accredited by the **Academy of Nutrition and Dietetics, formerly the** American Dietetic Association; or (~~10-14-88~~)( )
- c. Is a graduate of a state-approved education program that provides ninety (90) or more hours of classroom instruction in food service management and has at least three (3) months supervisory experience in a health care institution with consultation from a dietitian; or (10-14-88)
- d. Has training and experience in food service management in a military program equivalent in content to the requirements in Subsections ~~00210.109~~.b. or ~~00210.109~~.c. **of this rule**; or (~~12-31-91~~)( )
- e. Has training and experience in food service management equivalent to requirements in Subsections ~~00210.109~~.b. or ~~00210.109~~.c. **of this rule**; or (~~12-31-91~~)( )
- ~~110.~~ **Dietitian (~~Qualified Consultant~~).** A person who ~~meets the requirements of Title 54, Chapter 35, Idaho Code, and is licensed by the Board of Medicine as a licensed dietitian (LD),~~ (~~12-31-91~~)( )
- ~~a. Meets the requirements for registration by the Commission on Dietetic Registration of the American Dietetic Association under its requirements in effect on March 9, 1976; or~~ (~~10-14-88~~)
- ~~b. Has a baccalaureate degree with major studies in food and nutrition or dietetics, has one (1) year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.~~ (~~10-14-88~~)
- ~~121.~~ **Director of Nursing Service.** A licensed registered nurse who is licensed by the state of Idaho, and has been so designated by the facility. (10-14-88)
- ~~132.~~ **Director of Psychiatric Nursing Service.** A licensed registered nurse licensed by the state of Idaho who has training and experience in psychiatric nursing and has been so designated by the facility. (10-14-88)
- ~~143.~~ **Drug Administration.** An act in which a single dose of a prescribed drug or biological is given to a patient by an authorized person in accordance with laws and regulations governing such acts. The complete act of administration entails the removal of an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying the drug and dosage with the practitioner's orders, administering dose to the proper patient, and immediately recording the time and amount given. (10-14-88)
- ~~154.~~ **Governmental Unit.** The state, any county, municipality, or other subdivision, department, division, board, or agency thereof. (10-14-88)
- ~~15.~~ **Grievance.** A grievance is a formal or informal, written or verbal complaint that is made to the hospital by a patient, or the patient's representative, regarding the patient's care, alleged abuse or neglect, or issues related to the hospital's compliance with Idaho state licensure rules. ( )
- ~~16.~~ **Hospital.** A facility that: (10-14-88)
- a. Is primarily engaged in providing, by or under the daily supervision of physicians; (10-14-88)
- i. Concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing

- acute illness; or (10-14-88)
- ii. Diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; or (10-14-88)
  - iii. Rehabilitation services for injured, disabled, or sick persons; or (10-14-88)
  - iv. Obstetrical care. (10-14-88)
- b.** Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours. (10-14-88)
  - c.** Is staffed to provide professional nursing care on a twenty-four (24) hour basis. (10-14-88)
  - d.** Any hospital licensed under the provisions of these rules ~~shall~~ **must** be deemed a “facility” as defined at and for the purposes of Section 66-317(~~§7~~), Idaho Code. (~~12-11-91~~)(    )
- 17. Hospital Licensing Act.** The law referred to in Sections 39-1301 through 39-1314, Idaho Code, as amended. (10-14-88)
- 18. Hospital for the Treatment of Alcohol and Drug Abuse.** A facility for the diagnosis, care, and treatment of patients suffering from chronic alcoholism. (10-14-88)
- 19. Infectious Wastes.** Infectious wastes are defined as set out in Subsections ~~00210.19.a.~~ through ~~00210.19.f.~~ **of this rule.** Infectious wastes ~~shall~~ **must** be handled within specific rules as prescribed in ~~Subsection 550-06. of these rules.~~ Except as otherwise provided in these rules, infectious wastes ~~shall~~ **must** be handled and disposed of in accordance with the most current guidelines and recommendations of the Centers for Disease Control. (~~12-31-91~~)(    )
- a.** Cultures and stocks of infectious agents and associated biologicals including: (1-13-90)
    - i. Specimens from medical and pathology laboratories. (1-13-90)
    - ii. Wastes from production of biologicals (by-products from the production of vaccines, reagents in the laboratory, etc.). (1-13-90)
    - iii. Cultures and stocks from clinical, research and industrial laboratories, such as disposable culture dishes and devices used to transfer, inoculate and mix cultures. (1-13-90)
  - b.** Human blood and blood products (fluid form) and their containers, and liquid body wastes (fluid form) and their containers. (1-13-90)
  - c.** Pathologic waste including tissue, organs, body parts, autopsy and biopsy materials, unless such waste has been treated with formaldehyde or other preservative agents. (1-13-90)
  - d.** “Sharps” including needles, syringes, scalpel blades, pipettes, lancets or glass tubes that could be broken during handling. (1-13-90)
  - e.** Animal carcasses that have been exposed to pathogens, their bedding and other waste from such animals. (1-13-90)
  - f.** Items contaminated with blood or body fluids from patients known to be infected with diseases transmitted by body fluid contact. (1-13-90)
- 20. Licensed Independent Practitioner (L.I.P.).** A person who is: (    )
- a.** A licensed physician or physician assistant under Section 54-1803, Idaho Code; or (    )

- b.** A licensed advance practice registered nurse under Section 54-1402, Idaho Code. ( )
- ~~201.~~ **Licensed Practical Nurse (L.P.N.).** A person currently licensed by the Idaho State Board of Nursing to practice as a licensed practical nurse. (10-14-88)
- ~~212.~~ **Licensee.** The person or entity to whom a license is issued. (10-14-88)
- ~~223.~~ **Licensing Agency.** The Idaho Department of Health and Welfare. (10-14-88)
- ~~234.~~ **Maternity Hospital.** A facility, the primary purpose of which is to provide services and facilities for obstetrical care. (10-14-88)
- ~~24.~~ **Mechanical Restraint.** *Any apparatus that physically prevents the patient from doing what he might voluntarily do on his own (this includes but is not limited to "safety belts"). Mechanical supports used in rehabilitative situations to achieve proper body position shall not be considered as restraints.* (10-14-88)
- 25. Medical Record Practitioner (Qualified Consultant).** A person who: (12-31-91)
- a.** Meets the requirements for certification as a registered record administrator (RRA) or as an accredited record technician (ART) by the American Medical Record Association; or (10-14-88)
- b.** Is a graduate of a school of medical record science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Medical Record Association. (10-14-88)
- 26. Medical Staff Members.** Those licensed physicians, dentists, podiatrists and other professionals granted the privilege to practice in the hospital by the governing authority of a hospital. (10-14-88)
- 011. DEFINITIONS AND ABBREVIATIONS -- N THROUGH Z.**  
For the purposes of this chapter, the following terms and definitions apply. ( )
- ~~2701.~~ **New Construction or New Hospitals.** Includes the following: (12-31-91)
- a.** New buildings to be used as hospitals; and (10-14-88)
- b.** Additions to existing hospitals; and (10-14-88)
- c.** Conversion of existing buildings or portions thereof for use as a hospital; and (10-14-88)
- d.** Remodeling, alteration, addition or upgrading of a hospital or hospital building system that affects the structural integrity of the building, that changes functional operation, that affects fire safety or that adds beds, departments or services over those for which the hospital is currently licensed. (10-14-88)
- ~~028.~~ **Nuclear Medicine Physician.** A physician who: (12-31-91)
- a.** Meets the requirements for certification by the American Board of Nuclear Medicine or the American Osteopathic Board of Nuclear Medicine; or (10-14-88)
- b.** Meets the requirement for certification by the American Board of Radiology, the American Board of Pathology, or the American Board of Internal Medicine, and whose competence in the practice of nuclear medicine is approved by the medical staff. (10-14-88)
- ~~2903.~~ **Nursing Graduate.** A new graduate practicing on a temporary license must be provided direct supervision by a licensed registered nurse and may not assume charge responsibilities according to the rules of the Idaho State Board of Nursing. (10-14-88)
- ~~304.~~ **Nurse Practitioner.** A licensed registered nurse having specialized skill, knowledge and

experience authorized, by rules and regulations jointly promulgated by the Idaho State Board of Medicine and the Idaho Board of Nursing and implemented by the Idaho Board of Nursing, to perform designated acts of medical diagnosis, prescription of medical, therapeutic and corrective measures and delivery of medications. (10-14-88)

**3105. Nursing Unit.** A separate and distinct service area constructed, equipped, and staffed to function independently of other nursing units and having its own related service facilities. (10-14-88)

**3206. Occupational Therapist.** A person who is licensed by the Idaho State Board of Medicine to practice occupational therapy. (10-14-88)

**3307. Occupational Therapist Assistant.** A person who: (12-31-91)

**a.** Is a graduate of an occupational therapy assistant educational program accredited by the American Occupational Therapy Association; or (10-14-88)

**b.** Meets the requirements for certification (COTA) by the American Occupational Therapy Association under its requirements in effect on the effective date of these rules. (10-14-88)

**3408. Operating Room Technician.** A person who: (12-31-91)

**a.** Has successfully completed a one (1) year education program for operating room technicians accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in cooperation with the Joint Review Committee on Education for the Operating Room Technician, or meets the requirements for certification (CST) by the Association of Surgical Technologists; or (10-14-88)

**b.** Is licensed as a practical (vocational) nurse in the state of Idaho and meets the training requirements of the Idaho State Board of Nursing. (10-14-88)

**3509. Patient.** Any individual admitted to a hospital for diagnosis, treatment, and/or care. (10-14-88)

**3610. Person.** Any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. (10-14-88)

**3711. Pharmacist.** A person who is licensed by the state of Idaho and has training or experience in the specialized functions of institutional pharmacy, such as residences in hospital pharmacy, seminars in institutional pharmacy, and other related training programs. (10-14-88)

**3812. Psychiatrist.** A physician licensed by the Idaho State Board of Medicine and who meets the requirements for certification by the American Board of Physical Medicine and Rehabilitation. (10-14-88)

**139. Physical Therapist.** A person who ~~is registered by the Idaho State Board of Medicine or otherwise certified or qualified to~~ meets all requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and engages in the practice of physical therapy in Idaho. ~~(10-14-88)( )~~

**140. Physical Therapist Assistant.** ~~A graduate of a two (2) year educational program accredited by the American Physical Therapy Association~~ A person who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. ~~(10-14-88)( )~~

**415. Physician.** A person currently licensed under the Idaho Medical Practice Act to practice medicine and surgery in the state of Idaho. (10-14-88)

**4216. Physician's Assistant.** A person employed by a physician who: (12-31-91)

**a.** Is a graduate of an approved program; and (10-14-88)

**b.** Is qualified by general education, training, experience and personal character; and (10-14-88)

c. Has been authorized by the Hospital Board to render patient services under the direction of a supervising physician who is not required to be physically present on the premises when the physician's assistant is rendering patient services, unless so required by the Hospital Board. (10-14-88)

~~4317.~~ **Podiatrist.** A person who is licensed by the state of Idaho and is a doctor of podiatric medicine (D.P.M.) or doctor of podiatry (D.P.). (10-14-88)

~~4418.~~ **Provisional License.** A license issued to a hospital that is in substantial compliance with the regulations but that is temporarily unable to meet all of the requirements. A provisional license can be issued for a specified period of time, not to exceed six (6) months, while corrections are being completed. (10-14-88)

~~4519.~~ **Psychiatric Hospital.** A facility for the diagnosis and treatment of persons with mental illness. (10-14-88)

~~4620.~~ **Psychiatric Nurse.** A licensed registered nurse, licensed by the state of Idaho and qualified by training or experience in psychiatric nursing. (10-14-88)

~~4721.~~ **Psychiatric Unit.** A specialized unit within a general hospital for the diagnosis and treatment of the mentally ill. (10-14-88)

~~4822.~~ **Psychiatrist.** A physician who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. (10-14-88)

~~4923.~~ **Radiologic Service Director.** A person who: (12-31-91)

a. Is a radiologist; or (10-14-88)

b. Is a radiotherapist; or (10-14-88)

c. In a geographic area where the services of a radiologist or radiotherapist are not available, is a physician who meets the requirements for certification in a medical specialty in which he has become qualified by experience and training in the use of radiographs, and whose competence in the practice of radiology is approved by the medical staff. (10-14-88)

~~5024.~~ **Radiologic Technologist (Diagnostic).** A person who meets at least one (1) of the following criteria: (10-14-88)

a. Is a graduate of a two (2) year education program for radiologic technologists accredited by the Council on Medical Education of the American Medical Association in cooperation with the Joint Review Committee on Education in Radiologic Technology; or (10-14-88)

b. Meets the requirements for registration by the American Registry of Radiologic Technologists or by the American Registry of Clinical Radiography Technologists, and has one (1) year of experience as a radiologic technologist within the last three (3) years; or (10-14-88)

c. Has successfully completed an educational program in radiologic technology in a military service, and has one (1) year of experience in radiologic technology within the last three (3) years; or (10-14-88)

d. Has two (2) years of pertinent radiologic equipment experience within the last five (5) years, and has achieved a satisfactory grade on a proficiency examination in radiologic technology approved by the Secretary of Health and Human Services, except that such determination of proficiency will not apply with respect to persons initially licensed by a state or seeking initial qualification as a radiologic technologist after December 21, 1977. (10-14-88)

~~251.~~ **Radiologist.** A physician who meets the requirements for certification by the American Board of



Radiology or the American Osteopathic Board of Radiology. (10-14-88)

**526. Radiotherapist.** A physician who: (12-31-91)

a. Meets the requirements for certification as a radiotherapist by the American Board of Radiology; or (10-14-88)

b. Meets the requirements for certification as a radiologist by the American Board of Radiology or the American Osteopathic Board of Radiology, and whose competence in the practice of radiation therapy is approved by the medical staff of the hospital in which he practices. (10-14-88)

**527. Registered Nurse (R.N.).** A person licensed by the Idaho State Board of Nursing to practice professional nursing, also known as a licensed registered nurse. (10-14-88)

**528. Rehabilitation Hospital.** A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. (10-14-88)

**529. Respiratory Therapist.** A person who meets the requirements for registration by the American Registry of Respiratory Technicians (ARRT). (10-14-88)

**530. Respiratory Therapy Technician.** A person who meets the requirements for certification as a Certified Respiratory Therapy Technician (CRTT) by the National Board for Respiratory Therapy. (10-14-88)

**31. Restraints.** A restraint is (1) any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely; or (2) a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition. ( )

a. A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm. ( )

b. Side rails: Side rails are considered a restraint when they restrict the patient's freedom to exit the bed. Side rails may not be considered a restraint when they protect the patient. Examples include raising the side rails when a patient is: on a stretcher, recovering from anesthesia, sedated, experiencing involuntary movement, or on certain types of therapeutic beds. ( )

c. Physically escorting a patient from one area to another against the patient's will is a restraint. ( )

d. Physically holding a patient to administer a medication against the patient's will is a restraint. ( )

e. Placing a patient in a chair or recliner that prevents him or her from getting out of the chair safely and easily, is a restraint. ( )

f. Age or developmentally appropriate protective safety interventions (such as stroller safety belts, swing safety belts, high chair lap belts, and raised crib rails) that a safety-conscious child care provider outside a health care setting would utilize to protect an infant, toddler, or preschool-aged child would not be considered restraint or seclusion for the purposes of this rule. The use of these safety interventions needs to be addressed in the hospital's policies or procedures. ( )

**32. Seclusion.** Seclusion is the involuntary confinement of a patient in a room or area, such as an activity center, from which the patient is physically prevented from leaving. Physically prevented from leaving includes threats by staff, if the patient attempts to leave, including the threat of restraint or seclusion. Confinement on a locked unit or ward does not constitute seclusion. ( )

~~5733~~. **Skilled Nursing Facility.** A facility whose design and function ~~shall~~ **must** provide area, space and equipment to meet the health needs of two (2) or more individuals who, at a minimum, require inpatient care and services for twenty-four (24) or more consecutive hours for unstable chronic health problems requiring daily professional nursing supervision and licensed nursing care on a twenty-four (24) hour basis, restorative, rehabilitative care, and assistance in meeting daily living needs. Medical supervision is necessary on a regular, but not daily basis. ~~(10-14-88)~~( )

~~5834~~. **Social Worker.** An individual who is licensed by the state of Idaho to practice social work. (10-14-88)

~~5935~~. **Special Hospital.** A facility that provides primarily one (1) type of care. The specialized hospital must meet the applicable regulations for general hospitals. All medical and related health services in these facilities must be prescribed by or must be under the general direction of persons licensed to practice medicine in Idaho. (10-14-88)

~~6036~~. **Speech Pathologist or Audiologist.** A person who: (12-31-91)

a. Meets the current requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or (10-14-88)

b. Meets the educational requirements for certification, and is in the process of accumulating the supervised clinical experience required for certification. (10-14-88)

~~6137~~. **Substantial Compliance.** Substantial compliance means a facility is in substantial compliance with these rules when there are no deficiencies that would endanger the health, safety or welfare of residents. (10-14-88)

~~6238~~. **Supervision.** Authoritative procedural guidance by a qualified person for the accomplishment of a function within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function. Unless otherwise stated in the rules, the supervisor must be on the premises to perform supervisory duties. (10-14-88)

~~639~~. **Temporary License.** A license issued for a period not to exceed six (6) months and issued initially upon application when the Department determines that all application information is acceptable. A temporary license allows the Department time to evaluate the Facility's on-going capability to provide services and to meet these rules. (10-14-88)

~~640~~. **Tuberculosis Hospital.** A facility for the diagnosis and treatment of patients with tuberculosis or other pulmonary disease. (10-14-88)

~~41~~. **Video Monitoring.** Close observation of a person for the purpose of protecting them and/or gathering information. The observation is made from a distance by means of electronic equipment, such as closed-circuit television cameras. ( )

~~42~~. **Video and/or Audio Recording.** Saving video and audio information on an electronic medium that can be viewed and/or listened to at a later time. ( )

~~6543~~. **Waiver or Variance.** Waiver or variance means a waiver or variance to these rules and minimum standards in whole or in part that may be granted under the following conditions: (10-14-88)

a. Good cause is shown for such waiver and the health, welfare or safety of patients/residents will not be endangered by granting such a waiver; (10-14-88)

b. Precedent ~~shall~~ **is** not ~~be~~ set by granting of such waiver. The waiver may be renewed annually if sufficient written justification is presented to the licensing agency. ~~(10-14-88)~~( )

~~00312~~. -- 099. (RESERVED)



(BREAK IN CONTINUITY OF SECTIONS)

201. -- ~~241~~9. (RESERVED)

**220. PATIENT RIGHTS.**

A hospital must protect and promote each patient's rights. Patient rights are provided for and described in Sections 220 through 234 of these rules. ( )

**01. Informed in Advance of Patient Care.** A hospital must inform each patient, or when appropriate, the patient's representative, of the patient's rights in advance of furnishing or discontinuing patient care whenever possible. ( )

**02. Identify Who Is Responsible for Medical Decisions.** The hospital must identify who is responsible for making medical decisions and representing the patient if the patient is unable to make those decisions. ( )

**03. Specify Procedures to Inform Patient of Patient Rights.** ( )

**a.** The hospital must specify a procedure to inform patients or their representative of their rights before providing care. ( )

**b.** In an emergency, rights may be provided after emergent care is provided. ( )

**c.** The procedure must include a method to document that patients were informed of their rights or the reasons they were not informed before care was provided. ( )

**04. Informed in Format Understandable to Patient/Patient's Representative.** The patient and/or the patient's representative has the right to be informed of the patient's rights in a language or format that the patient and/or legal representative understands. ( )

**05. Make Informed Decisions.** The patient or patient's representative has the right to make informed decisions regarding patient's care. ( )

**06. Informed and Involved in Care Plan.** The patient has the right to be informed of health status, be involved in care planning and treatment, and to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate. ( )

**a.** The hospital must obtain written consent for general treatment at the hospital. If the hospital is not able to obtain this consent, the reasons must be documented. ( )

**b.** The hospital must obtain an informed written consent from each patient or the patient's representative for the provision of specific medical and/or surgical care, except in medical emergencies. The consent must include an explanation of risks, benefits, and alternatives for high-risk procedures, sedation, and other procedures or services as defined by the governing body. ( )

**07. Formulate Advance Directives.** The patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives. The hospital must document whether the patient has an advance directive. If the patient has an advance directive, the hospital must document what it includes. If the patient does not have an advance directive, the hospital must offer the patient assistance to create one and document the patient's response. ( )

**08. Privacy.** The patient has the right to meet privately with an attorney, a physician, a licensed independent practitioner, a representative of the state protection and advocacy group, and adult/child protection

agency. ( )

**09. Personal Privacy.** The patient has the right to personal privacy, including the right to privacy during all personal care, including hygiene activities such as bathing, dressing, and toileting. This right includes the right to treatment with dignity during personal care. ( )

**a.** A patient's right to privacy may be limited in situations when a treatment team determines a person must be continuously observed to ensure his or her safety. A decision to continuously observe a patient, either in person or by video and audio monitoring, must be based on an individualized assessment of the patient's needs and it must be part of the patient's individualized plan of care. ( )

**b.** When patients are video monitored, the hospital must turn the camera off or utilize an electronic privacy option during personal care and activities of daily living where the patient may be exposed, such as bathing, dressing, and toileting. Monitoring during these times must be done by staff members in person. Video and audio monitoring and recording must also be turned off during meetings with the patient and an attorney, a physician, a licensed independent practitioner, a representative of the state protection and advocacy group, and adult/child protection agency. ( )

**c.** When the hospital utilizes the continuous observation of patients, and/or video recording of patients, it must develop policies and procedures to direct staff in these activities. ( )

**d.** The hospital must obtain the patient's or patient's legal representative's written consent for video or audio recording except in common areas. ( )

**e.** Video or audio recordings of a patient for any reason must be included as part of the patient's medical record except in common areas. ( )

**f.** Monitors used for observing patients must not be visible or audible to unauthorized persons. ( )

**10. Video Monitoring of Common Areas.** Closed circuit television may be used to monitor common areas when signs are clearly posted that video monitoring or video recording is occurring. Patient consent is not required for common areas. Video recordings of common areas are not part of the patient's medical record. ( )

**11. Safe Setting.** The patient has the right to receive care in a safe setting. ( )

**12. Free From Abuse, Neglect, and Harassment.** The patient has the right to be free from all forms of abuse, neglect, and harassment. If hospital staff become aware of potential abuse or neglect of a patient, the hospital must protect the patient from future harm and report the suspicions to the appropriate legal entity. ( )

**13. Confidentiality.** The patient has the right to the confidentiality of his or her clinical records. ( )

**14. Access to Patient's Own Records.** The patient has the right to access information contained in his or her clinical records within three business days. The patient may request clinical record information as a paper copy or in an electronic format. ( )

**a.** The hospital may not charge the patient a rate for copies that is higher than that of the local library. ( )

**b.** When the patient requests the information electronically, the hospital must provide it on a currently popular media storage device. The information must be provided in a coherent format. ( )

**15. State Agency Contact Information.** The hospital must provide patients with contact information for the Idaho state survey agency, including the agency's physical and mailing addresses and telephone number. ( )

**221. -- 224. (RESERVED)**

**225. PATIENT GRIEVANCES.**

The hospital must establish a clearly explained process for the prompt resolution of patient grievances. ( )

**01. Grievance by Patient or Patient's Representative.** A patient's grievance is a formal or informal, written or verbal complaint that is made to the hospital by a patient, or the patient's representative, regarding the patient's care, alleged abuse or neglect, or issues related to the hospital's compliance with Idaho state licensure rules. When a complaint is resolved at the time of the complaint by staff present, it is not considered a grievance and does not require investigation. ( )

**02. Grievance Process.** The grievance process must include: ( )

**a.** The hospital must inform each patient how to submit a grievance. Grievances may be submitted to any professional staff member. ( )

**b.** Grievances must be investigated. The grievance process must specify time frames for review of the grievance and the provision of a response. ( )

**c.** The hospital must document the steps taken to investigate the grievance and the results of the grievance process. ( )

**03. Written Notice of Decision.** The hospital must provide the patient with written notice of its decision that contains: ( )

**a.** The name of the hospital contact person; ( )

**b.** The steps taken to investigate the grievance; and ( )

**c.** The results of the grievance process. ( )

**226. -- 228. (RESERVED)**

**229. LAW ENFORCEMENT RESTRAINTS.**

The use of law enforcement restraint devices are not considered safe, appropriate health care restraint interventions for use by hospital staff to restrain patients. ( )

**01. Law Enforcement Use of Restraint Devices.** The use of handcuffs, manacles, shackles, other chain-type restraint devices, or other restrictive devices applied by non-hospital employed or contracted law enforcement officials for custody, detention, and public safety reasons are not governed by these rules. ( )

**02. Law Enforcement Maintains Custody and Direct Supervision.** When a law enforcement officer applies handcuffs, manacles, shackles, other chain-type restraint devices to a patient, the law enforcement officer must maintain custody and direct supervision of the prisoner who is the hospital's patient. ( )

**a.** The law enforcement officer is responsible for the use, application, and monitoring of these restrictive restraint devices in accordance with state law. ( )

**b.** The hospital is responsible for an appropriate patient assessment and the provision of safe, appropriate care to its patient who is in the custody of a law enforcement officer. ( )

**230. RESTRAINT AND SECLUSION.**

The hospital must establish a clearly explained process for restraint and/or seclusion. The hospital must follow its restraint and seclusion policies. ( )

**01. Patient's Right to be Free From Restraint and Seclusion.** All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by

staff. ( )

**02. Use of Restraint or Seclusion.** Restraint and/or seclusion may only be imposed to ensure the physical safety of the patient, a staff member, or others. Restraint and/or seclusion must be discontinued at the earliest possible time, when the patient no longer presents an immediate risk of harm to self or others. ( )

**03. Policy and Procedures.** Restraint and seclusion policies and procedures must include: ( )

**a.** Definitions for restraint and seclusion as defined in these rules. ( )

**b.** Specification of: ( )

**i.** Which personnel may assess patients to determine the need for restraint and/or seclusion: ( )

**ii.** Which personnel may perform formal face-to-face evaluations for episodes of restraint and/or seclusion; and ( )

**iii.** Which personnel may evaluate patients for the need to continue restraint and/or seclusion. ( )

**c.** How patients will be assessed for the need for restraint and/or seclusion, including the types of restraint to be used and time frames for reassessment. ( )

**d.** How patients will be monitored while in restraints and/or seclusion to ensure their well-being. ( )

**e.** A requirement that restraint and/or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the patient, staff members, or others from harm. ( )

**f.** A requirement that the type or technique of restraint used must be the least restrictive intervention that will be effective to protect the patient, staff members, or others from harm. ( )

**g.** How services will be provided to patients while in restraint and/or seclusion, including time frames for general assessments, taking vital signs, offering fluids and nourishment, toileting/elimination, systematic release of restrained limbs to provide range of motion and exercise of those limbs, and other care as needed. ( )

**h.** A requirement that specifies when restraint or seclusion is applied, the patient's plan of care is changed to direct staff on how to care for the patient while in restraint or seclusion and how to prevent further episodes. ( )

**i.** The training requirements for staff who participate in the use of restraints and/or seclusion, including training requirements for persons who may order restraints and for persons who perform face-to-face examinations. Policies must address initial and ongoing training requirements. ( )

**j.** A requirement that restraint or seclusion must be discontinued when the patient no longer presents an immediate risk of harm to themselves or others. ( )

**k.** Documentation requirements for staff caring for patients in restraint and/or seclusion, including the documentation of assessments and behaviors following episodes of restraint or seclusion. ( )

**04. Investigation of Injuries.** A procedure for the hospital to investigate injuries that occur during the application or use of restraint or seclusion. The investigation procedure must include recommendations for the prevention of future injuries from restraint or seclusion. ( )

**231. RESTRAINT AND SECLUSION ORDERS.**

The use of restraint or seclusion must be in accordance with the order of a physician or other licensed independent practitioner, who has been granted privileges by the governing body to order restraint and seclusion. ( )

**01. Orders.** Orders for the use of restraint or seclusion must never be written as a standing order or on an as needed basis (PRN). ( )

**02. Attending Physician.** The attending physician must be consulted as soon as practical if the attending physician did not order the restraint or seclusion. ( )

**03. Time Limits on Orders.** Each order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others may only be renewed according to the following limits up to a total of twenty-four (24) hours: ( )

**a.** Four (4) hours for adults eighteen (18) years of age or older; ( )

**b.** Two (2) hours for children and adolescents nine (9) to seventeen (17) years of age; or ( )

**c.** One (1) hour for children under nine (9) years of age. ( )

**d.** The original restraint or seclusion order may only be renewed within the required time limits for up to a total of twenty-four (24) hours. After the original order expires, a physician or other licensed independent practitioner must see and assess the patient before issuing a new order. ( )

**e.** Seclusion may only be ordered for the management of violent or self-destructive behavior. ( )

**f.** Each order for restraint used to ensure the physical safety of a non-violent or non-self-destructive patient may be renewed as allowed by hospital policies. ( )

**g.** Restraint or seclusion must be discontinued at the earliest possible time when the patient no longer presents an immediate risk of harm to self or others. The risk of harm must be assessed by a physician or licensed independent practitioner, or a registered nurse prior to releasing the patient. ( )

**232. RESTRAINT AND SECLUSION IMPLEMENTATION AND MONITORING.**

The use of restraint or seclusion must be implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospital policy. ( )

**01. Written System.** The hospital must adopt a written system for the use of restraints and seclusion, including techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion. ( )

**02. Observation of Patients Who Are Not Violent or Self-Destructive.** Patients who are restrained but who are not violent or self-destructive, must be observed at intervals not greater than fifteen (15) minutes. ( )

**03. Management of Violent or Self-Destructive Behavior.** Patients who are restrained or secluded for violent or self-destructive behaviors must be continuously observed by trained staff assigned to observe the patient. Staff must observe the patient either directly or using both video and audio equipment. Staff observing the patient must be physically close enough to protect the patient in an emergency. ( )

**04. Face-to-Face by Physician or Other Licensed Independent Practitioner.** Patients who are restrained or secluded for the management of violent or self-destructive behavior, must be seen face-to-face within one (1) hour after the initiation of the intervention by a physician or other licensed independent practitioner or by a registered nurse who has been trained to conduct face-to-face examinations. The face-to-face examination must evaluate: ( )

**a.** The patient's immediate situation; ( )

**b.** The patient's reaction to the intervention; ( )

**c.** The patient's medical and behavioral condition; and ( )

**d.** The need to continue or terminate the restraint or seclusion. ( )

**e.** When the face-to-face evaluation is conducted by a trained registered nurse, the trained registered nurse must consult the attending physician or other licensed independent practitioner who is responsible for the care of the patient, as soon as possible after the completion of the one (1) hour face-to-face evaluation. ( )

**233. RESTRAINT AND SECLUSION DOCUMENTATION.**

The clinical record for each patient that is restrained or secluded must contain comprehensive documentation of the episode. ( )

**01. Patient's Behavior.** A description of the patient's behavior that led to the use of restraint or seclusion. ( )

**02. Interventions Used Prior to Restraint or Seclusion.** Alternatives or other less restrictive interventions attempted prior to the use of restraint or seclusion. ( )

**03. Type of Intervention.** The type of interventions used, including the date and time the interventions were initiated. ( )

**04. Assessments.** Initial and ongoing assessments of the need for restraint or seclusion by medical and nursing staff. ( )

**05. Patient's Response.** The patient's response to the use of restraint or seclusion, including ongoing behaviors. ( )

**06. Monitoring Activities.** Monitoring activities by staff. ( )

**07. Restraint and Seclusion Log.** Each hospital must maintain a log of restraint and/or seclusion use that must include: ( )

**a.** The name of the patient; ( )

**b.** The type of restraints and/or seclusion used; ( )

**c.** The date and time restraints and/or seclusion were applied and discontinued; and ( )

**d.** Any injury or adverse consequence to the patient incurred during the restraint and/or seclusion. ( )

**234. RESTRAINT AND SECLUSION TRAINING.**

All staff involved with the ordering, application, and monitoring of restraints and seclusion must be trained. ( )

**01. Training Requirements.** Training must include an overview of the hospital's system for the use of restraints and seclusion, including techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion. Training must also include: ( )

**a.** De-escalation techniques; ( )

**b.** Use of least restrictive interventions; ( )

**c.** The safe application of restraints; ( )

**d.** Monitoring patients in restraint or seclusion; and ( )

**e.** Providing care for a patient in restraint or seclusion. ( )

02. Training Related to Job Responsibilities. All hospital staff members who participate in restraint or seclusion must be trained in relation to their job responsibilities. ( )

03. Hospital's Policy Training. Physicians and licensed independent practitioners, who order restraints and seclusion and monitor those patients, must be trained in the hospital's policies for ordering restraints and seclusion and assessing patients who are restrained or secluded. ( )

04. Ongoing Training. Staff must receive ongoing restraint and/or seclusion training in accordance with hospital policies. ( )

235. -- 249. (RESERVED)

**250. MEDICAL STAFF.**

The hospital ~~shall~~ **must** have an active medical staff organized under bylaws approved by the governing body and responsible to the governing body for the quality of all medical care provided the patients, and for the professional practices and ethical conduct of the members. (10-14-88)( )

**01. Medical Staff Qualifications and Privileges.** All medical staff members ~~shall~~ **must** be qualified legally and professionally for the privileges that they are granted. (10-14-88)( )

a. Privileges ~~shall~~ **must** be granted only on the basis of individual training, competence, and experience. (10-14-88)( )

b. The medical staff, with governing body approval, ~~shall~~ **must** develop and implement a written procedure for determining qualifications for medical staff appointment, and for determining privileges. (10-14-88)( )

c. The governing body ~~shall~~ **must** approve medical staff privileges within the limits of the hospital's capabilities for providing qualified support staff and equipment in specialized areas. (10-14-88)( )

02. Authority to Admit Patients. A hospital may grant to physicians, physician assistants, and advanced practice nurses the privilege to admit patients, provided that admitting privileges be granted only if the privileges are: ( )

a. Recommended by the medical staff at the hospital; ( )

b. Approved by the governing body of the hospital; and ( )

c. Within the scope of practice conferred by the license of the physician, physician assistant, or advanced practice nurse. ( )

d. A hospital must specify in its bylaws the process by which its governing body and medical staff oversee those practitioners granted admitting privileges. Such oversight must include credentialing and competency review. ( )

**023. Medical Staff Appointments and Reappointments.** Medical staff appointments and reappointments ~~shall~~ **must** be made by the governing body upon the recommendation of the active medical staff, or a committee of the active staff. (10-14-88)( )

a. Appointments to the medical staff ~~shall~~ **must** include a written delineation of all privileges including surgical procedures, and governing body approval ~~shall~~ **must** be documented. (10-14-88)( )

b. Reappointments to the medical staff ~~shall~~ **must** be made at least every two (2) years with appropriate documentation indicating governing body approval. (10-14-88)( )

c. Reappointment procedures ~~shall~~ **must** include a means of increasing or decreasing privileges after consideration of the member's physical and mental capabilities. (10-14-88)( )

d. The medical staff and administration with approval of the governing body ~~shall~~ **must** develop a written procedure for temporary or emergency medical staff privileges. ~~(10-14-88)~~( )

**034.** **Required Hospital Functions.** Each hospital ~~shall~~ **must** have a mechanism in place to perform the following functions: ~~(10-14-88)~~( )

- a. Coordinate all activities of the medical staff; ~~and~~ ~~(10-14-88)~~( )
- b. Develop a hospital formulary and procedures for the choice and control of all drugs used in the hospital; ~~and~~ ~~(10-14-88)~~( )
- c. Establish procedures to prevent and control infections in the hospital; ~~and~~ ~~(10-14-88)~~( )
- d. Develop and monitor standards of medical records contents; ~~and~~ ~~(10-14-88)~~( )
- e. Maintain communications between medical staff and the governing body of the hospital; and (10-14-88)
- f. Review clinical work of the medical staff. (10-14-88)

**045.** **Documentary Evidence of Medical Staff Activities.** The medical staff or any committees of the staff ~~shall~~ **must** meet as often as necessary, but at least twice annually, to assure implementation of the required functions in Subsection 250.034 of this rule. Minutes of all meetings of the medical staff or any committees of the staff ~~shall~~ **must** be maintained. ~~(12-31-91)~~( )

**056.** **Medical Staff Bylaws, Rules, and Regulations.** These ~~shall~~ **must** specify at least the following: ~~(10-14-88)~~( )

- a. A description of the medical staff organization that includes: (10-14-88)
  - i. Officers and their duties; ~~and~~ ~~(10-14-88)~~( )
  - ii. Staff committees and their responsibilities; ~~and~~ ~~(10-14-88)~~( )
  - iii. Frequency of staff and committee meetings; and (10-14-88)
  - iv. Agenda for all meetings and the type of records to be kept. (10-14-88)
- b. A statement of the necessary qualifications for appointment to the staff, and the duties and privileges of each category of medical staff. (10-14-88)
- c. A procedure for appointment, granting and withdrawal of privileges. (10-14-88)
- d. A mechanism for hearings and appeals of decisions regarding medical staff membership and privileges. (10-14-88)
- e. A statement regarding attendance at staff meetings. (10-14-88)
- f. A statement of qualifications and a procedure for delineation of clinical privileges for all categories of nonphysician practitioners. (10-14-88)
- g. A requirement for keeping accurate and complete medical records. (10-14-88)
- h. A requirement that all tissue surgically removed will be delivered to a pathologist for a report on such specimens, unless the medical staff, in consultation with the pathologist, adopts uniform exceptions to sending tissue specimens to the laboratory for analysis. (10-14-88)



i. A statement requiring a medical history and physical examination be performed no more than seven (7) days before or within forty-eight (48) hours after admission. The findings from this history and physical examination, including a provisional diagnosis, must be included in the medical record prior to surgery, except in emergencies. (5-3-03)

j. A requirement that consultation is necessary with unusual cases, except in emergencies. Unusual cases *shall must* be defined by the hospital medical staff. (10-14-88)( )

**067. Review of Policies and Procedures.** The medical staff *shall must* review and approve all policies and procedures directly related to medical care. (10-14-88)( )

**078. Dentists and Podiatrists.** If dentists and podiatrists are appointed to the medical staff, the bylaws *shall must* specifically refer to services performed by such professionals, and *shall must* specify at least the following: (10-14-88)( )

a. Patients admitted for dental or podiatry service *shall must* be under the general care of a physician member of the active staff. (10-14-88)( )

b. All medical staff requirements and procedure for privileges *shall must* be followed for dentists and podiatrists. (10-14-88)( )

**08. Dating of Bylaws.** Bylaws *shall must* be dated and signed by the current officers of the medical staff or the committee of the whole. (10-14-88)( )

**109. Medical Orders.** Written, verbal and telephone orders from persons authorized to give medical orders under Idaho law *shall must* be accepted by those health care practitioners empowered to do so under Idaho law and written hospital policies and procedures. Verbal and telephone orders *shall must* contain the name of the person giving the order, the first initial and last name and professional designation of the health care practitioners receiving the order. The order(s) *shall must* be promptly signed or otherwise authenticated by the prescribing practitioner in a timely manner in accordance with the hospital's policy. (5-3-03)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**470. PSYCHIATRIC SERVICE.**

If the hospital offers psychiatric service it *shall must* be organized, staffed and equipped to provide inpatient and outpatient treatment to the mentally ill. (10-14-88)( )

**01. Staffing.** If the hospital offers psychiatric service, it *shall must* be directed and evaluated by a psychiatrist and staffed by adequate numbers of qualified personnel to meet patient needs. (10-14-88)( )

a. A licensed registered nurse qualified by training or experience in psychiatric nursing *shall must* supervise the nursing care rendered in the psychiatric service. (10-14-88)( )

b. Psychiatric service staff *shall must* collaborate with medical, nursing, and other professional personnel in patient care planning, and provide consultation to staff of other services regarding the psychiatric problems of patients. (10-14-88)( )

**02. Patient Treatment Plan.** Patient's records *shall must* reflect that an individualized plan of treatment is developed for each patient that is specific and appropriate to individual problems and takes into consideration strengths as well as disabilities. The plan *shall must* designate the persons responsible for each component of care and *shall must* be reviewed, evaluated, and updated at regularly scheduled intervals by all professional personnel involved in the patient's care. (10-14-88)( )

**03. Policies and Procedures.** Policies and procedures governing the service *shall must* be developed

by appropriate representatives of each discipline and in collaboration with other appropriate services.

~~(10-14-88)~~( )

**04. Examination to Assess Mental Status.** All examinations to assess the patient's mental status *shall* **must** be recorded, signed and dated as soon as possible after admission and *shall* **must** include a description of the patient's physical and emotional state and intellectual functions. There *shall* **must** be an initial patient history and report of the patient's mental status within twenty-four (24) hours after admission that may be based on the results of prior examinations by the reporting physician.

~~(10-14-88)~~( )

~~**05. Patient's Rights.** Written Policies and procedures shall be developed regarding patient's rights.~~

~~(10-14-88)~~

~~**a.** Use of any form of physical restraint, forced treatment, chemical restraint or seclusion shall only occur in circumstances where there is established written policy and approved procedures to warrant such action and/or is ordered by a physician; and~~

~~(10-14-88)~~

~~**b.** Each patient shall be allowed to communicate with persons outside the facility, except where excluded or limited in accordance with his comprehensive treatment plan.~~

~~(10-14-88)~~

~~**e.** Each patient shall be apprised of his rights.~~

~~(10-14-88)~~

**065. Records.** Adequate and comprehensive records *shall* **must** be retained for assessment, evaluation and treatment purposes. Admitting and subsequent psychiatric diagnoses *shall* **must** be recorded in currently accepted terminology; and

~~(10-14-88)~~( )

**a.** The patient's psychiatric history and social evaluation *shall* **must** provide information regarding the patient's background, the onset and development of the illness, including factors and precipitating circumstances that led to the patient's admission, and data useful for patient care and discharge planning; and

~~(10-14-88)~~( )

**b.** A properly executed consent form *shall* **must** be obtained and incorporated into the record in any case of treatment approach that carries significant risks, and shows that the patient, his family, or other legally responsible person is informed of available alternative approaches; *and*

~~(10-14-88)~~( )

**c.** Documentation *shall* **must** show that the patient, his family, or other legally responsible person is informed of the treatment to be given; and

~~(10-14-88)~~( )

**d.** Documentation *shall* **must** show that planning for continued care and treatment in the community are coordinated with the patient's family and others in his social environment.

~~(10-14-88)~~( )

**076. Special Medical Record Requirements for Psychiatric Hospitals or Services.** In addition to meeting all the requirements contained in Section 360 *of these rules*, patient medical records maintained by a psychiatric hospital or service unit *shall* **must** clearly reflect the types and intensity of treatment provided to patients in the hospital. The records *shall* **must** contain the following:

~~(12-31-91)~~( )

**a.** Information essential for identifying the patient's problems, for developing treatment objectives, and other information necessary for psychiatric evaluation and diagnosis; *and*

~~(10-14-88)~~( )

**b.** A record of the treatment received by the patient, including records of all treatment related to short-term and long-term goals, including discharge planning; *and*

~~(10-14-88)~~( )

**c.** The medical record *shall* **must** provide information regarding the management of the patient's condition and of changes in treatment and patient status. Progress notes *shall* **must** reflect that care provided in accordance with the treatment plan is recorded at least weekly for the first two (2) months after admission and at least monthly thereafter; and

~~(10-14-88)~~( )

**d.** Every safeguard *shall* **must** be employed to preserve confidentiality of the patient-therapist relationship and to prevent revelation of information that would be harmful or embarrassing to the patient, his family,

or others.

(10-14-88)( )

**087. Discharge Planning.** Consideration for continued care and services in the community after discharge, placement alternatives, and utilization of community resources *shall must* be initiated on admission and carried out to ensure that each patient has a documented plan for continuing care that meets his individual needs. Provision *shall must* be made for exchange of appropriate information with outside resources. (10-14-88)( )

**098. Physician Services.** A board certified or board eligible psychiatrist *shall must* provide the overall direction of the service including monitoring and evaluating the quality and appropriateness of psychiatric services rendered. Physicians *shall must* be available at all times to provide medical and surgical diagnosis and treatment services. (10-14-88)( )

**109. Nursing Service.** The nursing service *shall must* be under the overall direction of a psychiatric nurse qualified by training or experience in psychiatric nursing, who monitors and evaluates nursing care provided. (10-14-88)( )

a. A licensed registered nurse *shall must* be on duty twenty-four (24) hours a day, seven (7) days a week to provide direct patient care, and to assign and supervise nursing care activities performed by other nursing personnel. (10-14-88)( )

b. There *shall must* be adequate numbers of qualified licensed registered nurses, licensed practical (vocational) nurses, psychiatric technicians, and other supportive nursing personnel to carry out the nursing aspects of the individual treatment plan for each patient and capable of maintaining progress notes on all patients. (10-14-88)( )

**110. Psychological Services.** The director of the psychological services *shall must* be a clinical psychologist who continually monitors and evaluates the quality and appropriateness of psychological services rendered (in accordance with standards of practice, service objectives, and established policies and procedures). (10-14-88)( )

**121. Social Services.** The director of social services *shall must* be a social worker who monitors and evaluates the quality and appropriateness of social services (in accordance with service objectives, standards of practice, and established policies and procedures). (10-14-88)( )

**132. Therapeutic Activities.** The hospital *shall must* provide a therapeutic activities program appropriate to meet the needs and interests of patients that is directed toward rehabilitation to and maintenance of optimal levels of physical and psychosocial functioning, and toward attaining a life style appropriate for each patient. (10-14-88)( )

a. If occupational therapy services are offered, they *shall must* be under the supervision of an occupational therapist. (10-14-88)( )

b. Adequate numbers of qualified therapists, supportive personnel, and consultants *shall must* be available to provide comprehensive therapeutic activities in conjunction with each patient's treatment plan. (10-14-88)( )

c. Therapeutic recreational activities *shall must* be under the supervision of a designated member of the staff who has demonstrated competence in therapeutic recreational activities programs. (10-14-88)( )

d. The supportive staff of the occupational therapy and therapeutic recreational activities services *shall must* be provided formal orientation and inservice training to enable them to carry out assigned functions. (10-14-88)( )

e. If volunteers are utilized in the therapeutic activities program, they *shall must* be provided appropriate orientation, training, and supervision by qualified professional staff. (10-14-88)( )

**143. Physical Therapy Service.** If physical therapy services are offered, the director of the service *shall*

~~must~~ be a physical therapist who monitors the quality and appropriateness of services rendered. ~~(10-14-88)~~( )

**154. Psychiatric Unit Space.** After the effective date of these rules, any psychiatric unit not free standing ~~shall~~ **must** be separated and able to be secured from the general hospital with which it is associated. Each psychiatric service unit, free standing or not, ~~shall~~ **must** include the following: ~~(10-14-88)~~( )

- a. Consultation room or rooms; ~~and~~ ~~(10-14-88)~~( )
- b. Facilities for examination and a treatment room for medical procedures; ~~and~~ ~~(10-14-88)~~( )
- c. At least one (1) observation room for acutely disturbed patients, with facilities for visual observation; ~~and~~ ~~(10-14-88)~~( )
- d. Facilities for dining; and (10-14-88)
- e. Indoor and outdoor facilities for therapeutic activities. (10-14-88)

**16. Construction of Psychiatric Hospitals.** New construction, alterations, or modifications ~~shall~~ **must** not be made until plans and specifications have been approved by the licensing agency. ~~(10-14-88)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

601. -- 99~~5~~**9.** (RESERVED)

~~996. ADMINISTRATIVE PROVISIONS.~~

~~Hearings and appeals shall be governed according to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000 et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ ~~(12-31-91)~~

~~997. CONFIDENTIALITY.~~

~~Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this law, shall not be disclosed publicly in such a manner as to identify individual residents or patients of facilities or agencies as defined, except in a proceeding involving the question of licensure.~~ ~~(10-14-88)~~

~~998. INCLUSIVE GENDER.~~

~~For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.~~ ~~(10-14-88)~~

~~999. SEVERABILITY.~~

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.14, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ ~~(10-14-88)~~

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 – RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**  
**DOCKET NO. 16-0612-1801**  
**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2018.

**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 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

The Department has adopted these temporary rules to clarify the processes for determining eligibility and has updated terms to align with the Reauthorization of the Child Care and Development Block Grant federal regulations.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to update and align these rules with the federal requirements that will become effective as of October 1, 2018.

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

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

The Department does not anticipate any fiscal impact to state general funds or to the federally-funded block grant for the proposed rule changes.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes are being adopted as temporary rules to ensure compliance with federal laws that are effective October 1, 2018, and are not negotiable.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Ericka Rupp at (208) 334-5641.

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 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0612-1801  
(Only Those Sections With Amendments Are Shown.)**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

**02. ICCP Provider is Approved.** The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. (4-9-09)

**03. Availability to Work or Provide Service.** (4-9-09)

~~a. *The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records.*~~ (4-9-09)

~~b.~~ Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (4-9-09)

~~eb.~~ Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

**04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements.** The following applicants, providers, and other individuals listed below must submit evidence to the Department that the following individuals have successfully completed and received a Department criminal history and background check clearance: (3-2-17)

**a.** All child care centers group, family, relative, and in-home providers including owners, operators, and staff, who have direct contact with children; (3-2-17)

**b.** All individuals thirteen (13) years of age or older who have direct contact with children; and (3-2-17)

**c.** All individuals thirteen (13) years of age or older who are regularly on the premises. (3-2-17)

**05. Renewal of Criminal History and Background Check Requirement.** Applicants, providers, employees, volunteers, and individuals thirteen (13) years of age or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with these requirements and receive a clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. (3-2-17)

**06. Criminal History and Background Check at Any Time.** The Department can require a criminal history and background check at any time on any individual providing child care to an ICCP eligible child. (4-9-09)

**07. Additional Criminal Convictions.** Once an individual has received a criminal history clearance,

any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. (4-9-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. COPAYMENTS.**

Eligible families, except TAFI families participating in non-employment TAFI activities and guardians of foster children, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and must not waive these costs. (3-2-17)

**01. Poverty Rates.** Poverty rates will be one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-4-13)

**02. Calculating Family Payment.** Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment. (4-4-13)

**03. Changes to Copayments. A family's share of child care costs will not increase due to a change in income only.** (10-1-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**CHANGE REPORTING REQUIREMENTS FOR THOSE  
RECEIVING CHILD CARE BENEFITS  
(Sections 600 - 699)**

**600. CHANGE REPORTING REQUIREMENTS.**

A family who receives child care benefits must report the following permanent changes by the tenth day of the month following the month in which the change occurred. (4-4-13)

**01. Change in Full-time or Part-time Activity Hours.** (3-28-18)

**02. Change in Permanent Address.** (3-28-18)

**03. Change in Household Composition.** (4-4-13)

**04. Change in Income.** When the household's total gross income for family of the same size exceeds ~~the income limit for the program, as described the higher of either~~ any of the following: (10-1-18)T

**a.** ~~One hundred and thirty percent (130%) of the Federal Poverty Guidelines (FPG)~~; (10-1-18)T

**b.** ~~Eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size;~~ or (3-28-18)(10-1-18)T

**c.** The graduated phase-out income limit as defined in the Idaho Child Care State Plan. (10-1-18)T

**05. Change in Child Care Provider.** (5-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**



**602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.**

**01. Redetermination.** The Department must redetermine eligibility for child care benefits at least every twelve (12) months. (3-2-17)

**02. Graduated Phase Out.** At the time of redetermination, if a household's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size eligible children may receive a graduated phase out benefit. Graduated phase out benefits are limited to twelve (12) months following the completion of a redetermination as defined in the Idaho Child Care State Plan. ~~(3-28-18)~~(10-1-18)T

**603. -- 699. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DENIAL OF PAYMENT.**

The Department may deny payment for the reasons described in Subsections 704.01 through 704.0~~4~~<sup>5</sup> of this rule.

~~(7-1-09)~~(10-1-18)T

**01. Services Not Provided.** Any or all claims for child care services it determines were not provided. (7-1-09)

**02. Services Not Documented.** Child care services not documented by the provider as required in Subsection 810.01 of these rules. (7-1-09)

**03. Contrary to Rules or Provider Agreement.** Child care services provided contrary to these rules or the provider agreement. (7-1-09)

**04. Failure to Provide Immediate Access to Records.** The Department may deny payment when the provider does not allow immediate access to records as provided in Subsection 810.02 of these rules. (7-1-09)

**05. Paying for Attendance.** Payment will be denied if an eligible provider pays directly or indirectly, overtly or covertly, for a child to attend the provider's child care facility. (10-1-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**810. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.**

**01. Documentation of Services.** Providers must generate documentation at the time of service sufficient to support the reimbursement for child care services. Documentation must be legible and must be retained for a period of three (3) years from the date the child care was provided. Documentation to support child care services includes: (7-1-09)

**a.** Records of attendance, including signatures of a parent or guardian; ~~(7-1-09)~~(10-1-18)T

**b.** Immunization records, conditional admittance form, or exemption form according to IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." (4-4-13)

**c.** Billing records and receipts; (7-1-09)

**d.** Policies regarding sign-in procedures, and others as applicable; and (7-1-09)

**e.** Sign-in records, electronic or manual, or the Child and Adult Food Care Program records. (7-1-09)



**02. Immediate Access to Records.** Providers must grant to the Department and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 810.01 of this rule. (7-1-09)

**03. Copying Records.** The Department and its authorized agents may copy any record as defined in Subsection 810.01 of this rule. The Department may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. (7-1-09)

**04. Removal of Records From Provider's Premises.** The Department and its authorized agents may remove from the provider's premises copies of any records defined in Subsection 810.01 of this rule. (7-1-09)

# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.07.37 – CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-1801

### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, 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 19, 2018.

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 DSM-5 no longer includes Axis 1 diagnosis. The standard for referring parents to Child Support for children in Alternate Care is being removed. This rule appears to be a left-over from the days when Title IV-E funded alternate care. The rule is obsolete and does not align with the rest of the Children's Mental Health and Behavioral Health program which requires parental obligations be calculated via the sliding fee scale.

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

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

The Division of Behavioral Health is proposing to transition from using the child support system to using our sliding fee scale process to collect parental financial obligations when a child is placed in alternate care. The change will be in the method of calculating and collecting and should not impact the amount collected. There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 127 and 128](#).

**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 Treena Clark, (208) 334-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0737-1801  
(Only Those Sections With Amendments Are Shown.)

107. ELIGIBILITY DETERMINATION.

**01. The Department Determines Eligibility for Mental Health Services.** The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (4-7-11)

**02. Eligibility Requirements.** To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

a. Be under eighteen (18) years of age; (5-8-09)

b. Reside within the state of Idaho; (5-8-09)

c. Have a DSM-5 ~~Axis-I~~ mental health diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible ~~Axis-I~~ mental health diagnosis, although one (1) or more of these conditions may co-exist with an eligible ~~Axis-I~~ mental health diagnosis; and (7-1-17)(    )

d. Have a substantial functional impairment as assessed by using the Department's approved tool. (7-1-17)

**03. Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. Parents or guardians retain custody of the child. (7-1-17)

**04. Ineligible Conditions.** A child who does not meet the requirements under Subsections 107.02 or 107.03 of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

236. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. (5-8-09)

**01. Notice of Parental Responsibility.** The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. (5-8-09)

**02. Financial Arrangements with Parent(s).** Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental, and educational costs.

~~(5-8-09)~~ ( )

- ~~a. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. (5-8-09)~~
- ~~b. The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. (5-8-09)~~

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

### **16.07.50 – MINIMUM STANDARDS FOR NONHOSPITAL, MEDICALLY MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS**

**DOCKET NO. 16-0750-1801**

#### **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 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, 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 19, 2018.

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 Division has received feedback from providers approved under this rule, who indicate portions of the rules are over-prescriptive, use archaic terms and do not reflect current best practices. Internally, a policy unit rule analysis indicates that this chapter is not in alignment with other Division of Behavioral Health rules and approval practices.

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

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

These proposed changes include the fee structure to align with other Division of Behavioral Health rules and approval practices. The current structure is an initial \$500 application fee for programs seeking approval under the rule and an annual renewal fee of \$96 per bed. The proposed rule will reduce the initial application fee from \$500 to \$100. It will also change from an annual renewal fee of \$96 per bed to a flat \$100 renewal fee that is paid every three years. The Division has not had a new application for approval under these rules since 2015. Renewal fees for the last two SFY have been consistent at \$3,648 per year. The impact of this rule change is negligible.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 129-130](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the ASAM Criteria, Third Edition, the DSM-5, 2013 Edition, and the National Electrical Code, 2017 Edition are being incorporated by reference into these rules to give them the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Division of Behavioral Health.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Adam Panitch, (208) 334-4916.

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 26, 2018.

Dated this 3rd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0750-1801  
(Only Those Sections With Amendments Are Shown.)

**000. LEGAL AUTHORITY.**

~~Under Title 39, Chapter 3, Idaho Code, the Board of Health and Welfare has authority to adopt minimum standards, rules, and regulations for the development, construction, and operation of nonhospital, medically monitored detoxification/mental health diversion units in Idaho.~~ The Idaho Legislature has ~~designated~~ delegated to the Department of Health and Welfare as the State ~~Mental Behavioral~~ Health Authority ~~and the State Substance Abuse Authority.~~ ~~The Department's responsibility is to assure that mental health and substance use disorders treatment and services are available throughout the state to individuals who need such care and who meet the eligibility criteria under~~ the authority to promulgate and enforce rules to carry out the purposes and intent of the Regional ~~Mental Behavioral~~ Health Services Act and the Alcoholism and Intoxication Treatment Act. Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code, authorize the Board of Health and Welfare and the Director of the Department to adopt and enforce rules to promote safe and adequate services and treatment of individuals within nonhospital, medically monitored detoxification/mental health diversion units. (3-29-10)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

The Department has incorporated by reference the following documents in these rules. (3-29-10)

**01. AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006.** AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006, are applicable to airborne infection isolation rooms ~~for facilities operating a sobering station.~~ The guidelines are available online at <http://www.aia.org/>. (3-29-10)(    )

**02. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003).** These standards are available online at <http://www.ansi.org/>. (3-29-10)

**03. Americans with Disabilities Act Accessibility Guidelines.** 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is (800) 514-0301. (3-29-10)

**04. The ASAM ~~PPC-2R~~ Criteria.** American Society of Addiction Medicine (ASAM) ~~Patient Placement Treatment~~ Criteria for ~~the Treatment of Addictive~~ Substance-Related ~~Disorders, Second, and Co-Occurring Conditions Third~~ Edition ~~—Revised (ASAM-PPC-2R).~~ A copy of this manual is available by mail at the American Society of Addiction Medicine, 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815; by telephone and fax, (301) 656-3920 and (301) 656-3815 (fax); or on the internet at <http://www.asam.org>. (3-29-10)(    )

**05. DSM-~~IV-TR~~5.** American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Fifth~~ Edition, ~~Text Revision~~ (DSM-~~IV-TR~~5) Washington, D.C., American Psychiatric Association, ~~200013.~~ Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W., Washington, DC, 20005~~ 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (3-29-10)(    )

**06. Idaho Board of Nursing Rules.** IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” These rules are available online at <http://adminrules.idaho.gov/rules/current/23/230101.pdf>. (3-29-10)

**07. Idaho Diet Manual.** The Idaho Diet Manual, Ninth Edition, 2005, is available from the Idaho Dietetic Association, online at <http://eatrightidaho.org>. (3-29-10)

**08. Idaho Food Code.** IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." These rules are available online at <http://adminrules.idaho.gov/rules/current/16/160219.pdf>. (3-29-10)

**09. International Building Code, ~~Edition 2003.~~** ~~This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: (888) 422-7233, and IDAPA 07.03.01, "Rules of Building Safety." These rules are available~~ online at ~~<http://www.icesafe.org>~~ ~~<https://adminrules.idaho.gov/rules/current/07/070301.pdf>~~. ~~Other building safety rules may be required.~~ (3-29-10)( )

**10. Life Safety Code.** National Fire Protection Association Standard 101, the Life Safety Code, 2000 Edition, including mandatory references. A copy of the code is available at 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471. The telephone contact number is (800) 344-3555. The code is available online at <http://www.nfpa.org/catalog/product.asp?pid=10100>. (3-29-10)

**11. National Electrical Code.** ~~National Electric Code AKA: NFPA Standard 70, the National Electric Code, 2000 Edition~~ IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code." ~~A copy of the code is~~ ~~These rules are~~ available online at ~~<http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=70>~~ ~~<https://adminrules.idaho.gov/rules/current/07/070106.pdf>~~. ~~Other electrical rules may be required.~~ (3-29-10)( )

**12. National Fire Protection Association (NFPA) Documents.** The NFPA documents referenced in this chapter of rules are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908, (800) 344-3555, and online at <http://www.nfpa.org>. (3-29-10)

**13. National Sanitation Federation.** The National Sanitation Federation Standards. These standards may be found online at [http://www.nsf.org/business/about\\_NSF/](http://www.nsf.org/business/about_NSF/). (3-29-10)

**14. Occupational Safety and Health Act of 1970 (OSHA).** The OSHA Construction Standards may be obtained by contacting OSHA at 200 Constitution Avenue, NW, Washington, DC 20210. The internet website is <http://www.osha.gov/doc/index.html>. (3-29-10)

**005. OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – TELEPHONE – AND INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-29-10)

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (3-29-10)

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. (3-29-10)

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (3-29-10)

**05. Internet Website.** The Department's internet website at <http://www.healthandwelfare.idaho.gov>. (3-29-10)

**06. Substance Abuse Services Website.** The Substance Abuse Services internet website at <http://www.substanceabuse.idaho.gov>. (3-29-10)

**07. Mental Health Services Website.** ~~The Mental Health Services internet site is~~ ~~<http://www.mentalhealth.idaho.gov>~~. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH K.**

For the purposes of this chapter of rules, the following definitions apply. (3-29-10)

**01. Administrator.** The person delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The administrator, owner, medical director, ~~lead nurse~~ **director of nursing**, or mental health program director may be the same individual. The term “administrator” is synonymous with the term “chief executive officer (CEO).” ~~(3-29-10)( )~~

**02. Adult.** An individual eighteen (18) years of age, or older. (3-29-10)

**03. Applicant.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, who is planning to operate or maintain a detox/mental health diversion unit in Idaho. (3-29-10)

**04. ASAM.** The American Society of Addiction Medicine. (3-29-10)

**05. Board.** The Idaho State Board of Health and Welfare. (3-29-10)

**06. Change of Ownership.** The sale, purchase, exchange, or lease of an existing facility by the present owner to a new owner. (3-29-10)

~~07. **Chemical Dependency Counselor.** A professional counselor licensed by the Idaho State Licensing Board of Professional Counselors and Marriage and Family Therapists under Title 54, Chapter 34, Idaho Code, who:~~

~~a. *Has specialized training, education, and experience in the treatment of persons with problems related to alcohol and drug use; and*~~ (3-29-10)

~~b. *Meets the requirements for certification as a alcohol and drug counselor under IDAPA 16.07.17, “Substance Use Disorders Services.”*~~ (3-29-10)

~~08. **Chemical Restraint.** The use of drugs that prevents a client from doing what he might do voluntarily on his own.~~ (3-29-10)

~~09. **Chief Executive Officer (CEO).** The individual delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The chief executive officer, owner, medical director, ~~lead nurse~~ **director of nursing**, or mental health program director may be the same individual. The term “chief executive officer (CEO)” is synonymous with the term “administrator.”~~ (3-29-10)( )

~~10. **Client.** An adult, who is not the subject of involuntary commitment proceedings or detention without a hearing, as provided in Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code, and who receives services at a detox/mental health diversion unit. The term “client” is synonymous with the terms: patient, participant, resident, consumer, or recipient of treatment.~~ (3-29-10)

~~11. **Department.** The Idaho Department of Health and Welfare. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code, and as the State Substance Abuse Authority under Section 39-304, Idaho Code.~~ (3-29-10)

~~12. **Director.** The Director of the Department of Health and Welfare, or his designee.~~ (3-29-10)

~~13. **Full Accreditation Certificate of Approval.** A certificate of approval issued for a period of ~~one~~ **three** (~~1~~) years to a facility that is in substantial compliance with these rules and minimum standards.~~ (3-29-10)( )

~~14. **Governing Body.** The individual or individuals, board of directors, group, agency, or entity that~~



has ultimate authority and responsibility for the overall conduct and operation of the facility, and for full compliance with these rules and minimum standards. (3-29-10)

**154. Governmental Unit.** The state of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. (3-29-10)

**011. DEFINITIONS AND ABBREVIATIONS L THROUGH Z.**  
For the purposes of this chapter of rules, the following definitions apply. (3-29-10)

**01. ~~Lead Nurse~~ Director of Nursing.** A qualified licensed registered nurse (R.N.) licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," who is so designated by the governing body. The ~~lead nurse~~ director of nursing, administrator, or mental health program director may be the same individual. The ~~lead nurse~~ director of nursing is responsible for nursing care provided to clients and for supervising the nursing care and services provided by staff. ~~(3-29-10)~~(\_\_\_\_)

**02. ~~Level of Care Utilization System ("LOCUS").~~** ~~A clinical level of care placement tool for psychiatric and addictions services, developed by the American Association of Community Psychiatrists.~~ ~~(3-29-10)~~

**03. Licensed Clinical Social Worker (LCSW).** A clinical social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, "Rules of the Board of Social Work Examiners." (3-29-10)

**043. Licensed Marriage and Family Therapist (LMFT).** A person licensed to practice marriage and family therapy by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 34, Idaho Code, and IDAPA 24.14.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (3-29-10)

**054. Licensed Master's Level Social Worker (LMSW).** A master's level social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, "Rules of the Board of Social Work Examiners." (3-29-10)

**065. Licensed Practical Nurse (L.P.N.).** A practical nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-29-10)

**076. Licensed Professional Counselor (LPC).** A professional counselor licensed by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (3-29-10)

**087. Licensed Registered Nurse (R.N. or Licensed Registered Nurse).** A licensed registered nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-29-10)

**098. Mechanical Restraint.** Any apparatus that physically prevents a client from doing what he might do voluntarily on his own, including "safety belts." The term "mechanical restraint" is synonymous with the term "physical restraint." (3-29-10)

**109. Medical Director.** A qualified physician licensed by the Idaho State Board of Medicine in accordance with Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," who is so designated by the governing body. The medical director is responsible for providing medical care to clients and for supervising all of the medical care, services, and treatment provided by the medical staff. (3-29-10)

**140. Medical Staff.** Professional medical personnel employed, full-time or part-time, who are licensed under Title 54 or Title 56, Idaho Code, to provide medical care and services to clients in a Detox/Mental Health Diversion Unit. (3-29-10)

**121. Mental Health Clinical Staff.** Professional mental health personnel employed, full-time or part-time, who are licensed under Title 54, Idaho Code, to provide mental health counseling, treatment, and services to clients in a Detox/Mental Health Diversion Unit. (3-29-10)

**132. Mental Health Program Director.** A qualified psychiatrist, psychologist, licensed registered nurse, licensed clinical professional counselor, licensed clinical social worker, licensed professional counselor, licensed master's level social worker, or licensed marriage and family therapist, who is so designated by the governing body. The mental health program director is responsible for providing mental health counseling, treatment, and services provided to clients and for supervising mental health counseling, treatment, and services provided by mental health clinical staff. The mental health program director, administrator, ~~lead nurse~~ director of nursing, and medical director may be the same individual. (3-29-10)(    )

~~14. MIS. The Department's computerized management information system designed to collect individual demographics and service information on persons who are suffering from a subacute psychiatric or alcohol/drug crisis. (3-29-10)~~

**153. Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Unit.** A facility referred to in this rule as a "detox/mental health diversion unit," means a freestanding residential treatment facility, approved by the Department of Health and Welfare under these rules and minimum standards. Facilities owned, operated, or under the custody, control, or jurisdiction of the Department of Correction, Department of Juvenile Corrections, or state, city, or county law enforcement are excluded from this definition and are not required to meet these rules and minimum standards. (3-29-10)

**164. On-Call.** The scheduled state of availability to return to duty, work ready, within a specified period of time. (3-29-10)

**175. On-Duty.** Being awake, and actively carrying out assigned duties in the facility. (3-29-10)

**186. Owner.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, having legal ownership of the facility as an operating business, regardless of who owns the real property. An operator is synonymous with owner. (3-29-10)(    )

**197. Physical Restraint.** An apparatus that physically prevents a client from doing what he might do voluntarily on his own including "safety belts." The term "physical restraint" is synonymous with the term "mechanical restraint." (3-29-10)

~~2018. Physician.~~ An individual who holds a license issued by the Idaho State Board of Medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho." (3-29-10)

**219. Provisional Certificate of Approval.** Pending satisfactory correction of all deficiencies, a certificate of approval issued for a period not to exceed six (6) months to a facility that is not in substantial compliance with these rules and minimum standards. A facility will not be issued more than one (1) provisional certificate of approval in any two (2) year period. (3-29-10)

**220. Psychiatrist.** An individual licensed by the Idaho State Board of Medicine to practice medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery," who is certified by the American Board of Psychiatry and Neurology in psychiatry. (3-29-10)

**231. Psychologist.** An individual licensed by the Idaho State Board of Psychology to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-29-10)

22. Qualified Substance Use Disorders Professional. A qualified substance use disorders professional includes individuals with the following qualifications: (    )

- a. Idaho Board of Alcohol/Drug Counselor Certification - Certified Alcohol/Drug Counselor: ( )
- b. Idaho Board of Alcohol/Drug Counselor Certification - Advanced Certified Alcohol/Drug Counselor: ( )
- c. Northwest Indian Alcohol/Drug Specialist Certification - Counselor II or Counselor III: ( )
- d. National Board for Certified Counselors (NBCC) - Master Addictions Counselor (MAC): ( )
- e. “Licensed Clinical Social Worker” (LCSW) or a “Licensed Masters Social Worker” (LMSW) licensed under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners”: ( )
- f. “Marriage and Family Therapist” or “Associate Marriage and Family Therapist,” licensed under Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists”: ( )
- g. “Nurse Practitioner” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing”: ( )
- h. “Clinical Nurse Specialist” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing”: ( )
- i. “Physician Assistant” licensed under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, “Rules for the Licensure of Physician Assistants”: ( )
- j. “Licensed Professional Counselor” (LPC) or a “Licensed Clinical Professional Counselor” (LCPC) licensed under Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists”: ( )
- k. “Psychologist” or “Psychologist Extender” licensed under Title 54, Chapter 23, Idaho Code, and IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners”: ( )
- l. “Physician” licensed under Title 54, Chapter 18, Idaho Code; and ( )
- m. “Licensed Registered Nurse (RN)” licensed under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing. ( )

**243.** **Serious Mental Illness (SMI).** Means any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-~~IV~~ TR5), incorporated in Section 004 of these rules: (3-29-10)( )

- a. Schizophrenia- spectrum and other psychotic disorders: (3-29-10)( )
- b. ~~Paranoia and other psychotic disorders.~~ (3-29-10)
- e. Bipolar disorders (mixed, manic and depressive)-: (3-29-10)
- d.c. Major depressive disorders (single episode or recurrent)-: (3-29-10)
- e. ~~Schizoaffective disorders.~~ (3-29-10)
- f.l. Obsessive-compulsive disorders. (3-29-10)

**254.** **Serious and Persistent Mental Illness (SPMI).** A primary diagnosis under DSM-~~IV~~ TR5 of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one

hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: ~~(3-29-10)~~( )

- a. Vocational or education, or both. (3-29-10)
- b. Financial. (3-29-10)
- c. Social relationships or support, or both. (3-29-10)
- d. Family. (3-29-10)
- e. Basic daily living skills. (3-29-10)
- f. Housing. (3-29-10)
- g. Community or legal, or both. (3-29-10)
- h. Health or medical, or both. (3-29-10)

**265. Social Worker.** An individual licensed by the Idaho State Board of Social Work Examiners to practice social work in Idaho under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho State Board of Social Worker Examiners.” (3-29-10)

**276. Substantial Compliance.** Substantial compliance means complying with the minimum standards and requirements of these rules, and the absence of any state or condition that could endanger the health, safety, or welfare of any client, employee, contractor, occupant, or volunteer. (3-29-10)

**012. -- 099. (RESERVED)**

**CERTIFICATE OF APPROVAL REQUIREMENTS**  
**(Sections 100 - 199)**

**100. CERTIFICATE OF APPROVAL.**

**01. Purpose.** The purpose of a certificate of approval issued by the Department is to assure, insofar as is reasonably practicable, that the care, services, treatment, and physical surroundings of each detox/mental health diversion unit are in substantial compliance with this chapter. The issuance of a certificate of approval does not guarantee adequacy of individual care, treatment, personal safety, fire safety, or the well-being of any client, employee, contractor, volunteer, or occupant of a facility. (3-29-10)

**02. Valid Certificate of Approval.** Under Sections 39-304, 39-305, 39-311, 39-3133, and 56-1003, Idaho Code, no individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, can operate, establish, manage, conduct, or maintain, directly or indirectly, a detox/mental health diversion unit without a valid certificate of approval issued by the Department. (3-29-10)

a. No client may be admitted to, or cared for in, a detox/mental health diversion unit until a certificate of approval is issued by the Department. (3-29-10)

b. The application must include, at a minimum, all of the information, items, documents, and materials identified in Section 105 and 110 of these rules. Additional requirements found in the remainder of these rules must be supplied in a timely manner and prior to at least ninety (90) days prior to the planned opening date. ~~(3-29-10)~~( )

~~03. **Maximum Allowable Number of Beds.** A certificate of approval will specify the maximum allowable number of beds for detoxification, sobering, and mental health. Facilities are prohibited from exceeding~~

~~the maximum allowable number of beds for detoxification, sobering, and mental health as stated on the certificate of approval.~~ (3-29-10)

~~04.~~ **Apply for Certificate of Approval.** In addition to obtaining prior written approval of actual construction drawings, plans, and specifications in accordance with Section 600 through 699 of these rules, each individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, planning to operate or maintain a detox/mental health diversion unit must apply for a certificate of approval on forms provided by the Department. (3-29-10)

a. The application and application fee must be submitted to the Department at least ninety (90) days prior to the planned opening date. The application must contain information required by the Department which includes affirmative evidence of the facility's ability to comply with these rules. (3-29-10)

b. Upon receipt of a completed application, the Department has up to sixty (60) days to notify the applicant of its determination. (3-29-10)

**101. -- 104. (RESERVED)**

**105. AGREEMENTS REQUIRED FOR CERTIFICATE OF APPROVAL FOR A DETOX/MENTAL HEALTH DIVERSION UNIT FACILITY.**

Each detox/mental health diversion unit must have and maintain at all times formal written agreements as provided in Subsections 105.01 through 105.05 of this rule before a certificate of approval can be issued. An individual filling more than one (1) of the following positions, must meet the qualifications under these rules for each position being filled by the individual. (3-29-10)

**01. Agreement with Licensed Hospital Required.** A formal written agreement must be maintained at all times for the provision of emergency medical services and ambulatory medical services with one (1) or more licensed hospitals serving the area in which the facility is located. The agreement must provide, at a minimum, for: (3-29-10)

- a. Laboratory, x-ray, and other diagnostic services not otherwise available at the facility; (3-29-10)
- b. Hospitalization for acutely ill clients; (3-29-10)
- c. Specify hospital consents to accept all transfers for prompt medical evaluation, treatment, and admission; and (3-29-10)
- d. Assurances for the exchange of information for clients. (3-29-10)

**02. Agreement with CEO or Administrator.** A formal written agreement must be maintained at all times with a qualified professional who is employed or contracted to serve as the CEO or administrator. The CEO or administrator is responsible for the day-to-day operations of the facility. (3-29-10)

**03. Agreement with Medical Director.** A formal written agreement must be maintained at all times with a qualified physician licensed in Idaho, who is employed or contracted to serve as the medical director. The medical director is responsible for the medical care provided to clients and for supervising all medical care, services, and treatment provided by the medical staff. (3-29-10)

**04. Agreement with ~~Lead Nurse~~ Director of Nursing.** A formal written agreement must be maintained at all times with a qualified R.N. licensed in Idaho, who is employed or contracted to serve as the ~~lead nurse~~ director of nursing. The ~~lead nurse~~ director of nursing is responsible for nursing care provided to clients and for supervising the nursing care, and services provided by staff. (3-29-10)( )

**05. Agreement with Mental Health Program Director.** A formal written agreement must be maintained at all times with a qualified professional licensed in Idaho, who is employed or contracted to serve as the Mental Health Program Director. The Mental Health Program Director is responsible for providing mental health counseling, treatment, and services to clients and for supervising mental health counseling, treatment and services

provided by the mental health staff.

(3-29-10)

~~06. Agreement with Chemical Dependency Counselor. A formal written agreement must be maintained at all times with a qualified professional counselor licensed in Idaho who is employed or contracted as a chemical dependency counselor. The chemical dependency counselor is responsible for developing an individualized treatment plan based on the treatment needs assessment for each client admitted to the detoxification unit or mental health unit, and for supervising all chemical dependency counseling provided by staff.~~ (3-29-10)

106. -- 109. (RESERVED)

#### 110. APPLICATION FOR CERTIFICATE OF APPROVAL.

**01. Completed and Signed Application.** The applicant must apply for a certificate of approval on forms provided by the Department, and must provide all of the information requested by the Department. Forms for a certificate of approval are available upon written request, or online at <http://www.healthandwelfare.idaho.gov>. (3-29-10)

**02. Initial Application and Building Evaluation Fee.** The applicant must make a request in writing for a certificate of approval and evaluation of existing buildings. The request must include: (3-29-10)

a. The physical address of the buildings that are to be evaluated; (3-29-10)

b. The name, address, and telephone number of the individual who is to receive the Department's determination and evaluation report; and (3-29-10)

c. A nonrefundable ~~five~~ one hundred (\$~~5~~100) dollar application and building evaluation fee. No application will be processed until the application fee is paid. (3-29-10)(    )

**03. Statement to Comply.** The applicant must provide a written statement that the applicant, owner, operator, proposed CEO or administrator, proposed medical director, proposed ~~lead nurse~~ director of nursing, and proposed mental health program director have thoroughly read, reviewed, and are prepared to comply with the provisions in IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units." (3-29-10)(    )

**04. Statement Disclosing Revocation or Disciplinary Actions.** The applicant must provide a written statement regarding the applicant, owner, proposed CEO or administrator, proposed medical director, proposed ~~lead nurse~~ director of nursing, and proposed mental health program director that either: (3-29-10)(    )

a. Discloses any revocation or other disciplinary action taken against, or in the process of being taken against any of them, in Idaho or any other jurisdiction; or (3-29-10)

b. Affirms that no revocation or other disciplinary action has been taken against, or is in the process of being taken against any of them, in Idaho or any other jurisdiction. (3-29-10)

**05. Criminal History and Background Clearance.** The applicant must provide satisfactory evidence that the owner, applicant, all employees, transfers, reinstated former employees, student interns, contractors, volunteers, and any other individuals who provide care or services, or have access to clients, have successfully completed and received a clearance for a criminal history and background check that complies with Section 009 of these rules. (3-29-10)

**06. Electrical Inspection.** The applicant must provide a written statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical code as incorporated by reference in Section 004 of these rules. (3-29-10)

**07. Public Health District.** The applicant must provide a current written statement from the local health district that confirms the facility meets the local health codes for occupancy, and if the facility is not on a municipal water supply or sewage disposal system, that the water supply and sewage disposal system comply with



these rules and are in good working order. (3-29-10)

**08. Certificate of Occupancy, Fire Codes, and Building Codes.** The applicant must provide a written statement from the local zoning official, local building official, and local fire official, that confirms the facility complies with local zoning, local building codes, and local fire codes for occupancy. (3-29-10)

**09. Operational Policies and Procedures.** The applicant must provide a complete set of operational policies and procedures as required under these rules. (3-29-10)

**10. Proof of Insurance.** The applicant must provide proof of insurance. Each facility must maintain medical liability insurance at a minimum of one million dollars/three million dollars (\$1,000,000/\$3,000,000), and general liability insurance at a minimum of one million/three million dollars (\$1,000,000/\$3,000,000) or equivalent insurance. Copies of the declarations policy face-sheet must be included with the application. (3-29-10)

**11. Floor Plan.** The applicant must provide a detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings. (3-29-10)

**12. Purchase Agreement, Lease, or Deed.** The applicant must provide a copy of the purchase agreement, lease, or deed. (3-29-10)

**13. Identification of CEO or Administrator, Medical Director, ~~Lead Nurse~~ Director of Nursing, and Mental Health Program Director.** The applicant must provide a written statement that identifies the CEO or administrator, medical director, ~~lead nurse~~ director of nursing, and mental health program director along with documentation that establishes compliance with Sections 271 through 273, and 275 of these rules. ~~(3-29-10)~~( )

**14. Other Information as Requested.** The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of these rules. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**116. EXPIRATION AND RENEWAL OF CERTIFICATE OF APPROVAL.**

**01. Existing Certificate of Approval.** Each certificate of approval to operate a detox/mental health diversion unit will expire on the date designated on the certificate of approval, unless suspended or revoked prior to the certificate's expiration date. (3-29-10)

**02. Renewal of Certificate of Approval.** To renew a certificate of approval, the individual or governmental unit named on the certificate must submit a written request for renewal on a form approved by the Department at least ninety (90) days prior to the expiration of the certificate. The Department has up to thirty (30) days after receiving a completed renewal application to notify the applicant of its determination. (3-29-10)

**03. ~~Annual~~ Renewal Fee.** A ~~an annual~~ nonrefundable fee of ~~ninety six one hundred~~ (\$~~96~~100) dollars ~~per bed~~ must be submitted with the renewal application for certificate of approval. ~~This per bed annual renewal fee will be adjusted from time to time to cover the cost of licensing, enforcing, and regulating in accordance with these rules and minimum standards.~~ ~~(3-29-10)~~( )

**117. CERTIFICATE OF APPROVAL DURATION.**

A certificate of approval is effective for three (3) years from the date the Department issues the Certificate of Approval. The detox/mental health diversion unit's Certificate of Approval is subject to the unit maintaining compliance with these rules. ( )

**118. DETOX/MENTAL HEALTH DIVERSION UNIT - DEEMING.**

**01. National Accreditation.** The Department will deem a nationally accredited detox/mental health diversion unit to be in compliance with the minimum standards and rule requirements in these rules as long as the

national standards meet or exceed the standards of these rules. ( )

**02. Proof of Accreditation.** The applicant must submit a copy of accreditation results and reports regarding accreditation from the accrediting agency with their application. ( )

**03. Additional and Supplemental Information.** To address requirements for a state-approved detox/mental health diversion unit, the Department may require an applicant to provide additional or supplemental information not covered under the national accreditation or certification requirements. Additional documents may include: ( )

**a.** An organizational chart with verification that staff meet minimum certification standards; ( )

**b.** Satisfactory evidence that a criminal history and background check clearance, or waiver, has been issued by the Department for each individual required in Section 009 of these rules to have a criminal history check or whose position requires regular contact with clients. ( )

~~117.~~—119. (RESERVED)

**120. ISSUANCE OF CERTIFICATE OF APPROVAL BY DEPARTMENT.**

Upon completion of the application process, the Department may take any of the following actions in Subsections 120.01 through 120.03 of this rule. (3-29-10)

**01. Issue ~~Full Accreditation~~ Certificate of Approval.** Issue a full accreditation certificate of approval for a period of ~~one~~ three (+3) years if a facility is in substantial compliance with these rules and minimum standards. (~~3-29-10~~)( )

**02. Issue Provisional Certificate.** Issue a provisional certificate of approval for a period of six (6) months when a facility is not in substantial compliance with these rules and minimum standards. This provisional certificate is contingent on an approved plan to correct all deficiencies prior to the expiration of the provisional certificate being provided to the Department by the facility. A facility will not be issued more than one (1) provisional certificate of approval in any two-year period. (3-29-10)

**03. Deny Certificate.** The Department may ~~D~~deny a certificate of approval if it is determined that the detox/mental health diversion unit does not meet the requirements of these rules. The applicant will be notified of the denial, and the application returned with written recommendations for correction and completion of the recommendations. (~~3-29-10~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. CHANGES REQUIRING NOTIFICATION TO THE DEPARTMENT.**

A detox/mental health diversion unit must notify the Department if any of the following changes in Subsections 130.01 through 130.05 of this rule occurs. (3-29-10)

**01. Change of Ownership, Operator, or Location.** The owner must notify the Department when there is a change of ownership, operator, or location. A new application for a certificate of approval must be submitted to the Department at least ninety (90) days prior to the proposed date of the change. (3-29-10)

**02. Change of Ownership, Operator, or Location Due to Facility in Litigation.** An application for a certificate of approval that is being suspended or revoked and a change of ownership, operator, or location due to a facility in litigation for failure to comply with these rules, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. (3-29-10)

**03. Change of CEO or Administrator, Medical Director, or ~~Lead Nurse~~ Director of Nursing.** Any facility issued a certificate of approval must notify the Department in writing as soon as practicable prior to any the



following changes in Subsections 130.03.a. through 130.03.c of this rule, to permit the Department to determine whether any changes in certification status are necessary: ~~(3-29-10)~~( )

- a. Change in CEO or administrator; (3-29-10)
- b. Change in medical director; (3-29-10)
- c. Change in ~~lead nurse~~ **director of nursing**; or ~~(3-29-10)~~( )
- d. Change in mental health program director. (3-29-10)

**04. Change in Services or Closure of Facility.** A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any of the following changes to permit the Department to determine whether any changes in certification status are necessary: (3-29-10)

- a. Material change in services or program classifications provided by the facility; or (3-29-10)
- b. Closure of the facility. (3-29-10)

**05. Change in Maximum Allowable Number of Beds.** A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any proposed increase in the maximum allowable number of beds for detoxification, sobering, or mental health. (3-29-10)

**131. NOTIFICATION BY THE DEPARTMENT FOR PROPOSED CHANGES SUBMITTED BY THE FACILITY.**

**01. Notification on Submitted Applications for Proposed Changes.** The Department will notify the owner or operator of its determination with respect to a proposed change in ownership, operators, or location, within sixty (60) days of the submission of the application for the change as provided in Section 130 of these rules. (3-29-10)

~~**02. Notification of Changes in Maximum Number of Beds.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to the proposed changes in the maximum allowable number of beds for detoxification, sobering, and mental health for the facility. (3-29-10)~~

**032. Notification of Changes in Operations.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to any of the following proposed changes: ~~(3-29-10)~~( )

- a. Change of CEO or administrator; (3-29-10)
- b. Change of medical director; (3-29-10)
- c. Change of ~~lead nurse~~ **director of nursing**; ~~(3-29-10)~~( )
- d. Change of mental health program director; and (3-29-10)
- e. Material change in services or program classifications. (3-29-10)

**132. -- 149. (RESERVED)**

**150. DENIAL OF CERTIFICATE OF APPROVAL.**

**01. Denial of a Certificate of Approval for Lack of Substantial Compliance.** The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that the facility is not in substantial compliance with these rules and minimum standards. (3-29-10)

**02. Denial of a Certificate of Approval Related to Key Individuals.** The Department may deny a

certificate of approval when persuaded by a preponderance of the evidence that any of the following individuals: applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director has: ~~(3-29-10)~~( )

- a. Violated any conditions of a certificate of approval; (3-29-10)
- b. Willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval; (3-29-10)
- c. Been found guilty of fraud, gross negligence, abuse assault, battery, or exploitation of children or vulnerable adults; (3-29-10)
- d. Been denied or has had revoked any license or certificate issued by the Department or under Title 54, Idaho Code; (3-29-10)
- e. Been convicted of operating any facility without a certificate of approval; (3-29-10)
- f. Been enjoined from operating any facility; (3-29-10)
- g. Been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or infraction; or (3-29-10)
- h. Directly been under the control or influence of any person who is described in Subsections 150.02.a. through 150.02.g. of this rule. (3-29-10)

**03. Denial of a Certificate of Approval for an Act Adversely Affecting Welfare of Client, Employee, Contractor, or Volunteer.** The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director. Such acts or omissions include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. ENFORCEMENT ACTION FOR SUSPENSION OR REVOCATION OF A CERTIFICATE AND LIMIT ON ADMISSIONS WITH NOTICE.**

The Department may suspend or revoke a certificate of approval, terminate or limit admissions, with or without a referral of clients, when persuaded by a preponderance of the evidence, that the facility is not in substantial compliance with these rules and minimum standards. Additional causes for suspension or revocation of a certificate of approval, for terminating or limiting admissions, with or without a referral of clients, may be issued for any of the reasons listed in this section of rule. (3-29-10)

**01. Act Adversely Affecting Welfare of Client.** Any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director. Such acts or omissions may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. ~~(3-29-10)~~( )

**02. Endangerment to Health and Safety.** Any state or condition exists at the facility which endangers the health or safety of any client. (3-29-10)

**03. Misrepresentation or Omission on Application.** The applicant, owner, operator, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, or mental health program director has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining or renewing a

license. (3-29-10)( )

**04. Lack of Sound Judgment in Operation or Management.** The applicant, owner, operator, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director has demonstrated a lack of sound judgment in the operation or management of the facility. (3-29-10)( )

**05. Substantiated Deficiencies.** The facility has one (1) or more substantiated deficiencies as demonstrated by any one (1) of the following: (3-29-10)

**a.** Any deficiency that endangers the health and safety of any client, employee, contractor, or volunteer. (3-29-10)

**b.** Repeat violations of any requirement of these rules and minimum standards or of Idaho law. (3-29-10)

**c.** An accumulation of minor violations that when taken as a whole, would constitute a substantial deficiency. (3-29-10)

**06. Lack of Adequate Staffing.** The facility lacks adequate staff to properly care for the number and type of clients receiving care and treatment at the facility. (3-29-10)

**07. Acts of Key Individuals.** The facility, applicant, owner, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, or mental health program director: (3-29-10)( )

**a.** ~~Has~~ Violated any conditions of a certificate of approval. (3-29-10)( )

**b.** Willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval; ( )

**c.** Been found guilty of fraud, gross negligence, abuse assault, battery, or exploitation of children or vulnerable adults; ( )

**d.** ~~Has~~ Been denied or has had revoked any license issued under Title 54, Idaho Code, or by the Department; (3-29-10)( )

**e.** ~~Has~~ Been convicted of operating any facility without a license; (3-29-10)( )

**f.** ~~Has~~ Been enjoined from operating any facility; (3-29-10)( )

**g.** Been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or infraction; or ( )

**h.** ~~Is~~ Directly under the control or influence of any person who has been subject to the proceedings described in this Subsection of these rules; or (3-29-10)( )

**f.** ~~Fails to comply with the data gathering requirements of the MIS; or~~ (3-29-10)

**g.** Fails to substantially comply with these rules and minimum standards. (3-29-10)

**08. Violation of Client Confidentiality.** The applicant, owner, operator, CEO or administrator, medical director, ~~lead-nurse~~ director of nursing, mental health program director, or any employees, transfers, reinstated former employees, student interns, contractors, volunteers, or any other persons who provide care or services or have access to clients, violate client confidentiality. (3-29-10)( )

(BREAK IN CONTINUITY OF SECTIONS)

166. -- ~~169~~74. (RESERVED)

~~170. PENALTY FOR OPERATING A FACILITY WITHOUT A CERTIFICATE OF APPROVAL.~~

~~01. **Penalty for Operating Facility Without a Certificate of Approval.** Any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department is guilty of a misdemeanor. When a person is found guilty, the penalty is punishable by imprisonment in a county jail for a period of time not to exceed six (6) months, or by a fine not to exceed three hundred dollars (\$300), or both fine and imprisonment. Each day of continuing violation constitutes a separate offense. Under Section 39-1312, Idaho Code, the attorney general is authorized to prosecute any violations in the event the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation. (3-29-10)~~

~~02. **Injunction to Prevent Operation Without a Certificate of Approval.** 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 injunctive relief or other process against any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department. (3-29-10)~~

~~171. PENALTY FOR OPERATING FACILITY NOT IN SUBSTANTIAL COMPLIANCE.~~

~~01. **Civil Monetary Penalties.** Civil monetary penalties are based upon one (1) or more deficiencies of substantial noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to inspection or complaint investigation through which they are identified. Actual harm to a client or clients does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. (3-29-10)~~

~~02. **Assessment Amount for Civil Monetary Penalty.** When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of substantial compliance. The amounts below are multiplied by the total number of certified beds according to the records of the Department at the time substantial noncompliance is established. (3-29-10)~~

~~a. Initial deficiency is eight dollars (\$8). See following example:~~

| <del>ASSESSMENT FOR CIVIL MONETARY PENALTY—INITIAL DEFICIENCY</del> |                               |   |                            |                              |
|---|-------------------------------|---|----------------------------|------------------------------|
| <del>TABLE 171.02.a</del>   |                               |   |                            |                              |
| <del>Number of Beds</del>   | <del>Initial Deficiency</del> | <del>Times Number of Days Out of Substantial Compliance</del> | <del>Penalty Per Day</del> | <del>Amount of Penalty</del> |
| <del>41</del>   | <del>\$8</del>                | <del>45-Days</del>  | <del>\$88</del>            | <del>\$3,960</del>           |

~~(3-29-10)~~

~~b. Repeat deficiency is ten dollars (\$10). See following example:~~

| <del>ASSESSMENT FOR CIVIL MONETARY PENALTY—REPEAT DEFICIENCY</del> |                              |   |                            |                              |
|--|------------------------------|---|----------------------------|------------------------------|
| <del>TABLE 171.02.b</del>  |                              |   |                            |                              |
| <del>Number of Beds</del>  | <del>Repeat Deficiency</del> | <del>Times Number of Days Out of Substantial Compliance</del> | <del>Penalty Per Day</del> | <del>Amount of Penalty</del> |
| <del>41</del>  | <del>\$10</del>              | <del>30-Days</del>  | <del>\$110</del>           | <del>\$3,300</del>           |

~~(3-29-10)~~

~~03. **Notice of Civil Monetary Penalties and Appeal Rights.** The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment, and the facility's appeal rights.~~

~~(3-29-10)~~

~~04. **Payment of Penalties.** The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrualment will begin one (1) calendar day after the date of the initial assessment of the penalty.~~

~~(3-29-10)~~

~~05. **Failure to Pay.** Failure of a facility to timely pay the entire penalty, together with any interest, is cause for the Department to take any action described in Subsection 120 of these rules including but not limited to, revocation of the certificate of approval or offsetting and withholding any amounts due from Medicaid payments to the facility.~~

~~(3-29-10)~~

~~172.—174. (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**185. INSPECTIONS, INVESTIGATIONS, AND CONSULTATIONS.**

**01. Inspections or Investigations.** The Department will make or cause to be made such inspections and investigations as it deems necessary. Any holder of a certificate of approval, owner, operator, or applicant planning to alter, add to, or remodel an existing facility, to construct a new facility, or convert an existing structure is referred to Sections 600 through 699 of these rules for construction standards and review procedures that must occur prior to breaking ground or commencing any construction. (3-29-10)

**02. Initial Inspection.** Prior to commencing occupancy, the building or facility must be inspected and approved by the Department. The Department will make reasonable efforts to schedule an inspection within two (2) weeks of receiving a certificate of occupancy issued by the local governing authority, a city or county in Idaho or other evidence submitted by the applicant that the building or facility is ready for final inspection. (3-29-10)

**03. Intervals of Inspection Following Initial Inspection.** At the Department's discretion, the intervals of the inspection following the initial inspection will be at least one (1) every twelve (12) months or more frequently as needed. (3-29-10)

**04. Unannounced Inspections.** At the Department's discretion, inspections and investigations following the initial inspection are made unannounced and without prior notice. (3-29-10)

**05. Services of Others for Inspections and Investigations.** Under the provisions in these rules, the Department may use the services of any qualified person or organization, either public or private, to examine, survey, inspect, or investigate any person or entity holding a certificate of approval issued by the Department. (3-29-10)

**06. Access and Authority to Enter.** The Department or its designee must have full access and has the authority to examine: quality of care, services delivery, client records, facility records, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules. (3-29-10)

**07. Authority to Interview.** The Department or its designee has the authority to interview any individual associated with the facility or the provision of care, including persons or governmental units named in the certificate, the complainant, CEO or administrator, medical director, ~~lead nurse~~ director of nursing, mental health program director, ~~chemical dependency counselor~~ qualified substance use disorders professional, staff, clients, clients' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the Department or its designee.

~~(3-29-10)( )~~

- 08. Consultations.** Consultations may be provided at the option of the Department. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**REQUIREMENTS APPLICABLE TO ALL DETOXIFICATION UNITS,  
~~SOBERING STATIONS,~~ AND MENTAL HEALTH DIVERSION UNITS**  
(Sections 200 - 299)

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. PERSONNEL POLICIES AND PROCEDURES.**

Subject to the governing body's written approval, the CEO or administrator must establish the following policies, procedures, or plans. (3-29-10)

**01. Written Policies and Procedures for Personnel.** A written personnel policy concerning qualifications, responsibilities, and conditions of employment for each category of personnel must be maintained by the facility. The policy, procedures, or plans must contain at a minimum the following: (3-29-10)

- a.** The recruitment of qualified personnel, including consultants when utilized; (3-29-10)
- b.** Documentation of orientation of all employees to policies, procedures, and objectives of the facility; (3-29-10)
- c.** Competent supervision of all staff; (3-29-10)
- d.** Job descriptions for all categories of personnel and uniform rules for each classification concerning hours of work, paydays, overtime, and other related personnel matters; (3-29-10)
- e.** An ongoing, planned continuing educational program which maintains and upgrades the knowledge, skills, and abilities of the staff in relation to services provided and employee responsibilities, including the opportunity to attend outside educational programs. (3-29-10)
  - i.** A minimum of twenty-four (24) hours of training per year must be provided to staff; and (3-29-10)
  - ii.** Documentation of continuing education or in-service for all direct care personnel that is consistent with clients' needs and services offered. (3-29-10)
- f.** Employee grievance procedures. (3-29-10)
- g.** A written statement that the facility does not discriminate in employment in any manner prohibited by the laws of the United States or the state of Idaho. (3-29-10)
- h.** A written statement that describes the facility's policy and procedure for recruiting and hiring all employees and interns. (3-29-10)
- i.** Staff disciplinary, suspension, and termination policies and procedures. (3-29-10)
- j.** Those facilities using volunteers must maintain written policies and procedures concerning volunteer services. Volunteers must receive orientation in accordance with Section 215 of these rules. (3-29-10)

- 02. Daily Work Schedules.** Daily work schedules must be maintained in writing that reflect: (3-29-10)

- a. Personnel on duty at any given time for the previous ~~twelve~~ **one** (12) months; ~~(3-29-10)~~( )
  - b. The first and last names of each employee, including professional designation; and (3-29-10)
  - c. Any adjustments made to the schedule. (3-29-10)
- 03. Job Descriptions.** Each employee must be given a current job description that is consistent with his classification, be initialed by the employee, and be retained on file in each employee's personnel record. Job descriptions must contain at a minimum the following: (3-29-10)
- a. The authority, responsibilities and duties of each classification; and (3-29-10)
  - b. Reporting and supervisory requirements for the classification. (3-29-10)
- 04. Organizational Chart.** An organizational chart that clearly reflects lines of authority within the facility's organizational structure must be posted or made available to all employees. (3-29-10)
- 05. Applicable Idaho and Federal Laws.** Applicable Idaho and federal laws must be observed in relation to the employment of any individual. (3-29-10)
- 06. Age Limitations.** No person who is under the age of eighteen (18) years can provide direct care to clients. (3-29-10)
- 07. Payroll Records.** Payroll records must be maintained by the facility that reflect an employee's hours of work, paydays, overtime, and other related matters. (3-29-10)
- 08. Personnel Files.** Personnel files must be maintained by the facility for each employee. This file must contain at a minimum the following: (3-29-10)
- a. An application for employment signed by the employee and a resume that must include pre-employment education, training and experience; (3-29-10)
  - b. Copies of all certification certificates, certification identification card, and all other health care licenses or certificates related to job duties; (3-29-10)
  - c. Copy of completed criminal history and background check; (3-29-10)
  - d. Position and qualifications of the position for which the employee is hired, including education and experience; (3-29-10)
  - e. Letter of hire or other documentation of the terms of employment and the employee's starting and termination date; (3-29-10)
  - f. Orientation and training documentation reflecting what type of training the employee received and the amount of time for each program; (3-29-10)
  - g. Verification of a tuberculin skin test upon employment and any subsequent test results; (3-29-10)
  - h. Copies of the employee's annual written job performance evaluation reviews including: (3-29-10)
  - i. Documentation of any disciplinary actions taken against the employee; and (3-29-10)
  - ii. Documentation of any commendations. (3-29-10)
- 211. EMPLOYEE HEALTH.** Personnel policies related to employee health must include: (3-29-10)



**01. Tuberculin Skin Test.** The current status of a tuberculin skin test, taken immediately prior to employment or within thirty (30) days after employment, must be recorded. (3-29-10)

**a.** If the skin test is positive, either by history or current test, personnel must seek a medical evaluation and chest x-ray or tuberculosis blood test to determine the presence or absence of active disease. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by laboratory evaluation that the tuberculosis is noninfectious. ~~(3-29-10)~~( )

**b.** Personnel who have a negative reaction to the skin test, must be ~~tested annually if it is determined that they function in a high risk tuberculosis area~~ given an annual tuberculosis risk assessment checklist to screen for potential symptoms and infection. Employees who are screened as high risk must be given a tuberculin skin test within thirty (30) days. If the skin test is positive, personnel must seek a medical evaluation and chest x-ray or tuberculosis blood test to determine the presence or absence of active disease. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by laboratory evaluation that the tuberculosis is noninfectious. ~~(3-29-10)~~( )

**02.** ~~Repeat Skin Test. A repeat skin test is also required if an employee is exposed to a client or other staff who develop tuberculosis.~~ (3-29-10)

~~03.~~ **Report Symptoms.** The facility must require that all personnel report immediately to their supervisor any signs or symptoms of personal illness. (3-29-10)

~~043.~~ **Policy for Communicable Disease Precautions.** Personnel who have a communicable disease, infectious wound, or other transmittable condition and who provide care or services to clients or have access to clients are required to implement protective infection control techniques in accordance with these rules and as required by the facility's operator or contractor through its CEO or administrator. Personnel may be required: (3-29-10)

**a.** Not to work until the infectious state is corrected and noninfectious; (3-29-10)

**b.** To work in other areas of the facility where contact with others is not expected and the likelihood of transmission of infection is absent; or (3-29-10)

**c.** To seek other remedies that will avoid spreading the infection. (3-29-10)

~~054.~~ **Documentation in Personnel File.** Documentation of compliance with health policy must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-29-10)

212. -- 214. (RESERVED)

**215. ORIENTATION AND CONTINUING EDUCATION.**

The facility must provide a formalized, on-going educational program for all personnel, including a written structured orientation program designed to meet the training needs of new employees in relation to an employee's responsibilities. (3-29-10)

**01. Documentation of Education Program.** Documentation of compliance with orientation and continuing education program must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-29-10)

**02. Content for Orientation and Continuing Education Program.** Orientation and continuing education in the facility must include at a minimum the following: (3-29-10)

**a.** All facility policies and procedures relevant to an employee's responsibilities; (3-29-10)

**b.** Basic procedures relative to client care; (3-29-10)



- c. Client rights and responsibilities; (3-29-10)
- d. Confidentiality; (3-29-10)
- e. Facility's code of ethics; (3-29-10)
- f. Use of mechanical and electrical equipment by an employee; (3-29-10)
- g. Fire safety and emergency evacuation; (3-29-10)
- h. Emergency procedures; (3-29-10)
- i. Organizational structure; (3-29-10)
- j. Measures to prevent cross infection, including aseptic and isolation techniques; (3-29-10)
- k. Special needs of the client population served; (3-29-10)
- l. Restorative care; (3-29-10)
- m. Proper maintenance and handling of client records; (3-29-10)
- n. Philosophical approach to treatment and the facility's goals; and (3-29-10)
- o. Policies and procedures for reporting cases of suspected abuse or neglect of vulnerable adults. (3-29-10)

**03. Continuing Education for Direct Care Staff.** Each direct care staff member must annually receive ~~twenty-four~~ **twelve** (12) hours of continuing education that includes an understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy, and other treatment methodologies that are appropriate to the position held by each direct care staff member. Continuing education requirements may be met through in-house educational programs, outside continuing educational programs, or a combination thereof.

(3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**230. POLICIES AND PROCEDURES APPLICABLE TO ALL DETOXIFICATION UNITS, ~~SOBERING STATIONS,~~ AND MENTAL HEALTH DIVERSION UNITS.**

Subject to the governing body's written approval, the CEO or administrator must develop a set of physician approved written policies and procedures in accordance with these rules that are available at all times to clients, staff, and the public.

(3-29-10)( )

**231. PHYSICIAN APPROVED ADMISSIONS POLICY, INTAKE PROCEDURES, AND DISCHARGE PLANNING.**

Each detox/mental health diversion unit must have written physician-approved admission policies and procedures that at a minimum meet the following requirements in Subsections 231.01 through 231.10 of this rule. (3-29-10)

**01. Admissions Policy.** A client will be admitted, accepted, or retained only when the facility has the capability, capacity, and services to provide appropriate care, and the client does not require a type of service for which the facility is not approved to provide, or for which the facility does not provide or arrange for, or in which the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services. (3-29-10)

**02. Criteria for Admissions.** Written criteria for admissions, uniformly applied to all prospective clients, must be provided in accordance with these rules. (3-29-10)

**03. Criteria for Rejecting Admissions.** Written criteria for rejecting admission requests, uniformly applied to all prospective clients, must be provided in accordance with these rules, and that includes a statement that the following persons are not eligible for admission: (3-29-10)

- a. Any person who is violent, charged with a crime, or otherwise needs a secure holding facility; (3-29-10)
- b. Any person who is under the age of eighteen (18) years; (3-29-10)
- c. Any person who is the subject of involuntary commitment proceedings or detention without a hearing under Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code; (3-29-10)
- d. Any person who requires specialized care not available at the facility; (3-29-10)
- e. Any person who has a physical or medical condition that is unstable or can only be safely treated in a hospital; (3-29-10)
- f. ~~Any person whose primary problem is social, economic, or one of physical health such as epilepsy, an intellectual disability, dementia, a developmental disability, or, chronic alcoholism, drug abuse, physical disability, or aged, unless in addition to such condition, he meets the admission criteria provided in Sections 320, 420, or 520 of these rules;~~ (3-29-10)

~~g.~~ Any person who fails to meet the admission criteria in Sections 320, 420, or 520 of these rules; (3-29-10)

~~h.~~ Any person who can be safely maintained and effectively treated in a less restrictive or intensive level of care; or (3-29-10)

~~i.~~ Any person who does not voluntarily consent to admission or treatment. (3-29-10)

**04. Intake Procedures.** Written intake procedures must be provided that include a determination that the facility's services are or are not appropriate to meet the needs of the client. (3-29-10)

**05. Referrals For Individuals Not Admitted.** Written policies must be provided for making referrals of individuals not admitted to the facility and written policies for accepting referrals from outside facilities. (3-29-10)

**06. Initial Client Assessments Procedures.** Written procedures must be provided that require a completed initial client assessment on every proposed client prior to admission. (3-29-10)

**07. Medical Orders.** Written, verbal, and telephone orders from persons authorized to give medical orders under Idaho law and written policies and procedures established by the governing body will be accepted by the medical staff empowered to do so under Idaho law. (3-29-10)

a. Verbal and telephone orders must contain the name of the person giving the order, the first initial and last name and professional designation of the medical staff receiving the order. (3-29-10)

b. The order must be promptly signed or otherwise authenticated by the prescribing person in accordance with written policies and procedures established by the governing body. (3-29-10)

**08. Services Orientation Procedures for Clients Admitted to a Detoxification Unit or Mental Health Diversion Unit.** Written services orientation information must be recorded in each client's record as soon as practicable. This orientation information must include: (3-29-10)

a. The facility's philosophical approach to treatment; (3-29-10)

b. Information on client's rights and responsibilities while receiving services at the facility; (3-29-10)

- c. The services available; and (3-29-10)
- d. Information on the rules governing client's behavior and those infractions, if any, that may result in discharge or other disciplinary actions. (3-29-10)

~~09. **Criteria for Appropriate Rehabilitative Services.** Written criteria must be provided that assures appropriate rehabilitative services are provided whereby each client is assigned a primary addiction therapist or primary mental health professional, depending upon need, who will follow the client's progress during his admission to the detoxification or mental health unit, or both. The client's progress must be documented in the client's record. (3-29-10)~~

~~10. **Criteria for Assuring Clients Remain in Program.** Written criteria must be provided that assures clients will remain in a medical detoxification program, *sobering program*, or mental health diversion program for the period of time deemed medically necessary and documented by the attending physician. Coercion or force cannot be used to induce any client to remain in treatment. (3-29-10)( )~~

~~11. **Discharge Criteria and Planning.** Written criteria for discharge, uniformly applied to all prospective clients, must be established in accordance with these rules, including a procedure to screen each client for discharge planning needs. (3-29-10)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**235. MEDICATION POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must have written policies and procedures that govern the safe storage, dispensing, and administration of medication. Written policies and procedures must include at a minimum the following requirements in Subsection 235.01 through 235.07 of this rule. (3-29-10)

**01. Physician's Order.** Each client of a detox/mental health diversion unit must have a written order signed by a physician, a physician's standing order, or a physician's order received by phone and signed by the physician at the earliest opportunity before any medication is administered to a client. (3-29-10)

**02. Administration of Medication.** Medications can only be provided to a client by licensed nursing staff in accordance with written policies and procedures established by the governing body, which must include at least the following: (3-29-10)

- a. Administered in accordance with a physician's, dentists', nurse practitioner's, or physician assistant's written orders; (3-29-10)
- b. The client is identified prior to administering the medication; (3-29-10)
- c. Medications are administered as soon as possible after preparation; (3-29-10)
- d. Medications are administered only if properly identified; (3-29-10)
- e. Medications are administered by the person preparing the medication for delivery to the client; (3-29-10)
- f. Clients are observed for reactions to medications and if a reaction occurs, it is immediately reported to the on-duty nurse and *lead nurse director of nursing*; and (3-29-10)( )
- g. Each client's medication is properly recorded on his individual medication record. (3-29-10)

**03. Storage and Distribution of Medication.** Storage and distribution policies and procedures must describe the following: (3-29-10)

- a. Receiving of medication; (3-29-10)
  - b. Storage of medication, including assurances that all prescription drugs stored in the facility must be kept in a double locked container. Only those medications requiring refrigeration can be stored in a refrigerator; and (3-29-10)
  - c. Medication distribution system to be used including assurances that medications prescribed for one client will not be administered to or by another client or employee. (3-29-10)
- 04. Disposal of Unused, Outdated, or Recalled Drugs.** Policy and procedures for documentation and disposal of unused drugs must provide assurances that no unused, outdated, or recalled drugs are kept in the facility. All unused, outdated, or recalled drugs must be disposed of in a manner that assures that they cannot be retrieved. (3-29-10)
- 05. Written Records of Disposals.** A written record of all disposals of drugs must be maintained in the facility and must include at a minimum the following: (3-29-10)
- a. A description of the drug, including the amount; (3-29-10)
  - b. The client for whom the medication was prescribed; (3-29-10)
  - c. The reason for disposal; and (3-29-10)
  - d. The method of disposal. (3-29-10)
- 06. Medication Policies and Procedures for Staff Response.** How staff are to respond if: (3-29-10)
- a. A client refuses a medication; (3-29-10)
  - b. A client misses a medication and the reasons; (3-29-10)
  - c. A client medication is not available; (3-29-10)
  - d. Medications are missing; (3-29-10)
  - e. A client receives an incorrect medication or dosage. (3-29-10)
- 07. Written Medication Record.** Each client's medication must be properly recorded on his individual medication record by the person administering the medication. The written record must include: (3-29-10)
- a. Client's name; (3-29-10)
  - b. Prescribing physician's name; (3-29-10)
  - c. Description of medication, including prescribed dosage; (3-29-10)
  - d. Verification in writing by staff that medication was taken, not taken, missed, not available, or refused, and the times and dates administered; (3-29-10)
  - e. Method of administration; (3-29-10)
  - f. Date and time of administration; (3-29-10)
  - g. Injection sites; (3-29-10)

- h. Name or initial of person administering the medication; and (3-29-10)
- i. Any adverse reactions to the medication. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**245. INFECTION CONTROL.**

Each detox/mental health diversion unit must develop and implement written plans consistent with recognized standards for the prevention and control of infection for both staff and clients. (3-29-10)

**01. Infection Control Program.** The program must include, at minimum, the following elements: (3-29-10)

- a. Methods of maintaining sanitary conditions in the facility; (3-29-10)
- b. Employee infection surveillance and actions; and (3-29-10)
- c. Isolation procedures; (3-29-10)

**02. Report for Monitoring Infections.** Specifics for monitoring the course of infections must include, at minimum, a prepared written quarterly report describing the status of each infection. This report must include: (3-29-10)

- a. Diagnosis; (3-29-10)
- b. Description of the infection; (3-29-10)
- c. Causative organism, if identified; (3-29-10)
- d. Date of onset; (3-29-10)
- e. Treatment and date initiated; (3-29-10)
- f. ~~Client's progress;~~ ~~(3-29-10)~~
- ~~g.~~ Control techniques utilized; and (3-29-10)
- ~~h.g.~~ Diagnostic tests employed. (3-29-10)

**03. Infection Control and Prevention Procedures.** There must be a written infection control procedure that includes aseptic techniques, cleaning, sanitizing, and disinfection of all instruments, equipment, and surfaces, for all departments and services where client care is delivered. (3-29-10)

**246. CONTROL OF TUBERCULOSIS.**

In order to assure the control of tuberculosis in the facility, there must be a planned, organized program of prevention through written and implemented procedures that are consistent with current accepted practices and include the following in Subsections 246.01 through 246.05 of this rule. (4-7-11)

**01. Tuberculosis Risk Assessment.** Each client must be given a tuberculosis risk assessment checklist immediately prior to admission to screen for potential symptoms and infection. Clients who are screened as high risk must be given a tuberculin skin test prior to admission or provide proof of the results of a tuberculin skin test given within six (6) months prior to admission. ( )

**02. Tuberculin Skin Tests.** The results of a tuberculin skin test, taken immediately prior to admission or within six (6) months prior to admission, must be established for ~~each~~ any client who is screened at high risk. ~~If the~~

~~status is not known upon admission, a tuberculin skin test must be done as soon as possible.~~ (3-29-10)( )

a. If the tuberculin skin test is negative, the test does not have to be repeated prior to discharge. (3-29-10)

b. If the tuberculin skin test is positive, the client must have a chest x-ray or tuberculosis blood test to rule out the presence of infectious pulmonary tuberculosis. (3-29-10)( )

**023. Protective Infection Control Techniques.** If any x-ray is suggestive of infectious pulmonary tuberculosis, the facility is required to implement protective infection control techniques in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

**034. Transfer of Client Suspected or Diagnosed.** Arrangements for transfer to an appropriate facility must be made for any client suspected or diagnosed with infectious pulmonary tuberculosis. These arrangements must be made in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

**045. Discharge Prior to Availability of Test Result.** A client, discharged prior to sufficient time elapsing for the tuberculin skin test to be read, will be instructed regarding the appropriate time frame and protocol for return to the facility to have the tuberculin skin test read. (4-7-11)

~~05. Sobering Station Exclusion. The tuberculin skin tests required in Subsection 246.01 of this rule, is not required for clients receiving services from a sobering station.~~ (4-7-11)

247. -- 249. (RESERVED)

## 250. FOOD AND NUTRITIONAL CARE POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must develop written policies and procedures for providing proper nutritional care for each client that includes procedures to follow if a client refuses food or to follow the prescribed diet. The acquisition, preparation, storage, and serving of all food and drink in a facility must comply with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-29-10)

**01. Three Nutritious Meals Per Day.** At least three nutritious meals per day and nutritional snacks, must be provided to each client present at meal times in the detoxification or mental health diversion units. No more than fourteen (14) hours may elapse between the end of an evening meal and the beginning of the morning meal. Physician approved special diets must be provided upon request by a client. Under no circumstances may food be withheld for disciplinary reasons. Menus must be reviewed and approved in advance by a registered dietitian in Idaho in accordance with the Idaho Diet Manual from the Idaho Dietetic Association. Nourishments must be made available to a client in a sobering station. (3-29-10)( )

**02. On-Site Food Service.** On-site food service must comply with all provisions of IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-29-10)

**03. Third-Party Food Service.** When food service is provided by a third-party, the provider must meet all the conditions of these rules pertaining to food service and be in compliance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." Each detox/mental health diversion unit must maintain a written agreement at all times with a food service provider containing assurances that the provider will meet all food service and dietary standards imposed by this rule. (3-29-10)

**04. Reports for Sanitation and Food Service.** Sanitation reports and food service reports must be maintained on file in the facility. (3-29-10)

251. -- 259. (RESERVED)

## 260. CLIENT RECORDS POLICIES AND PROCEDURES.

Each detox/mental health diversion unit must develop written policies and procedures to assure accurate and authentic records are maintained for each client in the facility. (3-29-10)

01. **Complete and Accurate Records.** Each facility must implement written policies and procedures to assure complete, accurate, and authentic records in accordance with professional standards and practices.

(3-29-10)

02. **~~Responsible Staff~~ Client Record Required.** ~~The CEO or administrator must designate to a staff member the responsibility for the accurate maintenance of client records. If this person is not a Registered Records Administrator (RRA) or an Accredited Records Technician (ART), consultation from such a qualified individual must be provided periodically to the designated staff person.~~ Each detox/mental health diversion unit must maintain a client record on each client. All entries into the client's record must be signed and dated. (3-29-10)(    )

03. **~~Individual Client Record~~ Content of Client Record.** ~~An individual record must be maintained for each admission with all entries kept current, dated, and signed. Client records must, at a minimum, contain the following:~~ The client record must describe the client's situation at the time of admission and include the services provided, all progress notes, and the client's status at the time of discharge. At a minimum the record must contain:

(3-29-10)(    )

a. ~~Client's name, date and time of admission; previous address; home telephone; sex; date of birth; place of birth; ethnicity; marital status; religious preference; usual occupation; Social Security number; branch and dates of military service; name, address, and telephone number of nearest relative or responsible person or agency; place admitted from; attending physician; and date and time of discharge.~~ The client's name, address, contact information, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the unit, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated; (3-29-10)(    )

b. ~~Biopsychosocial assessment, including medical history and physical examination that evaluates an individual's strengths, weaknesses, problems, and needs.~~ Any staffing notes pertaining to the client; (3-29-10)(    )

c. ~~Transfer or referral report, where applicable.~~ Any medical records obtained regarding the client; (3-29-10)(    )

d. ~~Special reports dated and signed by the person making the report such as laboratory, x-ray, social services, mental health, consultation, and other special reports.~~ Any assessments; and (3-29-10)(    )

e. ~~Individualized treatment plan based on a biopsychosocial assessment of the client's alcohol or substance use disorder treatment needs, including treatment goals based on client input.~~ The initial and updated service plans. (3-29-10)(    )

f. ~~Physician's orders containing the physician's authorization for required medications, tests, treatments, and diet. Each entry must be dated and signed or counter-signed by the physician.~~ (3-29-10)

g. ~~Progress notes by physicians, nurses, therapists, social workers, and other health care personnel must be recorded indicating observations to provide a full descriptive, chronological picture of the client during his admission. The author must date and sign his entry.~~ (3-29-10)

h. ~~The final diagnosis on discharge or cause of death, condition on discharge, and disposition signed and dated by the attending physician.~~ (3-29-10)

i. ~~Nurses' entries must include the following information:~~ (3-29-10)

i. ~~Date, time and mode of admission; documentation of the client's general physical and emotional condition as well as mental attitude on admission.~~ (3-29-10)

ii. ~~Medication administration record.~~ (3-29-10)



- ~~iii. Date and times of all treatments. (3-29-10)~~
- ~~iv. Any change in the client's physical or mental status. (3-29-10)~~
- ~~v. Any incident or accident occurring while the client is in the facility. (3-29-10)~~
- ~~vi. The signature of the on-duty nurse for each shift indicating the assumption of responsibility for all entries made by nonprofessional nursing personnel. (3-29-10)~~

**04. Maintenance of Client Records.** Each detox/mental health diversion unit must develop written policies and procedures governing the maintenance, compilation, storage, dissemination, and accessibility of client records. ( )

**05. Retention and Destruction of Client Records.** Each detox/mental health diversion unit must develop written policies and procedures governing the retention and destruction of client records. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. MINIMUM STAFFING POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must develop, implement, and comply with written staffing policies and procedures based on the number of beds, number of clients, client needs, services provided, and configuration of the facility as described in Subsections 270.01 through 270.06 of this rule. In a facility with both detoxification and mental health diversion units, the facility may divide a staff member's time to provide direct care in both units provided the staffing ratios for each unit are met. (3-29-10)

**01. Staff Trained for Emergencies.** A staff member trained to respond to fires and other natural disasters, as well as to administer emergency first aid and CPR must be on duty twenty-four (24) hours per day, seven (7) days per week. Training and annual training updates in each of these areas must be documented in personnel files. (3-29-10)

**02. Direct Care Staff.** The facility must have adequate nursing personnel and direct care staff in sufficient numbers to plan, administer, and provide client bedside care. At a minimum, two (2) staff, one of whom must be an R.N. or L.P.N., must be on duty twenty-four (24) hours per day, seven (7) days per week. In the absence of the ~~lead nurse~~ **director of nursing**, an R.N. or L.P.N. must be designated to assume the ~~lead nurse~~ **director of nursing's** duties. No person may be assigned nursing duties, including aides and orderlies, who has been on duty in the facility during the preceding twelve (12) hours, except in an emergency. (3-29-10)( )

**03. Monthly Staffing Pattern.** Monthly staffing patterns indicating daily staff, staff titles, and client census must be kept for the previous ~~twelve one~~ **one** (12) months. A written staffing plan must be developed to ensure appropriate and adequate staff coverage for emergency or high demand situations. (3-29-10)( )

**04. ~~Clinical Supervision and Consultation for Staff~~ **Supervision.**** ~~A written staffing plan that specifies a minimum of one (1) hour per month of personal clinical supervision and consultation for each staff person and volunteer who is responsible for the delivery of direct care services must be maintained. The clinical supervision must relate to the individual's skill level with the objective of assisting direct care staff and volunteers to increase their treatment skill and the quality of services delivered to clients.~~ **Each detox/mental health diversion unit must ensure that:** (3-29-10)( )

**a. Staff have access to regularly scheduled supervision with detox/mental health diversion unit supervisors: and** ( )

**b. Staff members practice only within the scope of their credentials.** ( )

**05. ~~Staffing of Certified Alcohol and Drug Counselor~~ **Clinical Supervision.**** ~~The services of a certified alcohol and drug counselor must be available to each client.~~ **Each detox/mental health diversion unit must**



provide for regular and ongoing supervision of clinical activities. The detox/mental health diversion unit must establish a written supervisory protocol that addresses: (3-29-10)( )

a. Management and oversight of the provision of professional services offered by the detox/mental health diversion unit; and ( )

b. Supervision centered on the evaluation and improvement of clinician skills, knowledge, and attitudes. ( )

**06. Staff Trained in Substance Abuse Withdrawal.** The facility, at a minimum, must have at least one (1) staff member on duty twenty-four (24) hours per day, seven (7) days per week trained in the following areas: (3-29-10)

a. Substance abuse withdrawal symptoms, including delirium tremens; and (3-29-10)

b. Symptoms of secondary complications to substance abuse. (3-29-10)

**271. QUALIFICATIONS AND RESPONSIBILITIES FOR CEO OR ADMINISTRATOR.**

**01. CEO or Administrator.** Each detox/mental health diversion unit must maintain at all times, through employment or contract, a CEO or administrator who is responsible for carrying out the policies established by the governing body and the day-to-day conduct and operations of the facility. ~~This individual must have the qualifications required in Subsections 271.03 and 271.04 of this rule at the time of hire and throughout the duration of employment or contract.~~ (3-29-10)( )

**02. CEO's or Administrator's Responsibilities.** The CEO or administrator is responsible for assuring that policies, procedures, conduct and operations required by Title 39, Chapter 3, Idaho Code, Title 39, Chapter 31, Idaho Code, and IDAPA 16.07.50, "Rules and Minimum Standards Governing Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units," are developed and implemented. (3-29-10)

~~**03. Required License or Degree.** Each CEO or administrator of a Detox/Mental Health Diversion Unit must, at a minimum, have one (1) or more of the following Idaho licensures or degrees at the time of hire or contract and throughout the duration of employment or contract:~~ (3-29-10)

~~a. Licensed Physician;~~ (3-29-10)

~~b. Licensed Psychologist;~~ (3-29-10)

~~c. Licensed Master's Level Nurse;~~ (3-29-10)

~~d. Licensed Clinical Professional Counselor (LCPC);~~ (3-29-10)

~~e. Licensed Clinical Social Worker (LCSW);~~ (3-29-10)

~~f. Licensed Professional Counselor (LPC);~~ (3-29-10)

~~g. Licensed Master's Level Social Worker (LMSW);~~ (3-29-10)

~~h. Licensed Bachelor's Level Nurse; or~~ (3-29-10)

~~i. Master's degree in the field of alcoholism, substance use disorders, or mental health.~~ (3-29-10)

~~**04. Required Experience and Abilities.** Each CEO or administrator of a detox/mental health diversion unit must, at a minimum have and demonstrate the following experience and abilities at the time of hire or contract:~~ (3-29-10)

~~a. At least two (2) years of paid full-time experience must be in the field of alcoholism, substance use~~

~~disorders and mental health.~~

~~(3-29-10)~~

~~b. At least one (1) year of the two (2) years' full-time experience must be in an administrative capacity that includes knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting. (3-29-10)~~

~~05. Availability of CEO or Administrator. The facility's CEO or administrator must, at a minimum, be full-time forty (40) hours per week to provide for safe and adequate care of clients and staff. The facility's CEO or Administrator, or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-29-10)~~

## 272. QUALIFICATIONS AND RESPONSIBILITIES FOR MEDICAL DIRECTOR.

**01. Medical Director.** Each detox/mental health diversion unit must maintain at all times through employment, or contract a medical director who is responsible for providing medical care to clients and for supervising all medical care, services, and treatment provided by the medical staff. This individual must have the qualifications required in Subsections 272.03 and 272.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-29-10)

**02. Medical Director's Responsibilities.** The medical director's responsibilities include, at a minimum, the following: (3-29-10)

- a. The provision of advice on health-related policies and issues; (3-29-10)
- b. The provision of emergency medical care to admitted clients; (3-29-10)
- c. The supervision of the performance of the medical examination and laboratory tests required upon the client's admission and the evaluation of the resultant test results; and (3-29-10)
- d. The supervision of the medical treatment provided to clients. (3-29-10)

**03. Required License.** Each medical director of a detox/mental health diversion unit must be a licensed physician by the Idaho Board of Medicine at the time of hire or contract and throughout the duration of employment or contract. (3-29-10)

**04. Required Experience and Abilities.** Each medical director of a detox/mental health diversion unit must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-29-10)

a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders and mental health. (3-29-10)

b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting which includes: (3-29-10)

i. Assessment of the likelihood of danger to self or others, grave disability, capacity to give informed consent, and capacity to understand legal proceedings; (3-29-10)

ii. Diagnosis using DSM-~~IV~~-TR5 criteria; and ~~(3-29-10)~~ ( )

iii. Treatment of mental health disorders including knowledge of treatment modalities and experience applying treatment modalities in a clinical setting. (3-29-10)

d. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-29-10)

i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal

management, supervision, personnel management, employee performance assessment, data collection, and reporting;  
and (3-29-10)

ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)

**05. Availability of Medical Director.** The facility's medical director or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-29-10)

**273. QUALIFICATIONS AND RESPONSIBILITIES FOR ~~LEAD-NURSE~~ **DIRECTOR OF NURSING.****

**01. ~~Lead-Nurse~~ Director of Nursing.** Each detox/mental health diversion unit must maintain at all times, through employment or contract, an R.N. licensed in Idaho to serve as the ~~lead-nurse~~ director of nursing. This individual must have the qualifications required in Subsections 273.03 and 273.04 of this rule at the time of hire and throughout the duration of employment or contract. (~~3-29-10~~)(    )

**02. ~~Lead-Nurse~~ Director of Nursing's Responsibilities.** The ~~lead-nurse~~ director of nursing is responsible for all nursing services provided to clients and for supervising all of the nursing services provided by staff. The ~~lead-nurse~~ director of nursing's responsibilities include, at a minimum, the following: (~~3-29-10~~)(    )

- a. To organize, coordinate, and evaluate nursing service functions and staff; (3-29-10)
- b. To be responsible for development and implementation of client care policies and procedures; (3-29-10)
- c. To select, supervise, direct, promote, and terminate nursing staff; (3-29-10)
- d. To establish procedures to insure that staff licenses are valid and current; and (3-29-10)
- e. To participate with the CEO or administrator and medical director in planning and budgeting for nursing care. (3-29-10)

**03. Required License.** Each ~~lead-nurse~~ director of nursing must be an R.N. licensed by the Idaho Board of Nursing at the time of hire or contract and throughout the duration of employment or contract. (~~3-29-10~~)(    )

**04. Required Experience and Abilities.** Each ~~lead-nurse~~ director of nursing must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract (~~3-29-10~~)(    )

- a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-29-10)
- b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-29-10)
- c. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-29-10)
  - i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-29-10)
  - ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)

**05. Availability of ~~Lead-Nurse~~ Director of Nursing.** The facility's ~~lead-nurse~~ director of nursing must, at a minimum, be full-time forty (40) hours per week. (~~3-29-10~~)(    )

274. ~~QUALIFICATIONS AND RESPONSIBILITIES FOR CHEMICAL DEPENDENCY COUNSELORS.~~  
~~(RESERVED)~~

~~01. Chemical Dependency Counselor. Each detox/mental health diversion unit must maintain at all times through employment or contract a chemical dependency counselor. This individual must have the qualifications required in Subsections 274.03 and 274.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-29-10)~~

~~02. Chemical Dependency Counselor's Responsibilities. A chemical dependency counselor's responsibilities include at a minimum, the following: (3-29-10)~~

~~a. Case staffing; (3-29-10)~~

~~b. Individual case supervision; (3-29-10)~~

~~c. Consultation with other clinical professionals; (3-29-10)~~

~~d. Review of case record maintenance; and (3-29-10)~~

~~e. Other clinically appropriate services determined by the facility. (3-29-10)~~

~~03. Chemical Dependency Counselor License or Certification. Each chemical dependency counselor must be certified in Idaho to meet the standards and requirements under IDAPA 16.07.17, "Substance Use Disorders Services," at the time of hire or contract and throughout the duration of employment or contract. (3-29-10)~~

~~04. Required Experience and Abilities. Each chemical dependency counselor must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-29-10)~~

~~a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-29-10)~~

~~b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-29-10)~~

~~e. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-29-10)~~

~~i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-29-10)~~

~~ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-29-10)~~

~~05. Availability of Chemical Dependency Counselor. The facility must have at least one (1) chemical dependency counselor; at a minimum, be full-time forty (40) hours per week. (3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

295. AVAILABILITY OF ON-SITE ALCOHOL AND DRUG **SCREENING AND TESTING.**

01. On-Site **Testing Screening.** Each facility must have **testing screening** available on-site for the purpose of detecting the presence of alcohol or any controlled substances in clients. (3-29-10)(    )

02. **Quality of ~~Tests~~ Screening.** The facility must use testing screening instruments that are widely recognized as possessing sufficient sensitivity to detect the presence of substances in low quantities a Clinical Laboratory Improvement Amendments (CLIA) waiver. (3-29-10)()

03. ~~**Policies for Collection and Handling Specimens**~~ **Drug Screening and Testing Policies and Procedures.** ~~The facility must establish and enforce policies to govern the collection and handling of urine specimens when such testing is indicated~~ Each facility must have policies and procedures regarding the collection, handling, testing, and reporting of drug-screening and drug-testing specimens. Policies and procedures must include elements contributing to the reliability and validity of the screening and testing process. (3-29-10)()

- a. Direct observation of specimen collection (as instructed by the Medical Director); ()
- b. Verification temperature; ()
- c. Specific, detailed, written procedures regarding all aspects of specimen collection, specimen evaluation, and result reporting; ()
- d. A documented chain of custody for each specimen collected; ()
- e. Quality control and quality assurance procedures for ensuring the integrity of the process; and ()
- f. Procedures for verifying accuracy when drug test results are contested. ()

04. ~~**Documentation of Test Results**~~ **Release of Results.** ~~All test results must be documented in the client's record according to the requirements of the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164, 42 U.S.C. Sections 290 dd-3 and ee-3, and 42 C.F.R., Part 2 (June 9, 1987)~~ The facility must have a policy and procedures for releasing the results of an alcohol and drug screening or test. (3-29-10)()

05. **On-Site Testing.** A program performing on-site testing must use alcohol and drug screening tests approved by the U.S. Food and Drug Administration. ()

06. **Laboratory Used for Testing.** Each laboratory used for lab-based confirmation or lab-based testing must meet the requirements in and be approved under IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." ()

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO DETOXIFICATION UNITS.** Each detoxification unit must develop and implement policies and procedures to provide necessary and qualified staff in sufficient numbers to assure the health and safety of clients. The program's policies must define the types and numbers of clinical, direct care, and managerial staff needed to provide clients with treatment services in a safe and therapeutic environment. Each detoxification unit must, at a minimum, meet the following standards for staffing in the detoxification unit for direct care staff. (3-29-10)

01. **Nurse.** At least one (1) R.N. or L.P.N. must be on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)

02. **Direct Care Staff.** (3-29-10)

a. A detoxification unit with one (1) through six (6) clients must have one (1) direct care staff member on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)

b. A detoxification unit with seven (7) through twelve (12) clients must have two (2) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)

c. A detoxification unit with thirteen (13) through eighteen (18) clients must have three (3) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-29-10)

d. A detoxification unit with nineteen (19) ~~clients~~ or more ~~clients~~ must have ~~at least one three (3)~~ at least one three (3) ~~additional~~ direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week, ~~beyond the three (3) staff required in Subsection 301.02.e of this rule for each additional six (6) clients or fraction thereof. Based on client acuity, the Medical Director must determine and document if additional direct care staff members are needed.~~ Based on client acuity, the Medical Director must determine and document if additional direct care staff members are needed. (3-29-10)(    )

03. **Physician Supervision.** The treatment of each client must be under the supervision of a physician. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**320. REQUIRED MINIMUM ADMISSION CRITERIA TO DETOXIFICATION UNITS.**

According to physician-approved written admission criteria, policies, and procedures, each detoxification unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

01. **Admission to Detoxification Unit.** A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)

a. Must be eighteen (18) years of age or older; (3-29-10)

b. Demonstrates a need for detoxification services; (3-29-10)

c. Has alcohol or other addictive controlled substance intake of sufficient amount and duration to create a reasonable expectation of withdrawal upon cessation of use; (3-29-10)

d. Is medically stable prior to admission and if seeking detoxification from alcohol has a blood alcohol level no greater than point twenty-four (.24) as measured by an accurately calibrated Breathalyzer or as determined by another equivalent laboratory test. A client who has a blood alcohol content in excess of point twenty-four (.24) may be admitted with approval granted by the medical director or his designee; (4-7-11)

e. ~~Meets admission criteria specifications that do not exceed ASAM Level III-7-D; and~~ (3-29-10)

f. Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)

02. **Detoxification Unit Able to Provide Services.** The detoxification unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the detoxification unit is not approved to provide. (3-29-10)

03. **Monitoring Clients in Detoxification Unit.** The level of monitoring in the detoxification unit of the client or the physical restrictions of the environment must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)

~~04. **Notification of Admission of Opiate/Methadone Client.** The lead nurse must be notified that an opiate/methadone client was admitted to the detoxification unit. The name of the clinic where the client received the methadone must be documented in the client's record.~~ (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**330. REQUIRED MINIMUM TREATMENT NEEDS ASSESSMENT FOR CLIENTS OF DETOXIFICATION UNITS.**

**01. Client Treatment Needs Assessment.** A ~~chemical dependency counselor~~ qualified substance use disorders professional, within twenty-four (24) hours of admission, or as soon as a client is able, must complete a treatment needs assessment for each client admitted to the detoxification unit. The assessment must establish the historical development and dysfunctional nature of the client's alcohol and drug abuse or dependence and must evaluate the client's treatment needs. ~~(3-29-10)~~( )

**02. Treatment Needs Assessment Content.** The treatment needs assessment must be recorded in the client's record and must include, at a minimum, the following: (3-29-10)

**a.** A summary of the client's alcohol or drug abuse history including substances used, date of last use, amounts used, frequency, duration, age of first use, patterns, and consequences of use; types of and responses to previous treatment, periods of sobriety, and any other information supporting any diagnostic recommendations or diagnosis made; (3-29-10)

**b.** A summary of the client's family, including family background, current family composition, substance use and abuse by family members, supportive or dysfunctional relationships, and other family-related issues; (3-29-10)

**c.** A summary of the client's educational background, including current educational status, levels of achievement, and educational problems or difficulties; (3-29-10)

**d.** A summary of the client's vocational and employment status including skills or trades learned, work record, and current vocational or employment problems; (3-29-10)

**e.** A summary of the client's past and current involvement with the criminal justice system; (3-29-10)

**f.** A general summary of the client's medical history including past or current major illnesses or injuries, afflictions with communicable diseases, or known health problems or needs; (3-29-10)

**g.** A summary of the client's financial status, including current income sources, family income, ability to pay for services, and insurance coverage; (3-29-10)

**h.** A social assessment of the client, including a summarization of the nature of and problems with the client's social relationships outside the family unit; (3-29-10)

**i.** Any history of emotional or behavioral problems, including any history of psychological or psychiatric treatment; (3-29-10)

**j.** A master problem list developed from client input and identified clinical problems; and (3-29-10)

**k.** A diagnostic summary and master problem list. (3-29-10)

**331. -- 334. (RESERVED)**

**335. MINIMUM REQUIREMENTS FOR INDIVIDUALIZED DETOXIFICATION TREATMENT PLAN FOR CLIENTS OF DETOXIFICATION UNITS.**

**01. Develop Detoxification Treatment Plan.** A ~~chemical dependency counselor~~ qualified substance use disorders professional must develop an individualized treatment plan based upon the treatment needs assessment for each client admitted to the detoxification unit. ~~(3-29-10)~~( )

**02. Written Detoxification Treatment Plan.** The individualized detoxification treatment plan must be



signed and dated by both the client and the ~~chemical dependency counselor~~ qualified substance use disorders professional. The signature of the counselor must be followed by the counselor's credentials. (3-29-10)(    )

**03. Client Records for Detoxification Treatment.** The treatment plan must be recorded in the client's record and must include at a minimum the following: (3-29-10)

- a. A statement of the client's current strengths. (3-29-10)
- b. A statement of specific clinical problems to be addressed during treatment. (3-29-10)
- c. A diagnostic statement and a statement of measurable treatment goals based on client input that relate to the problems identified. (3-29-10)
- d. Measurable short-term objectives based on client input leading to the completion of goals including: (3-29-10)
  - i. Time frames for the anticipated dates of achievement or completion of each objective, or for reviewing progress towards objectives; and (3-29-10)
  - ii. Specification and description of the indicators to be used to assess progress based on client input. (3-29-10)
- e. A description of the methods or treatment procedures proposed to assist the client in achieving the objectives, including: (3-29-10)
  - i. Type and frequency of services or assigned activities to be provided; (3-29-10)
  - ii. Referrals for needed services that are not provided directly by the facility; and (3-29-10)
- f. A statement identifying the staff member responsible for facilitating the methods or treatment procedures. (3-29-10)

**04. Detoxification Treatment Plan Review.** The detoxification treatment plan must be reviewed by a ~~chemical dependency counselor~~ qualified substance use disorders professional every three (3) days and documented in each client's record. The treatment plan review must include, at a minimum, the following: (3-29-10)(    )

- a. A statement of the client's progress or regress as it relates to the measurable goals and measurable objectives identified in the client's individualized treatment plan. (3-29-10)
- b. Any additional clinical problems identified. (3-29-10)
- c. A statement of the planned actions to be taken to address the identified clinical problems. (3-29-10)

**336. -- 339. (RESERVED)**

**340. REQUIRED MINIMUM DISCHARGE PLANNING FOR CLIENTS OF DETOXIFICATION UNIT.** According to physician-approved written discharge criteria, policies, and procedures, each detoxification unit must provide each client with a discharge plan that must include, at a minimum, the following. (3-29-10)

~~**01. Discharge Criteria.** A client with stable vital signs and stable laboratory results can be discharged from a detoxification unit when the client meets the discharge criteria specifications of the dimensions in Level III.2-D of the Patient Placement Criteria for the Treatment of Psychoactive Substance Use Disorders of the American Society of Addiction Medicine incorporated by reference in Section 004 of these rules. (3-29-10)~~

~~**02. Client Referral.** Each client must be referred to the appropriate level of care upon discharge which may include community resources or state substance use disorders programs. (3-29-10)~~



- ~~032.~~ **Discharge Summary Content.** The discharge summary must include: (3-29-10)
- a. The reason for admission and original diagnosis; (3-29-10)
  - b. A summary of the client's clinical problems, course of treatment, and progress toward planned goals and objectives identified in the treatment plan; (3-29-10)
  - c. The reason for discharge and diagnoses at discharge; (3-29-10)
  - d. A continued care treatment plan and documentation of referrals made; and (3-29-10)
  - e. An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-29-10)

341. -- ~~400~~**99.** (RESERVED)

~~**ADDITIONAL REQUIREMENTS APPLICABLE TO SOBERING STATIONS**~~  
~~(Sections 400—499)~~

~~**401. REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO SOBERING STATIONS.**~~

~~Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must, at a minimum, meet the following standards for staffing in the sobering station for direct care staff. (3-29-10)~~

- ~~**01. Nurse.** At least one (1) R.N. or L.P.N. must be on duty during posted hours of operation. (3-29-10)~~
- ~~**02. Direct Care Staff.** (3-29-10)~~
  - ~~**a.** A sobering station with one (1) through eight (8) clients must have one (1) direct care staff member on duty during posted hours of operation. (3-29-10)~~
  - ~~**b.** A sobering station with nine (9) through eighteen (18) clients must have two (2) direct care staff members on duty during posted hours of operation. (3-29-10)~~
  - ~~**c.** A sobering station with nineteen (19) through thirty (30) clients must have three (3) direct care staff members on duty during posted hours of operation. (3-29-10)~~
  - ~~**d.** A sobering station with more than thirty (30) clients must have one (1) additional direct care staff member beyond the three (3) staff required in Subsection 401.02.e of this rule for each additional ten (10) clients or fraction thereof during posted hours of operation. (3-29-10)~~
- ~~**03. Physician Supervision.** The services provided to each client must be under the supervision of a physician. (3-29-10)~~

~~**402.—409.** (RESERVED)~~

~~**410. REQUIRED MINIMUM SERVICES APPLICABLE TO SOBERING STATIONS.**~~

~~Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must provide the following services. (3-29-10)~~

- ~~**01. Services to Reduce Acute Symptoms and to Monitor.** A sobering station must provide services that reduce the client's acute symptoms in a safe structured setting. (3-29-10)~~
- ~~**02. Planning Services on Release.** A sobering station must provide a procedure to screen each client for planning needs on release. (3-29-10)~~

~~411. — 419. (RESERVED)~~

~~420. REQUIRED MINIMUM INTAKE CRITERIA APPLICABLE TO SOBERING STATIONS.~~

~~Each detox/mental health diversion unit that maintains or operates a sobering station must develop and implement physician approved written intake criteria, policies, and procedures that are uniformly applied to all clients. (3-29-10)~~

~~01. Intake to Sobering Station. A prospective client will be accepted into or retained only if he meets the following intake criteria: (3-29-10)~~

~~a. Must be brought to the sobering station by law enforcement or referred by a hospital or other medical care provider. (3-29-10)~~

~~b. Must be eighteen (18) years of age or older; and (3-29-10)~~

~~c. Demonstrates the capacity to benefit from sobering; (3-29-10)~~

~~d. The services available in the sobering station may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)~~

~~02. Sobering Station Able to Provide Services. The sobering station must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. (3-29-10)~~

~~a. The client does not require a type of service for which the facility is not approved to provide; and (3-29-10)~~

~~b. The level of monitoring of the client in the unit or the physical restrictions of the environment of the facility are adequate to prevent the patient from causing serious harm to self or others. (3-29-10)~~

~~03. Monitoring Clients in Sobering Station. A client admitted to a sobering station must be closely monitored. (3-29-10)~~

~~a. Qualified staff must check each client's vital signs upon entry and throughout the client's stay in the sobering station according to the written policies and procedures approved and signed by the medical director. (3-29-10)~~

~~b. The lead nurse must be notified that an opiate/methadone client was admitted to the sobering station and the name of the clinic where the client received the methadone must be documented. (3-29-10)~~

~~421. — 424. (RESERVED)~~

~~425. REQUIRED MINIMUM PLANNING ON RELEASE APPLICABLE TO SOBERING STATIONS.~~

~~According to physician approved written criteria, policies, and procedures, each sobering station must provide each client with a plan on release that must include, at a minimum, the following. (3-29-10)~~

~~01. Planning on Release. The facility must provide a procedure to screen each client for planning needs on release. (3-29-10)~~

~~a. A client must be released from a sobering station according to the criteria in Subsection 425.02 of this rule. (3-29-10)~~

~~b. A client must be referred to the appropriate level of care upon release which may include community resources and state substance use disorders programs. (3-29-10)~~

~~02. Summary on Release Content. The summary on release must include: (3-29-10)~~

~~a. Documented signs of being sober such as clear speech, steady gait, clear thinking, and appropriate~~

~~behavior, including stable vital signs and stable laboratory results. (3-29-10)~~

~~b. Documented signs that the client is able to care for self or released as sober and responsible to a third party adult. (3-29-10)~~

~~c. A release executed by a sober third party adult into whose care the client has been discharged, if the client is not sober, and the sober third party adult has requested and agreed to assume responsibility for the client's well being. (3-29-10)~~

~~d. Documentation that the client was encouraged to enter programs for ongoing recovery. (3-29-10)~~

~~e. An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-29-10)~~

~~426-499. (RESERVED)~~

ADDITIONAL REQUIREMENTS APPLICABLE TO MENTAL  
HEALTH DIVERSION UNITS  
(Sections 500 - 599)

500. REQUIRED MINIMUM POLICY STANDARDS APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.

~~01. Crisis Stabilization for Mental Health Diversion Unit. Each mental health diversion unit issued a certificate of approval under these rules must offer intensive mental health services twenty-four (24) hours per day, seven (7) days per week, to persons **eighteen (18) years of age or older** with an urgent or emergent need for crisis stabilization services in a safe, structured setting. (3-29-10)(    )~~

~~02. Focus of Mental Health Diversion Unit. Mental health diversion units are focused on short term stabilization for up to a maximum of seven (7) days. In order to assure that adequate arrangements are in place to allow for a safe discharge of a client, the length of stay may be extended up to twenty four (24) hours. (3-29-10)~~

~~03. Alternative to Inpatient Hospitalization. Services at this level of care are used as an alternative to inpatient hospitalization and include crisis stabilization, initial and continuing biopsychosocial assessment, care management, medication management, and mobilization of family or significant other support, and community resources. (3-29-10)~~

~~04. Initial Assessment. This level of care provides for an initial assessment by a licensed mental health professional followed by a face-to-face psychiatric evaluation within twenty four (24) hours of admission or as soon as a client is able. (3-29-10)~~

~~05. Primary Diagnoses. The primary diagnoses treated in a mental health diversion unit are active symptomatology consistent with a DSM-IV-TR diagnosis (Axes I-V) as the principle diagnosis however, patients may have additional physical, medical, or co-dependency issues. (3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

520. MINIMUM REQUIREMENTS FOR ADMISSION CRITERIA APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.

According to physician-approved written admission criteria, policies, and procedures, each mental health diversion unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

01. Admission to Mental Health Diversion Unit. A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)

a. Demonstrates active symptomatology consistent with a DSM-~~IV~~<sup>TR</sup>5 diagnosis (~~Axis I-V~~) as the principle diagnosis and demonstrates significant functional impairment related to his diagnosis such as self-injurious behavior or threats, current suicidal ideation with expressed intentions or a past history of self-destructive, impulsive, or parasuicidal behavior, or grave disability; (3-29-10)(    )

b. ~~His symptoms do not exceed Level V of LOCUS Criteria;~~ (3-29-10)

~~e~~ Must be eighteen (18) years of age or older; and (3-29-10)

~~d.c.~~ Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from psychiatric hospitalization. (3-29-10)

**02. Mental Health Diversion Unit Able to Provide Services.** The mental health diversion unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the mental health diversion unit is not approved to provide. (3-29-10)

**03. Monitoring Clients in Mental Health Diversion Unit.** The level of monitoring the client in the mental health diversion unit or the physical restrictions of the environment of the unit must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. CODES AND STANDARDS.**

Each detox/mental health diversion unit must comply with all state and local building, fire, electrical, plumbing, zoning, heating, or other applicable codes in which the facility is located and that are in effect when construction is begun. Written evidence of compliance must be kept in the facility. (3-29-10)

**01. Code Conflict.** In the event of a conflict between codes, the most restrictive code requirements will apply. (3-29-10)

**02. Compliance with Codes and Standards.** Each detox/mental health diversion unit must be in compliance with the applicable provisions of the following codes and standards in Subsection 601.02.a. through 601.02.h. of this rule. (3-29-10)

a. 2000 Edition of the Life Safety Code, including mandatory references. (3-29-10)

b. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003). (3-29-10)

c. Idaho Department of Health and Welfare Rules, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," also known as the Idaho Food Code. (3-29-10)

d. National Electrical Code. (3-29-10)(    )

e. International Fire Code. (3-29-10)

f. Occupational Safety and Health Act of 1970 (OSHA). (3-29-10)

g. National Sanitation Federation. (3-29-10)

~~h. For facilities operating a sobering station, at least one (1) airborne infection isolation room must comply with (AIA) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. (3-29-10)~~

**03. Evidence of Compliance with Local Building Codes.** No facility will be approved unless the applicant provides evidence to the Department that responsible local officials (planning, zoning, and building) have approved the facility/building for code compliance. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**620. BEDS AND SLEEPING AREAS FOR MEDICALLY MONITORED RESIDENTIAL DETOXIFICATION UNIT.**

Each medically monitored residential detoxification unit must be in compliance with Subsections 620.01 through 620.11 of this rule. (3-29-10)

**01. ~~Number of Approved Beds for Detoxification Unit.~~ ~~The number of approved beds for detoxification is limited to the number stated on the certificate of approval.~~** (3-29-10)(    )

**a.** Each ~~approved~~ bed for detoxification must have, at a minimum, a single bed mattress in good repair with moisture-proof cover, sheets, blankets, bedspread, pillow and pillow cases. (3-29-10)(    )

**b.** Roll-away type beds, cots, bunk-beds, and folding beds cannot be used and will not be approved. (3-29-10)

**02. Location of Beds.** Client beds for medical detoxification may be located within an area suitable for multiple beds (“suite”), provided the suite is surrounded by solid walls, floor to ceiling, and is constructed and maintained in accordance with Chapter 18 of the 2000 Edition of the Life Safety Code. (3-29-10)

**03. Cubicle Curtains.** Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms or suites to ensure privacy for clients. (3-29-10)

**04. Unacceptable Location of Beds.** Client beds for detoxification must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)

**05. Numbered Beds.** Client beds for detoxification must be numbered. (3-29-10)

**06. Square Footage Requirements.** Square footage requirements for client sleeping areas must, at a minimum, provide not less than sixty (60) square feet of floor space per client. (3-29-10)

**07. Visibility of Client Beds.** Client beds for detoxification must be visible at all times to staff in the staff station. (3-29-10)

**08. Occupants of Sleeping Areas.** Solid walls or movable partitions, floor to ceiling, must be used to ensure that sleeping areas and suites for detoxification are only occupied by individuals of the same sex. (3-29-10)

**09. Safe and Secure Sleeping Areas.** Sleeping areas for detoxification must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)

**10. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for medically monitored detoxification are separate and distinct from client areas for ~~sobering and~~ mental health. (3-29-10)(    )

**11. Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for detoxification cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-29-10)

**621. -- 629. (RESERVED)**

**630. BEDS AND BEDROOMS FOR MENTAL HEALTH DIVERSION UNIT.**

Each mental health diversion unit must be in compliance with the following Subsections 630.01 through 630.14 of this rule. (3-29-10)

**01. ~~Number of Approved Beds for Mental Health Diversion Unit.~~ ~~The number of approved beds for mental health diversion is limited to the number stated on the certificate of approval.~~ (3-29-10)( )**

**a.** Each ~~approved~~ bed for mental health diversion treatment must have, at a minimum, a single bed mattress in good repair with moisture-proof cover, sheets, blankets, bedspread, pillow and pillowcases. (3-29-10)( )

**b.** Roll away type beds, cots, bunk beds, and folding beds cannot be used and will not be approved. (3-29-10)

**02. Cubicle Curtains.** Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms to ensure privacy for clients. (3-29-10)

**03. Maximum Room Capacity.** The maximum room capacity in each bedroom is two (2) clients. (3-29-10)

**04. Staff Calling System.** A staff calling system for each client must be installed in each bedroom and in each toilet, bath, and shower room. A staff call must be considered an emergency call and must register at the staff station. The staff calling system must be designed so that a signal light activated by the client will remain lit until turned off by a staff member at the client's calling station - bed, bath, or shower room. The staff calling system is not a substitute for supervision. (3-29-10)

**05. Location of Client Beds.** Client beds must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)

**06. Numbered Bedrooms and Beds.** Client bedrooms and beds must be numbered. (3-29-10)

**07. Size of Client Sleeping Areas.** Square footage requirements for client sleeping areas must provide for not less than sixty (60) square feet of floor space per client. (3-29-10)

**08. Entrances to Client Bedrooms.** Entrances to each client bedroom must be visible at all times to staff in the staff station. (3-29-10)

**09. Ceiling Height.** Ceiling heights must be a minimum of seven (7) feet, six (6) inches. (3-29-10)

**10. Occupants of Bedrooms.** A client bedroom used for mental health diversion must only be occupied by individuals of the same sex. (3-29-10)

**11. Bedroom Door Requirements.** Each client bedroom must have a ninety-degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty-two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff in the staff station. (3-29-10)

**12. Safe and Secure Client Bedrooms.** Each client bedroom must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)

**13. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for mental health diversion are separate and distinct from client areas for ~~sobering and~~ medically monitored detoxification. (3-29-10)( )

**14. Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for mental health diversion cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-29-10)

631. -- ~~634~~9. (RESERVED)

~~640. SOBERING STATION.~~

~~A sobering station is an optional service that may be provided in a detox/mental health diversion unit. When a sobering station is provided it must be in compliance with Subsections 640.01 through 640.16 of this rule. (3-29-10)~~

~~01. Number of Clients in a Sobering Station. The number of clients that may be housed in the sobering station is limited to the number stated on the certificate of approval. (3-29-10)~~

~~02. Visible Client Areas. Client areas for sobering must be visible at all times to staff at the staff station. If vision windows are used they must provide for one way vision into client areas for staff at the staff station and must be made of tempered, shatterproof glass. The Department will consider alternative design solutions to one way vision which will accommodate the requirements for client area accessibility and monitoring. (3-29-10)~~

~~03. Disease Protection of Clients. Client areas must provide for disease protection and be maintained in a clean sanitary condition at all times. (3-29-10)~~

~~04. Furniture. Furniture located in client areas must be weighted or secured to the floor to ensure safety of staff and clients. (3-29-10)~~

~~05. Location of Client Areas. Client areas in a sobering station must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-29-10)~~

~~06. Numbered Rooms. Client rooms for a sobering station must be numbered. (3-29-10)~~

~~07. Size of Client Rooms. Square footage requirements for client rooms in a sobering station must provide for not less than thirty (30) square feet of floor space per client. (3-29-10)~~

~~08. Entrances to Client Rooms. Entrances to all sobering station client rooms must be visible at all times to staff at the staff station. (3-29-10)~~

~~09. Ceiling Height of Client Rooms. Ceiling heights for client rooms must be a minimum of seven (7) feet, six (6) inches. (3-29-10)~~

~~10. Floor Drain in Client Room. Client rooms in a sobering station must have at least one tamper resistant floor drain installed. (3-29-10)~~

~~11. Doors on Client Rooms. Client rooms in a sobering station must have a ninety degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff at the staff station. The Department will consider alternative design solutions to one way vision which will accommodate the requirements for client area accessibility and monitoring. (3-29-10)~~

~~12. Utilities in Client Rooms. Client rooms in a sobering station must have a toilet and hand washing sink with solid walls or partitions to separate the toilet from the sleeping area, and have mechanical ventilation to the outside. (3-29-10)~~

~~13. Client Rooms Free of Hazards. Client rooms and areas in a sobering station must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-29-10)~~

~~14. Airborne Infection Isolation Room. Each sobering station must have at least one (1) private airborne infection isolation room with a toilet, hand washing sink, and other accessory facilities that complies with (AIH) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. Private airborne infection isolation rooms must have no hardware, equipment, or furnishings that obstruct observation of a client, or that present a physical hazard, or a suicide risk. Private airborne infection isolation rooms must have at least sixty (60) square feet of floor space and a ceiling height of seven (7) feet, six (6) inches. (3-29-10)~~



~~15. **Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for sobering are separate and distinct from client areas for medically monitored detoxification and mental health diversion. (3-29-10)~~

~~16. **Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for a sobering station cannot be reallocated or relocated unless prior approval has been obtained from the Department. (3-29-10)~~

~~641.—649. (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**655. ADMINISTRATIVE AREAS.**

The following administrative areas must be located in the facility, or readily available to staff. The size and disposition of each administrative area will depend upon the number and types of approved beds to be served. Depending on the size of the facility and the number of clients served, there may be a need for more than one of the administrative areas listed below. Although identifiable spaces are required to be provided for each of the indicated functions, consideration will be given to design solutions which would accommodate some functions without specific designation of areas or rooms. Details of such proposals must be submitted to the Department for prior approval. Each administrative area must be in compliance with Subsections 655.01 through 655.10 of this rule. (3-29-10)

**01. Staff Station.** The facility must have one (1) or more staff stations centrally located in each distinct service area for ~~the sobering station~~, the medically monitored detoxification unit, and the mental health diversion unit, with adequate space for charting and storage for administrative supplies. ~~(3-29-10)~~ ( )

**02. Lounge and Toilets for Staff.** The facility must have lounge and toilet rooms for staff. The toilet rooms may be unisex. (3-29-10)

**03. Closets and Compartments.** Individual closets or compartments, for the safekeeping of coats and personal effects of personnel, must be located convenient to the staff station or in a central location close to personnel. (3-29-10)

**04. Clean Workroom or Clean Holding Room.** If the room is used for work, it must contain a counter and hand-washing facilities. When the room is used only for storage as part of a system for distributing clean and sterile supplies, the work counter and hand-washing facilities can be omitted. (3-29-10)

**05. Soiled Workroom and Soiled Holding Room.** The soiled workroom must contain a clinical sink or equivalent flushing rim fixture and a sink for hand-washing, towel dispenser, work counter, waste receptacle, and soiled linen receptacle. (3-29-10)

**06. Drug Distribution Station.** The drug distribution station must be secure and convenient, with prompt twenty-four (24) hour availability of medicine. A secure medicine preparation area must be available and under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for controlled drugs, convenient to hand washing station and have a minimum area of fifty (50) square feet. A medicine dispensing unit can be located at the staff station, in the clean workroom, or in an alcove or other space convenient to staff and under staff control. (3-29-10)

**07. Nourishment Station.** The nourishment station must contain a sink equipped for hand-washing, towel dispenser, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for clients' must be provided only by icemaker-dispenser units. (3-29-10)

**08. Equipment Storage Rooms.** Rooms must be available for storage of equipment. (3-29-10)

**09. Janitor's Closet.** Rooms must be available for storage of janitorial supplies and equipment.



(3-29-10)

10. **Lockable Storage Area.** A storage area of at least sixty-four (64) cubic feet (4x4x4), with segregated lockable storage compartments for client personal effects, must be maintained on-site. This storage area for client personal effects may be located in a separate area inside or outside of the facility's buildings. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**685. VENTILATION.**

~~01. **Detox/Mental Health Diversion Unit Ventilation.** Each detox/mental health diversion unit must be adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the minimum requirements of the Uniform Mechanical Code. (3-29-10)( )~~

~~02. **Sobering Station Ventilation.** A facility with a sobering station, must have private airborne infection isolation rooms that are adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the following minimum requirements of the 2006 AIA Guidelines for Design and Construction of Health Care Facilities:~~

| <b>TABLE 685.02—MINIMUM REQUIREMENTS OF THE 2006 AIA GUIDELINES FOR DESIGN AND CONSTRUCTION OF HEALTH CARE FACILITIES—VENTILATION PRECAUTIONS FOR SOBERING STATIONS</b> |                              |                                       |                             |                  |
|---|------------------------------|---------------------------------------|-----------------------------|------------------|
| <i>Area</i>   | <i>Air Movement/Relation</i> | <i>Minimum Outdoor Air Changes/Hr</i> | <i>Total Air Changes/Hr</i> | <i>Exhausted</i> |
| <i>Isolation Room</i>   | <i>In</i>                    | <i>2</i>                              | <i>12</i>                   | <i>Yes</i>       |

(3-29-10)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.06 – RULE TO IMPLEMENT UNIFORM COVERAGE FOR NEWBORN AND NEWLY ADOPTED CHILDREN

DOCKET NO. 18-0106-1801

#### 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 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 current rule applies to self-funded health plans subject to registration with the Department, as well as health insurers, and addresses coverage for congenital anomalies. There is some language in the rule that refers to premiums that denotes health insurance only and causes confusion for self-funded plans given that the term used for payments by members covered by a self-funded plan is “contribution” and not “premium.” This rulemaking seeks to modify language in Section 012 to include contributions in addition to premiums.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 131](#).

**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, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0106-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**012. NOTIFICATION AND PAYMENT REQUIREMENTS.**

**01. Notification and Payment. (4-2-08)**

**a.** If notice and payment of additional premium are required for dependent coverage under the health plan contract, the contract may require notice of birth, placement or adoption and payment of required premium as a condition of coverage for newborn and newly adopted children. The notification period shall be not less than sixty (60) days from the date of birth for a newborn child or, for newly adopted children, sixty (60) days from the earlier of the date of adoption or placement for adoption. The due date for payment of any additional premium, if required, shall be not less than thirty-one (31) days following receipt by the health plan member of a billing for the required premium. (4-2-08)

**b.** All requirements for notice and payment of premium applied by the health plan for the enrollment of newborn or newly adopted children shall be clearly set forth in the health plan contract and provided to the health plan members in a manner reasonably calculated to provide notice to the members of the requirements. (4-2-08)

**c.** If the health plan member fails to provide the required notification, or make the required premium payment, the health plan may decline to enroll a dependent child as a newborn or newly adopted child, but shall treat a newborn or newly adopted child no less favorably than it treats other applicants who seek coverage at a time other than when the applicant was first eligible to apply for coverage. (4-2-08)

**d.** For self-funded health care plans subject to Chapter 40 or 41, Title 41, Idaho Code, any references to premium in Section 012 of this rule should be recognized to be applying to contributions. ( )

**IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE**  
**18.01.23 – RULES PERTAINING TO IDAHO ACQUISITIONS OF CONTROL**  
**AND INSURANCE HOLDING COMPANY SYSTEMS**

**DOCKET NO. 18-0123-1801**

**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 41-211 and 41-3817, 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 19, 2018.

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

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

This rulemaking revises language in Subsection 027.01 regarding extraordinary dividends to be consistent with changes made to Section 41-3812, Idaho Code, following enactment of House Bill 454 in 2018.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 132](#).

**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 this proposed rule, contact Nathan Faragher at [nathan.faragher@doi.idaho.gov](mailto:nathan.faragher@doi.idaho.gov), or (208) 334-4314.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0123-1801  
(Only Those Sections With Amendments Are Shown.)

027. EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.

**01. Request for Approval.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following: (3-20-14)

a. The amount of the proposed dividend; (12-24-93)

b. The date established for payment of the dividend; (12-24-93)

c. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value, together with an explanation of the basis for valuation; (12-24-93)

d. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information: (12-24-93)

i. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year; (3-20-14)

ii. Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding; (12-24-93)

iii. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding; ~~and~~ (3-20-14)( )

iv. If the insurer is not a life insurer, the net income less ~~net~~ realized capital gains for the twelve (12) month period ending the 31st day of December next preceding ~~and the two preceding twelve (12) month periods; and.~~ (3-20-14)( )

~~v. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years. (12-24-93)~~

e. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and (3-20-14)

f. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs. (12-24-93)

**02. Other Dividends.** Subject to Section 41-3812, Idaho Code, each registered insurer shall report to the Director all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsections 027.01.d. (3-20-14)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.24 – ADVERTISEMENT OF DISABILITY (ACCIDENT AND SICKNESS) INSURANCE

DOCKET NO. 18-0124-1801

#### 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 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 025 of the rule states that the Director may require the filing of “direct response” advertising regarding disability accident and sickness policies. Some carriers, typically those seeking to sell limited benefit plans, object to filing advertising materials. This results in the Department sending a separate request for this material. The Department believes that it's appropriate to review any advertising material, and this change would streamline that communication and process. This rulemaking seeks to modify the rule to eliminate the reference to “direct response” advertising.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 133](#).

**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, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0124-1801  
(Only Those Sections With Amendments Are Shown.)

**025. FILING FOR PRIOR REVIEW.**

The Director may, at his discretion, require the filing ~~with this Department, for review prior to use,~~ of ~~direct response~~ any accident and sickness insurance advertising material for review prior to use. Such advertising material must be filed by the insurer with this Department not less than thirty (30) days prior to the date the insurer desires to use the advertisement. ~~(7-1-93)~~( )

# IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

## 18.01.49 – FIRE PROTECTION SPRINKLER CONTRACTORS

DOCKET NO. 18-0149-1801

### 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 41-211 and 41-254, 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 19, 2018.

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

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

The proposed rule revises language in IDAPA 18.01.49 to eliminate Subsection 011.07 providing for an advisory board, a board that never formed, and to eliminate language in Subsection 021.06 concerning fees that tie the fee amount to one percent (1%) of the bid amount. Language imposing fees in the amount of two dollars (\$2) per sprinkler head payable to the local department or the State Fire Marshal will be retained, including the retention of the maximum and minimum fees. The rulemaking also clarifies in Subsection 021.06 that the fee applies to each fire protection sprinkler system, which is defined in Subsection 004.01 of this rule.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 136](#).

**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 this proposed rule, contact Knute Sandahl at [knute.sandahl@doi.idaho.gov](mailto:knute.sandahl@doi.idaho.gov), or (208) 334-4377.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0149-1801  
(Only Those Sections With Amendments Are Shown.)

**011. POWERS AND DUTIES OF THE STATE FIRE MARSHAL.**

In addition to the powers and duties prescribed in this rule, the State Fire Marshal shall: (7-1-93)

**01. Assistants, Inspectors and Other Employees.** Appoint an adequate number of assistants, inspectors and other employees that may be necessary to carry out the provisions of this rule, prescribe their duties, and fix their compensation within the amount appropriated. (7-1-93)

**02. Licensing Procedures.** Establish procedures for licensing of fire protection sprinkler contractors and fitters, set forth the form and content of applications, and investigate and examine all applicants as to their qualifications and fitness for such licensing. (7-1-93)

**03. Records.** Keep records of all licenses issued, suspended or revoked. (1-1-94)

**04. Suspension or Revocation of License.** Suspend or revoke any license for any cause prescribed by this rule, and refuse to grant any license for any cause which would be grounds for revocation or suspension. (7-1-93)

**05. Examinations.** Prepare, administer, and grade such applicable examinations and tests for applicants as may be required for the purposes of this rule, and determine the score that shall be deemed a passing score. (7-1-93)

**06. Fees.** Collect fees, including applications, testing, licensing, renewals, and duplication fees from the applicants, and license holders for the purpose of administering and funding this rule. (7-1-93)

~~**07. Advisory Board.** Appoint an advisory board consisting of six (6) members whose duties shall be to advise and counsel the State Fire Marshal on matters contained in this rule. One (1) or more representatives from each of the following professions or occupations shall be appointed to the board. (1-1-94)~~

~~**a. Architect.** (1-1-94)~~

~~**b. Mechanical Engineer.** (1-1-94)~~

~~**c. Fire Service Official.** (1-1-94)~~

~~**d. General Contractor.** (1-1-94)~~

~~**e. Licensed Fire Sprinkler Contractor—Two (2).** (1-1-94)~~

~~**f. The terms of the members of the board first appointed shall expire as follows: three (3) members two (2) years later, three (3) members three (3) years later. Thereafter, appointments shall be for three (3) years. At its first meeting of every calendar year the board shall elect a president from its members, and a secretary who may or may not be a member of the board. Members of the board shall serve without compensation. The staff of the office of the State Fire Marshal shall provide such assistance as the board may require. (1-1-94)**~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. SERVICE EVIDENCE.**

**01. Submission of Plans.** Where automatic fire sprinkler systems are installed, the installer shall complete the contractor's material and test certificates NFPA 1~~23~~ 1-10.1. All systems must be under the supervision of a contractor or a R.M.E. These persons shall cause proper tests and inspections to be made at prescribed intervals and must have general charge of all alterations and additions to the systems under their supervision. (7-1-93)(    )

**02. Conformance to Standards.** A service tag conforming to the requirements of this chapter shall be attached to all systems. (7-1-93)

**021. DESIGN REQUIREMENTS.**

**01. Submission of Plans.** Detailed plans in accordance with applicable NFPA standards must be submitted by a licensed contractor for approval to the local fire department and to the State Fire Marshal. (7-1-93)

**02. Conformance to Standards.** The specifications must state that the installation will conform to the applicable standards listed in this rule and be approved by the local fire department and the State Fire Marshal. (7-1-93)

**03. Tests.** The specifications must include the specific tests required to meet the standards for approval of the local fire department and the State Fire Marshal. (7-1-93)

**04. Scale.** Plans must be drawn to an indicated scale or be suitably dimensioned, and must be made so that they can be easily reproduced. (7-1-93)

**05. Detail.** Plans must contain sufficient detail to evaluate the effectiveness of the system. (7-1-93)

**06. Prior Approval of Plans.** Plans must be submitted to the State Fire Marshal and the local fire department and approved, before work starts. Work may start prior to final plans submitted based on conceptual drawings if approved by the local fire department and the State Fire Marshal. A plans review fee of two dollars (\$2) per sprinkler head up to one thousand (1000) heads per fire protection sprinkler system (maximum two thousand dollars (\$2,000)) or one hundred dollars (\$100) per fire protection sprinkler system if less than fifty (50) sprinkler heads ~~or one percent (1%) of the total bid price (whichever is larger) up to the maximum of two thousand dollars (\$2,000) or the minimum of one hundred dollars (\$100).~~ The applicable fee must accompany the plans sent to the State Fire Marshal. Two (2) sprinkler heads on an arm-over will be considered as one (1) sprinkler head for fee purposes. (7-1-93)(    )

**07. Corrected Plans.** Where field conditions necessitate any substantial change from the approved plan, the corrected plan showing the system as installed must be submitted to the local fire department and the State Fire Marshal for approval. (7-1-93)

**08. Exemption.** A City or County may request, and the State Fire Marshal may grant, an exemption from the requirements of this Section that plans be submitted to the State Fire Marshal for review and approval. A request for exemption shall be made in writing signed by the Fire Chief, his designated representative or elected local official and shall set forth the reasons for the request. If the State Fire Marshal determines the request is justified, the requesting party will be provided a written notice of exemption. The exemption will continue until terminated by the State Fire Marshal. Any such exemption shall not apply to plans or inspections relating to structures owned, leased or controlled by the state or any state agency. (4-5-00)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.54 – RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-1801

#### 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 41-211 and 41-4409, 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 19, 2018.

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

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

This rulemaking seeks to make updates to the current rule consistent with NAIC Model Regulation 651 to add definitions for the 2020 Standardized Medicare Supplement Benefit Plans and add more detailed sections with respect to such plans.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 137](#).

**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 materials cited are incorporated into the current rule, however, a correction is made to the reference, namely, to the NAIC Model Regulation 651, rather than the NAIC Model Act (650). Additionally, there are some substantive changes to the outlines of coverage and plan designs reflecting options and eligibility for Medicare supplement plans issued starting on January 1, 2020.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this proposed rule, contact Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0154-1801  
(Only Those Sections With Amendments Are Shown.)

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rules, IDAPA 18.01.54, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” (3-29-10)

**02. Scope.** (4-5-00)

**a.** Except as otherwise specifically provided in Sections 020, ~~02846~~, ~~02951~~, ~~03266~~, and ~~0377~~, this rule shall apply to: ~~(3-29-10)~~(\_\_\_\_)

**i.** All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and (4-5-00)

**ii.** All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state. (4-5-00)

**b.** This rule shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organization. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

This rule incorporates by reference Appendixes A (Refund Calculation and Calculation of Benchmark forms Model Regulation 651 pages 651-94 to 651-97), B (Form for Reporting Medicare Supplement Policies, page 651-98), and C (Disclosure Statements pages 651-99 to 651-108), and all other outlines of coverage and specific plan designs of the National Association of Insurance Commissioners (NAIC) Model ~~Act~~ Regulation 651 (pages 651-42 to 651-85) implementing the Medicare supplement insurance minimum standards; ~~July 1, 2009~~ (2018). The Model ~~Act~~ Regulation is available from the National Association of Insurance Commissioners, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662 and from the Idaho Department of Insurance. ~~(3-29-10)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. POLICY DEFINITIONS AND TERMS.**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section. (4-5-00)

**01. Accident, Accidental Injury, or Accidental Means.** To employ “result” language and shall not include words that establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization. (3-29-10)

**a.** The definition shall not be more restrictive than the following: “Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.” (4-5-00)

b. The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law. (4-5-00)

**02. Benefit Period or Medicare Benefit Period.** Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**03. Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility.** Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**04. Health Care Expenses.** For purposes of Section ~~02951~~, expenses of managed care organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. ~~(3-29-10)~~( )

**05. Hospital.** May be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program. (4-5-00)

**06. Medicare.** Shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import. (3-29-10)

**07. Medicare Eligible Expenses.** Expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare. (4-11-06)

**08. Physician.** Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**09. Sickness.** Shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**023. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY ON OR AFTER JULY 1, 1992 AND WITH AN EFFECTIVE DATE FOR COVERAGE PRIOR TO JUNE 1, 2010.**

**01. Policy Form or Certificate Form.** An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 021.02. (3-29-10)

**02. Medicare Supplement Benefits.** No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Subsection 023.07 and in Section ~~02531~~ of this rule. ~~(3-29-10)~~( )

**03. Benefit Plans.** Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "L" listed in this Subsection and conform to the definitions in Section 010 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 021.02, and 021.03 or 021.07, and list the benefits in the order shown in this Subsection. For purposes of Section 023, "structure, language,

and format” means style, arrangement and overall content of a benefit. (3-29-10)

**04. Other Designations.** An issuer may use, in addition to the benefit plan designations required in Subsection 023.03, other designations to the extent permitted by law. (3-29-10)

**05. Make-Up of Benefit Plans.** (3-29-10)

**a.** Standardized Medicare supplement benefit plan “A” shall be limited to the basic (core) benefits common to all benefit plans, as defined in Subsection 021.02. (3-29-10)

**b.** Standardized Medicare supplement benefit plan “B” shall include only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible as defined in Paragraph 021.03.a. (3-29-10)

**c.** Standardized Medicare supplement benefit plan “C” shall include only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Paragraphs 021.03.a. through 021.03.c., and 021.03.h., respectively. (3-29-10)

**d.** Standardized Medicare supplement benefit plan “D” shall include only the following: The core benefit (as defined in Subsection 021.02), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Paragraphs 021.03.a., 021.03.b., 021.03.h., and Subsection 021.05, respectively. (3-29-10)

**e.** Standardized Medicare supplement benefit plan “E” shall include only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Paragraphs 021.03.a., 021.03.b., 021.03.h., and Subsection 021.04, respectively. (3-29-10)

**f.** Standardized Medicare supplement benefit plan “F” shall include only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 021.03.a. through 021.03.c., 021.03.e., and 021.03.h., respectively. (3-29-10)

**g.** Standardized Medicare supplement benefit high deductible plan “F” shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible plan “F” deductible. The covered expenses include the core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 021.03.a. through 021.03.c., 021.03.e., and 021.03.h., respectively. The annual high deductible plan “F” deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan “F” policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan “F” deductible shall be one thousand five hundred dollars (\$1,500) for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10). (3-29-10)

**h.** Standardized Medicare supplement benefit plan “G” shall include only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Paragraphs 021.03.a., 021.03.b., 021.03.d., 021.03.h., and Subsection 021.05, respectively. (3-29-10)

**i.** Standardized Medicare supplement benefit plan “H” shall consist of only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Paragraphs

021.03.a., 021.03.b., 021.03.f., and 021.03.h., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. (3-29-10)

**j.** Standardized Medicare supplement benefit plan “I” shall consist of only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Paragraphs 021.03.a., 021.03.b., 021.03.e., 021.03.f., 021.03.h., and Subsection 021.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. (3-29-10)

**k.** Standardized Medicare supplement benefit plan “J” shall consist of only the following: The core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Paragraphs 021.03.a. through 021.03.c., 021.03.e., 021.03.g., 021.03.h., and Subsections 021.04 and 021.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. (3-29-10)

**l.** Standardized Medicare supplement benefit high deductible plan “J” shall consist of only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible plan “J” deductible. The covered expenses include the core benefit as defined in Subsection 021.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Paragraphs 021.03.a. through 021.03.c., 021.03.e., 021.03.g., 021.03.h., and Subsections 021.04 and 021.05, respectively. The annual high deductible plan “J” deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan “J” policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be one thousand five hundred dollars (\$1,500) for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. (3-29-10)

**06. Make-Up of Two Medicare Supplement Plans Mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).** (3-29-10)

**a.** Standardized Medicare supplement benefit plan “K” shall consist of only those benefits described in Paragraph 021.07.a. (3-29-10)

**b.** Standardized Medicare supplement benefit plan “L” shall consist of only those benefits described in Paragraph 021.07.b. (3-29-10)

**07. New or Innovative Benefits.** An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goals of simplification of Medicare supplement policies. After December 31, 2005 the innovative benefit shall not include an outpatient prescription drug benefit. (4-11-06)

**024. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010.**

**01. General Standards.** The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards



applicable to Medicare supplement policies and certificates with an effective date for coverage before June 1, 2010 remain subject to the requirements of Section 02~~4~~<sup>3</sup> of this rule. (3-29-10)(    )

a. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic (core) benefits, as defined in Subsection 022.02 of this rule. (3-29-10)

b. If an issuer makes available any of the additional benefits described in Subsection 022.03, or offers standardized benefit Plans K or L (as described in Paragraphs 024.02.h. and 024.02.i. of this rule), then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic (core) benefits as described in Paragraph 024.01.a., a policy form or certificate form containing either standardized benefit Plan C (as described in Paragraph 024.02.c. of this rule) or standardized benefit Plan F (as described in Paragraph 024.02.e. of this rule). (3-29-10)

c. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Subsection 024.03 and in Section 02~~5~~<sup>31</sup> of this rule. (3-29-10)(    )

d. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this Subsection and conform to the definitions in Section 010 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 022.02 and 022.03 of this rule; or, in the case of plans K or L, in Paragraphs 024.02.h. and 024.02.i. of this rule and list the benefits in the order shown. For purposes of this section, “structure, language, and format” means style, arrangement and overall content of benefit. (3-29-10)

e. In addition to the benefit plan designations required in Paragraph 024.01.d., an issuer may use other designations to the extent permitted by law. (3-29-10)

**02. Make-up of 2010 Standardized Benefit Plans.** (3-29-10)

a. Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as defined in Subsection 022.02 of this rule. (3-29-10)

b. Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible as defined in Paragraph 022.03.a. of this rule. (3-29-10)

c. Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03. a., 022.03.c., 022.03.d., and 022.03.f of this rule, respectively. (3-29-10)

d. Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit (as defined in Subsection 022.02 of this rule), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., 022.03.c., and 022.03.f. of this rule, respectively. (3-29-10)

e. Standardized Medicare supplement [regular] Plan F shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., and 022.03.c., through 022.03.f. of this rule, respectively. (3-29-10)

f. Standardized Medicare supplement Plan F With High Deductible shall include only the following: One hundred percent (100%) of covered expenses following the payment of the annual deductible set forth in Subparagraph 024.02.f.ii. (3-29-10)

i. The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent



(100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., and 022.03.c., through 022.03.f. of this rule, respectively. (3-29-10)

ii. The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by [regular] Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be ~~fifteen~~ one thousand five hundred dollars (\$1,500) and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10). ~~(3-29-10)~~ ( )

g. Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., 022.03.c., 022.03.e., and 022.03.f. of this rule, respectively. Effective January 1, 2020, the standardized benefit plans described in Paragraph 025.01.d. (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020. ~~(3-29-10)~~ ( )

h. Standardized Medicare supplement Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following: (3-29-10)

i. Part A Hospital Coinsurance sixty-first through ninetieth days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period. (3-29-10)

ii. Part A Hospital Coinsurance ninety-first through one hundred fiftieth day: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any Medicare benefit period; (3-29-10)

iii. Part A Hospitalization After One Hundred Fiftieth Day: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance; (3-29-10)

iv. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. (3-29-10)

v. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. (3-29-10)

vi. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. (3-29-10)

vii. Blood: Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. (3-29-10)

viii. Part B Cost Sharing: Except for coverage provided in Subparagraph 024.02.h.ix., coverage for fifty

percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. (3-29-10)

ix. Part B Preventive Services: Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and (3-29-10)

x. Cost Sharing After Out-of-Pocket Limits: Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars (\$4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services. (3-29-10)

i. Standardized Medicare supplement Plan L is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following: (3-29-10)

i. The benefits described in Subparagraphs 024.02.h.i. through 024.02.h.iii., and 024.02.h.ix. (3-29-10)

ii. The benefits described in Subparagraphs 024.02.h.iv. through 024.02.h.viii. but substituting seventy-five percent (75%) for fifty percent (50%); and (3-29-10)

iii. The benefit described in Subparagraph 024.02.h.x. but substituting two thousand dollars (\$2,000) for four thousand dollars (\$4,000). (3-29-10)

j. Standardized Medicare supplement Plan M shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.b., 022.03.c., and 022.03.f. of this rule, respectively. (3-29-10)

k. Standardized Medicare supplement Plan N shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in foreign country as defined in Paragraphs 022.03.a., 022.03.c., and 022.03.f. of this rule, respectively, with copayments in the following amounts: (3-29-10)

i. The lesser of twenty dollars (\$20) or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and (3-29-10)

ii. The lesser of fifty dollars (\$50) or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense. (3-29-10)

**03. New or Innovative Benefits.** An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan. (3-29-10)

**025. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2020 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY TO INDIVIDUALS NEWLY ELIGIBLE FOR MEDICARE ON OR AFTER JANUARY 1, 2020.**

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of

the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of Section 024 of this rule. ( )

**01. Benefit Requirements.** The standards and requirements of Section 024 shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions: ( )

**a.** Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Paragraph 024.02.c. of this rule but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible. ( )

**b.** Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Paragraph 024.02.e. of this rule but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible. ( )

**c.** Standardized Medicare supplement benefit plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020. ( )

**d.** Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in Paragraph 024.02.f. of this rule but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible. ( )

**e.** The reference to Plans C or F contained in Paragraph 024.01.b. is deemed a reference to Plans D or G for purposes of this section. ( )

**02. Applicability to Certain Individuals.** This section applies only to individuals that are newly eligible for Medicare on or after January 1, 2020: ( )

**a.** By reason of attaining age sixty-five (65) on or after January 1, 2020; or ( )

**b.** By reason of entitlement to benefits under part A pursuant to section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under section 226(a) of the Social Security Act on or after January 1, 2020. ( )

**03. Guaranteed Issue for Eligible Persons.** For purposes of Subsection 041.05 of this rule, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F With High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G With High Deductible) respectively that meet the requirements of Subsection 025.01. ( )

**04. Offer of Redesignated Plans to Individuals Other Than Newly Eligible.** On or after January 1, 2020, the standardized benefit plans described in Paragraph 025.01.d. may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Subsection 024.02 of this rule. ( )

**026. -- 030. (RESERVED)**

**02531. MEDICARE SELECT POLICIES AND CERTIFICATES.**

This section shall apply to Medicare Select policies and certificates, as defined in this section. No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(3-29-10)

**01. Definitions.** For the purposes of Section 02531: (3-29-10) ( )

- a. Complaint. Any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers. (4-5-00)
- b. Grievance. Dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers. (4-5-00)
- c. Medicare Select issuer. An issuer offering, or seeking to offer, a Medicare Select policy or certificate. (4-5-00)
- d. Medicare Select policy or Medicare Select certificate. Respectively a Medicare supplement policy or certificate that contains restricted network provisions. (4-5-00)
- e. Network provider. A provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy. (4-5-00)
- f. Restricted network provision. Any provision which conditions the payment of benefits, in whole or in part, on the use of network providers. (4-5-00)
- g. Service area. The geographic area approved by the director within which an issuer is authorized to offer a Medicare Select policy. (4-5-00)

**02. Authorization to Issue Medicare Select Policy or Certificate.** The director may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to Section ~~02531~~ of this rule and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the director finds that the issuer has satisfied all of the requirements of this rule. ~~(3-29-10)~~( )

**03. Filing Requirements.** A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the director. (4-5-00)

**04. Proposed Plan of Operation.** A Medicare Select issuer shall file a proposed plan of operation with the director in a format prescribed by the director. The plan of operation shall contain at least the following information: (4-5-00)

- a. Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that: (4-5-00)
  - i. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community. (4-5-00)
  - ii. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either to deliver adequately all services that are subject to a restricted network provision or to make appropriate referrals. (4-5-00)
  - iii. There are written agreements with network providers describing specific responsibilities. (4-5-00)
  - iv. Emergency care is available twenty-four (24) hours per day and seven (7) days per week. (4-5-00)
  - v. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate. (3-29-10)

- b. A statement or map providing a clear description of the service area. (4-5-00)
  - c. A description of the grievance procedure to be utilized. (4-5-00)
  - d. A description of the quality assurance program, including: (4-5-00)
    - i. The formal organizational structure; (4-5-00)
    - ii. The written criteria for selection, retention, and removal of network providers; and (4-5-00)
    - iii. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted. (4-5-00)
  - e. A list and description, by specialty, of the network providers. (4-5-00)
  - f. Copies of the written information proposed to be used by the issuer to comply with Subsection 02531.08. ~~(3-29-10)~~ (4-5-00)
  - g. Any other information requested by the director. (4-5-00)
- 05. Proposed Changes to the Plan of Operation.** A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the director prior to implementing the changes. Changes shall be considered approved by the director after thirty (30) days unless specifically disapproved. An updated list of network providers shall be filed with the director at least quarterly. (4-5-00)
- 06. Restrictions.** A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if: (4-5-00)
- a. The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and (4-5-00)
  - b. It is not reasonable to obtain services through a network provider. (4-5-00)
- 07. Payment for Full Coverage.** A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers. (4-5-00)
- 08. Full and Fair Disclosure.** A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following: (4-5-00)
- a. An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with: (4-5-00)
    - i. Other Medicare supplement policies or certificates offered by the issuer; and (4-5-00)
    - ii. Other Medicare Select policies or certificates. (4-5-00)
  - b. A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers. (4-5-00)
  - c. A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L. (4-11-06)
  - d. A description of coverage for emergency and urgently needed care and other out-of-service area

coverage. (4-5-00)

- e. A description of limitations on referrals to restricted network providers and to other providers. (4-5-00)
- f. A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)
- g. A description of the Medicare Select issuer's quality assurance program and grievance procedure. (4-5-00)

**09. Medicare Select Policy or Certificate.** Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection 02531.08 and that the applicant understands the restrictions of the Medicare Select policy or certificate. ~~(3-29-10)~~( )

**10. Complaints and Grievances.** A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures. (4-5-00)

- a. The grievance procedure shall be described in the policy and certificates and in the outline of coverage. (4-5-00)
- b. At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer. (4-5-00)
- c. Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action. (4-5-00)
- d. If a grievance is found to be valid, corrective action shall be taken promptly. (4-5-00)
- e. All concerned parties shall be notified about the results of a grievance. (4-5-00)
- f. The issuer shall report no later than each March 31 to the director regarding its grievance procedure. The report shall be in a format prescribed by the director and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances. (4-5-00)

**11. Initial Purchase.** At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)

**12. Comparable or Lesser Benefits.** (4-5-00)

a. At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months. (4-5-00)

b. For the purposes of Subsection 02531.12, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges. ~~(3-29-10)~~( )

**13. Continuation of Coverage.** Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and



certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be re-authorized under law or its substantial amendment. (3-29-10)

**a.** Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability. (4-5-00)

**b.** For the purposes of Subsection ~~02531~~.13, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges. ~~(3-29-10)~~( )

**14. Requests for Data.** A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program. (4-5-00)

~~032.~~ -- ~~035.~~ **(RESERVED)**

~~023~~**6. OPEN ENROLLMENT.**

**01. Offer of Coverage.** (3-29-17)

**a.** An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with: (3-29-17)

**i.** The first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. (3-29-17)

**ii.** January 1, 2018 or the first day of the first month of Medicare Part B eligibility due to disability or end stage renal disease, whichever is later, for an individual that is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B; or (3-29-17)

**iii.** The first day of the first month after the individual receives written notice of retroactive enrollment under Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration. (3-29-17)

**b.** Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under Paragraph ~~023~~6.01.a. without regard to age. ~~(3-29-17)~~( )

**02. Treatment of Preexisting Conditions.** (3-29-17)

**a.** If an applicant qualifies under Subsection ~~023~~6.01 and submits an application during the time period referenced in Subsection ~~023~~6.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. ~~(3-29-17)~~( )

**b.** If the applicant qualifies under Subsection ~~023~~6.01 and submits an application during the time period referenced in Subsection ~~023~~6.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary of Health and Human Services shall specify the manner of the reduction under this Subsection. ~~(3-29-17)~~( )

**c.** Except as provided in Paragraphs ~~023~~6.02.a. and 02.b., and Sections ~~02741~~ and ~~0381~~, nothing in

this rule shall be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. ~~(3-29-17)~~( )

**03. Discrimination in Pricing.** An issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection ~~0236~~01, except on the basis of the following criteria: ~~(3-29-17)~~( )

- a. Issue age; and (3-29-17)
- b. Smoking or tobacco use. (3-29-17)

~~037. -- 040.~~ **(RESERVED)**

~~02741.~~ **GUARANTEED ISSUE FOR ELIGIBLE PERSONS.**

**01. Guaranteed Issue.** (4-5-00)

a. Eligible persons are those individuals described in Subsection ~~02741~~.02 who seek to enroll under the policy during the period specified in Subsection ~~02741~~.03, and who submit evidence of the date of termination or disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy. ~~(3-29-10)~~( )

b. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection ~~02741~~.05 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy. ~~(3-29-10)~~( )

**02. Eligible Persons.** An eligible person is an individual described here in any part of Subsection ~~02741~~.02: ~~(3-29-10)~~( )

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefits plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan; (4-5-00)

b. The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan: (4-11-06)

i. The certification of the organization or plan under this part has been terminated; (4-11-06)

ii. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; (4-11-06)

iii. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; (4-11-06)

iv. The individual demonstrates, in accordance with guidelines established by the Secretary of Health



and Human Services: (3-29-10)

(a) That the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or (3-29-10)

(b) The organization, or agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or (3-29-10)

(c) The individual meets such other exceptional conditions as the Secretary may provide. (3-29-10)

c. The individual is enrolled with: (4-5-00)

i. An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); (5-3-03)

ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; (4-5-00)

iii. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or (5-3-03)

iv. An organization under a Medicare Select policy; and (4-5-00)

d. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Paragraph 02741.02.b. (~~3-29-10~~) ( )

e. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because: (4-5-00)

i. Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or (4-5-00)

ii. Of other involuntary termination of coverage or enrollment under the policy; (4-5-00)

iii. The issuer of the policy substantially violated a material provision of the policy; or (4-5-00)

iv. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual. (4-5-00)

f. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and (4-11-06)

g. The subsequent enrollment under Paragraph 02741.02.f. is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or (~~3-29-10~~) ( )

h. The individual, upon first becoming eligible for benefits under Part A of Medicare, enrolls in a Medicare Advantage plan under Part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment. (4-11-06)

i. The individual enrolls in a Medicare Part D plan during the initial enrollment period and at the time of enrollment in Part D, was enrolled under Medicare supplement policy that covers outpatient prescription drugs and

the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Paragraph 02741.05.e. (3-29-10)( )

**03. Guaranteed Issue Time Periods.** (5-3-03)

**a.** In the case of an individual described in Paragraph 02741.02.a., the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter; (3-29-10)( )

**b.** In the case of an individual described in Paragraphs 02741.02.b., 02741.02.c., 02741.02.f., or 02741.02.h., whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated; (3-29-10)( )

**c.** In the case of an individual described in Paragraph 02741.02.e., the guaranteed issue period begins on the earlier of: (3-29-10)( )

**i.** The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and (5-3-03)

**ii.** The date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated; (5-3-03)

**d.** In the case of an individual described in Paragraph 02741.02.b. and Subparagraph 02741.02.e.iii., and Subparagraph 02741.02.e.iv., Paragraph 02741.02.f., or 02741.02.h., who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date; and (3-29-10)( )

**e.** In the case of an individual described in Paragraph 02741.02.i., the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and (3-29-10)( )

**f.** In the case of an individual described in Subsection 02741.02 but not described in the preceding provisions of Subsection 02741.03, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date. (3-29-10)( )

**04. Extended Medigap Access for Interrupted Trial Periods.** (5-3-03)

**a.** In the case of an individual described in Paragraph 02741.02.f. (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Paragraph 02741.02.f. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Paragraph 02741.02.f.; (3-29-10)( )

**b.** In the case of an individual described in Paragraph 02741.02.h. (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Paragraph 02741.02.h. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Paragraph 02741.02.h.; and (3-29-10)( )

**c.** For purposes of Paragraphs 02741.02.f. and 02741.02.h., no enrollment of an individual with an organization or provider described in Paragraph 02741.02.f. or with a plan or in a program described in Paragraph 02741.02.h. may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program. (3-29-10)( )

**05. Products to Which Eligible Persons are Entitled.** The Medicare supplement policy to which eligible persons are entitled under: (4-11-06)

**a.** Paragraphs 02741.02.a. through 02741.02.e. is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F (including F with a high deductible), K or L offered by any issuer. (3-29-10)( )

**b.** Subject to Paragraph 02741.05.c., Paragraph 02741.02.g. is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Paragraph 02741.05.a. (3-29-10)( )

**c.** After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in Subsection 02741.05 is: (3-29-10)( )

**i.** The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or (4-11-06)

**ii.** At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer; (4-11-06)

**d.** Paragraph 02741.02.h. shall include any Medicare supplement policy offered by any issuer. (3-29-10)( )

**e.** Paragraph 02741.02.i. is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage. (3-29-10)( )

**06. Notification Provisions.** (4-5-00)

**a.** At the time of an event described in Subsection 02741.02 of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Subsection 02741.01. Such notice shall be communicated contemporaneously with the notification of termination. (3-29-10)( )

**b.** At the time of an event described in Subsection 02741.02 because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection 02741.01. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment. (3-29-10)( )

**07. Discrimination in Pricing.** With respect to eligible persons, an issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection 02741.01, except on the basis of the following criteria: (3-29-10)( )

**a.** Issue age; and (3-29-17)

**b.** Smoking or tobacco use. (3-29-17)

**042. -- 045. (RESERVED)**

**02846. STANDARDS FOR CLAIMS PAYMENT.**

**01. Compliance.** An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100-203) by: (3-29-10)

- a. Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice; (4-5-00)
- b. Notifying the participating physician or supplier and the beneficiary of the payment determination; (4-5-00)
- c. Paying the participating physician or supplier directly; (4-5-00)
- d. Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent; (4-5-00)
- e. Paying user fees for claim notices that are transmitted electronically or otherwise; and (4-5-00)
- f. Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers. (4-5-00)

**02. Certification.** Compliance with the requirements set forth in Subsection ~~02846~~.01 shall be certified on the Medicare supplement insurance experience reporting form. (~~3-29-10~~)( )

~~047. -- 050.~~ **(RESERVED)**

~~02951.~~ **LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM.**

**01. Loss Ratio Standards.** (4-5-00)

a. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form. (4-5-00)

i. At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or (4-5-00)

ii. At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies; (4-5-00)

b. Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a managed care organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a managed care organization shall not include: (4-11-06)

- i. Home office and overhead costs; (4-11-06)
- ii. Advertising costs; (4-11-06)
- iii. Commissions and other acquisition costs; (4-11-06)
- iv. Taxes; (4-11-06)
- v. Capital costs; (4-11-06)

- vi. Administrative costs; and (4-11-06)
- vii. Claims processing costs. (4-11-06)
- c. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards. Demonstrations shall, at a minimum, account for: (3-29-17)
  - i. Lapse rates; (3-29-17)
  - ii. Medical trend and rationale for trend; (3-29-17)
  - iii. Assumptions regarding future premium rate revisions; and (3-29-17)
  - iv. Interest rates for discounting and accumulating. (3-29-17)
- d. For purposes of applying Paragraphs 02951.01.a. and 03056.05.b., only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. ~~(3-29-10)~~(\_\_\_\_)
- e. For policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet: (4-5-00)
  - i. The originally filed anticipated loss ratio when combined with the actual experience since inception; (4-5-00)
  - ii. The appropriate loss ratio requirement from Subparagraphs 02951.01.a.i. and 02951.01.a.ii. when combined with actual experience beginning with July 1, 1992 to date; and ~~(3-29-10)~~(\_\_\_\_)
  - iii. The appropriate loss ratio requirement from Subparagraphs 02951.01.a.i. and 02951.01.a.ii. over the entire future period for which the rates are computed to provide coverage. ~~(3-29-10)~~(\_\_\_\_)
- 02. Refund or Credit Calculation. (4-5-00)**
  - a. An issuer shall collect and file with the director by May 31 of each year the data contained in the applicable reporting form as defined by NAIC Model Regulation (Attachments) and accessible by the Internet website at <https://doi.idaho.gov> for each type in a standard Medicare supplement benefit plan. (4-11-06)
  - b. If on the basis of the experience as reported the benchmark ratio since inception (ratio one (1)) exceeds the adjusted experience ratio since inception (ratio three (3)), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded. (4-5-00)
  - c. For the purpose of Section 02951, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after July 1, 1992. The first report shall be due by May 31, 1994. ~~(3-29-10)~~(\_\_\_\_)
  - d. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credit exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based. (4-5-00)

**03. Annual Filing of Premium Rates.** An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the director in accordance with the filing requirements and procedures prescribed by the director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the director, in accordance with the applicable filing procedures of this state: (4-5-00)

**a.** Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing. (4-5-00)

**b.** An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. (4-5-00)

**c.** If an issuer fails to make premium adjustments acceptable to the director, the director may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by Section ~~029~~51. (~~3-29-10~~)(    )

**d.** Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate. (4-5-00)

**04. Public Hearings.** The director may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the director. (4-5-00)

~~052.~~ -- ~~055.~~ **(RESERVED)**

~~030~~56. **FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.**

**01. Filing of Policy Forms.** (3-29-10)

**a.** An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the director in accordance with filing requirements and procedures prescribed by the director. (3-29-10)

**b.** An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the director in the state in which the policy or certificate was issued. (3-29-10)

**02. Filing of Premium Rates.** (3-29-10)

**a.** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate



unless the rates, rating schedule, and supporting documentation have been filed with and approved by the director in accordance with the filing requirements and procedures prescribed by the director. (3-29-10)

**b.** Except as provided in Subsection ~~02951~~.03, the insured shall not receive more than one (1) rate increase in any twelve (12) month period. (~~3-29-10~~)(    )

**03.** Except as provided in Paragraph ~~03056~~.03.a., an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan. (~~3-29-10~~)(    )

**a.** An issuer may offer, with the approval of the director, up to three (3) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) or each of the following cases: (3-29-17)

i. The inclusion of new or innovative benefits; (4-5-00)

ii. The addition of either direct response or agent marketing methods; (4-5-00)

iii. The addition of either guaranteed issue or underwritten coverage; (4-5-00)

**b.** For the purposes of Section ~~03056~~, “type” means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy. (~~3-29-17~~)(    )

**04. Availability of Policy Form or Certificate.** Except as provided in Paragraph ~~03056~~.04.a., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months. (~~3-29-10~~)(    )

**a.** An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the director in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of this notice by the director, the issuer shall no longer offer for sale the policy form or certificate form in this state. (4-5-00)

**b.** An issuer that discontinues the availability of a policy form or certificate form pursuant to Paragraph ~~03056~~.04.a. shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the director of the discontinuance. The period of discontinuance may be reduced if the director determines that a shorter period is appropriate. (~~3-29-10~~)(    )

**c.** The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of Subsection ~~03056~~.04. (~~3-29-10~~)(    )

**d.** A change in the rating structure or methodology shall be considered a discontinuance under this Subsection ~~03056~~.04 unless the issuer complies with the following requirements: (~~3-29-10~~)(    )

i. The issuer provides an actuarial memorandum, in a form and manner prescribed by the director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates. (4-5-00)

ii. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The director may approve a change to the differential which is in the public interest. (4-5-00)

**05. Experience of Policy Forms.** (4-5-00)

**a.** Except as provided in Paragraph ~~03056~~.05.b., the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section ~~02951~~. (~~3-29-10~~)(    )

b. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. (4-5-00)

c. The experience of all policy forms or certificate forms for standardized Medicare supplement benefit plans of the same type shall be combined for purposes of the rate change filing. Generally, any applicable percentage increase shall be filed and applied uniformly across all standardized plans within the same type, unless doing so would violate the federal lifetime loss ratio standards for specific forms within the same type. (3-29-17)

**06. Attained Age Rating Prohibited.** With respect to Medicare supplement policies that conform to the Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this state and all those sold on or after January 1, 1995, it is an unfair practice and an unfair method of competition for any issuer, insurer, or licensee to use the increasing age of an insured, subscriber or participant as the basis for increasing premiums or prepayment charges for policyholders who initially purchase a policy after January 1, 1995. This rule explicitly authorizes both issue age ratings and community ratings consistent with the prohibition of attained age ratings and allows companies to resubmit for approval issue age ratings previously rejected. (3-29-10)

**07. Rating by Area and Gender Prohibited.** With respect to Medicare supplement policies that conform to the Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho, July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this State and all those sold on or after January 1, 1999, it is an unfair practice and an unfair method of competition for any issuee, issuer, or licensee to use area or gender for rating purpose. (3-29-10)

**08. Other Rating Requirements.** With respect to Medicare supplement policies that conform to the Standard Benefit Plans under this rule, sold to residents of this State on or after January 1, 2018: (3-29-17)

a. Any rate adjustments will be uniform between 1990 Standardized and 2010 Standardized plans throughout the lifetime of the policies, unless doing so would violate the federal lifetime loss ratio standards for specific forms within the same type. (3-29-17)

b. No discount or underwriting factor of less than 1.0 will be available to policies issued outside of open enrollment, per Section ~~0236~~, or guaranteed issue, per Section ~~02741~~, unless the greatest discount or lowest underwriting factor is automatically applied to all policies issued under open enrollment and guaranteed issue. ~~(3-29-17)~~ ( )

c. For issue-ages sixty-five (65) and greater, the filed rate for any given age must not exceed the rate for any higher issue-age, similarly rated individual. (3-29-17)

d. For issue-ages sixty-four (64) or less, the premium shall not exceed one hundred fifty percent (150%) of the premium for an issue-age sixty-five (65), similarly rated individual, while the individual's attained age is less than sixty-five (65). Upon attaining age sixty-five (65), a policyholder with an issue-age less than sixty-five (65) shall be charged the same premium rate as an issue-age sixty-five (65), similarly rated individual. (3-29-17)

e. For any given age, the rating by the issuer shall not differentiate on the basis of the reason for eligibility for Medicare Part B. (3-29-17)

~~057. -- 060.~~ (RESERVED)

~~036~~1. PERMITTED COMPENSATION ARRANGEMENTS.

**01. Commissions.** An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first-year commission or other first-year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period. (4-5-00)



**02. Compensation in Subsequent Years.** The commission or other compensation provided in subsequent renewal years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years. (4-11-06)

**03. Renewal Compensation.** No issuer or other entity shall provide compensation to its agent or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced. (4-5-00)

**04. Compensation.** For purposes of Section 0361, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, awards, and finder's fees. (~~3-29-10~~) ( )

~~062.~~ -- ~~065.~~ (RESERVED)

~~032~~**66. REQUIRED DISCLOSURE PROVISIONS.**

**01. General Rules.** (4-5-00)

**a.** Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums. (3-29-10)

**b.** Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy. (4-5-00)

**c.** Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import. (4-5-00)

**d.** If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations." (4-5-00)

**e.** Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto, stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. (3-29-10)

**f.** Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare & Medicaid Services and in a type size no smaller than twelve (12) point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered. (4-11-06)

**g.** For the purposes of Section 03266, “form” means the language, format, type size, type proportional spacing, bold character, and line spacing. (3-29-10)( )

**02. Notice Requirements.** (4-5-00)

**a.** As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the director. The notice shall: (4-5-00)

**i.** Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and (4-5-00)

**ii.** Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare. (4-5-00)

**b.** The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension. (4-5-00)

**c.** The notices shall not contain or be accompanied by any solicitation. (4-5-00)

**03. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Notice Requirements.** Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. (4-11-06)

**04. Outline of Coverage Requirements for Medicare Supplement Policies.** (4-5-00)

**a.** Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and (4-5-00)

**b.** If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

**“NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.”** (4-5-00)

**c.** The outline of coverage provided to applicants pursuant to this section consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated. (3-29-10)

**05. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.** (3-29-10)

**a.** Any accident and sickness insurance policy or certificate other than Medicare supplement policy and policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Section 1395 et seq.), disability income policy; or other policy identified in Paragraph 001.02.b. of this rule, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the

policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

**“THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company.”** (3-29-10)

b. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Paragraph ~~03266~~.04.a. shall disclose, using the applicable NAIC Model Regulation as incorporated by reference in Section 004 of this rule and referenced as Appendix C located at the website: <https://doi.idaho.gov>, ~~—select Senior Services, see incorporated documents to IDAPA 18.01.54—“Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act”, the extent to which the policy duplicates Medicare.~~ The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate. (3-29-10)(    )

~~067.~~ -- 070. (RESERVED)

~~033~~**71. REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.**

**01. Application Forms.** Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used. (4-11-06)

**02. Statements.** (4-5-00)

a. You do not need more than one (1) Medicare supplement policy. (4-5-00)

b. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages. (4-5-00)

c. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy. (4-5-00)

d. If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within ninety (90) days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. (4-11-06)

e. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within ninety (90) days of losing your employer or union-based health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. (4-11-06)

f. Counseling services are available through the Senior Health Insurance Benefit Advisors program (SHIBA), to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB). (4-11-06)

**03. Questions.** See Idaho Appendix A at the end of this rule. (3-29-10)

**04. Agents.** Agents shall list any other health insurance policies they have sold to the applicant. (4-5-00)

a. List policies sold which are still in force. (4-5-00)

b. List policies sold in the past five (5) years which are no longer in force. (4-5-00)

**05. Direct Response Issuer.** In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy. (4-5-00)

**06. Notice Regarding Replacement of Medicare Supplement Coverage.** Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage. (4-5-00)

**07. SHIBA and Consumer Assistance Link.** The notice required in Subsection ~~03371~~.06 for an issuer shall be provided in substantially the following form based on the NAIC Model Regulation as incorporated by reference in Section 004 of this rule, which includes NAIC Appendixes A, B, and C and all other outlines of coverage and specific plan designs. ~~For which can be accessed on the website, go to~~ Idaho Department of Insurance ~~homepage~~ website at <https://doi.idaho.gov/displaypdf?ID=18.01.54&cat=Laws;select=Senior Services;see=incorporated documents to IDAPA 18.01.54--Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act>. To obtain a copy of the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. ~~(3-29-10)~~ ( )

**~~03472~~. FILING REQUIREMENTS FOR ADVERTISING.**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, or television medium to the director for review or approval by the director. (4-5-00)

**~~03573~~. STANDARDS FOR MARKETING.**

**01. Issuer.** An issuer, directly or through its producers, shall: (4-5-00)

a. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate. (4-5-00)

b. Establish marketing procedures to assure excessive insurance is not sold or issued. (4-5-00)

c. Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following:

**“Notice to buyer: This policy may not cover all of your medical expenses.”** (4-5-00)

d. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance. (4-5-00)

- e. Establish auditable procedures for verifying compliance with this Subsection ~~03573~~.01. (3-29-10)( )

**02. Prohibited Acts and Practices.** In addition to the practices prohibited in Chapter 13, Title 41, Idaho Code, the following acts and practices are prohibited: (4-5-00)

a. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer. (4-5-00)

b. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance. (4-5-00)

c. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. (4-5-00)

**03. Prohibited Terms.** The terms “Medicare supplement,” “Medigap,” “Medicare wrap-around,” and words of similar import shall not be used unless the policy is issued in compliance with this rule. (3-29-10)

**074. -- 075. (RESERVED)**

**0376. APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE.**

In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. Any sale of Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage. (4-11-06)

**0377. REPORTING OF MULTIPLE POLICIES.**

**01. Reporting.** On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement policy or certificate: (4-5-00)

- a. Policy and certificate number, and (4-5-00)  
b. Date of issuance. (4-5-00)

**02. Grouping by Individual Policyholder.** The items set forth above must be grouped by individual policyholder. (4-5-00)

**078. -- 080. (RESERVED)**

**0381. PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES.**

**01. Waiving of Time Periods.** If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy. (4-5-00)

**02. Replacing Policy.** If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at last six (6) months, the replacing policy shall not

provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate. (4-5-00)

**03982. PROHIBITION AGAINST USE OF GENETIC INFORMATION AND REQUESTS FOR GENETIC TESTING.**

This section applies to all policies with policy years beginning on or after May 21, 2009. (3-29-10)

**01. Prohibited Provisions.** An issuer of a Medicare supplement policy or certificate: (3-29-10)

**a.** Shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a preexisting condition) on the basis of the genetic information with respect to such individual; and (3-29-10)

**b.** Shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual. (3-29-10)

**02. Denial of Coverage.** Nothing in Subsection 03982.01 shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from: (~~3-29-10~~)( )

**a.** Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or (3-29-10)

**b.** Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group). (3-29-10)

**03. Genetic Testing.** An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test. (3-29-10)

**04. Payment.** Subsection 03982.03 shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and Section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with Subsection 03982.01. of this rule. (~~3-29-10~~)( )

**05. Information.** For purposes of carrying out Subsection 03982.04, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose. (~~3-29-10~~)( )

**06. Allowed Genetic Testing.** Notwithstanding Subsection 03982.03, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met: (~~3-29-10~~)( )

**a.** The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or rules for the protection of human subjects in research. (3-29-10)

**b.** The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that: (3-29-10)

**i.** Compliance with the request is voluntary; and (3-29-10)

**ii.** Non-compliance will have no effect on enrollment status or premium or contribution amounts. (3-29-10)

**c.** No genetic information collected or acquired under Subsection 03982.06 shall be used for



underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate. (3-29-10)( )

**d.** The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under Subsection 03982.06, including a description of the activities conducted. (3-29-10)( )

**e.** The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under Subsection 03982.06. (3-29-10)( )

**f.** An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes. (3-29-10)

**g.** An issuer of a Medicare supplement policy or certificate shall not request, require or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment. (3-29-10)

**h.** If an issuer of Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning an individual, such request, requirement, or purchase shall not be considered a violation of Paragraph 03982.06.g. if such request, requirement, or purchase is not in violation of Paragraph 03982.06.f. (3-29-10)( )

**07. Definitions.** For the purposes of this section only; (3-29-10)

**a.** "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer. (3-29-10)

**b.** "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual. (3-29-10)

**c.** "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual. (3-29-10)

**d.** "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education. (3-29-10)

**e.** "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved. (3-29-10)

**f.** "Underwriting purposes" means: (3-29-10)

**i.** Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy; (3-29-10)

**ii.** The computation of premium or contribution amounts under the policy; (3-29-10)

- iii. The application of any preexisting condition exclusion under the policy; and (3-29-10)
- iv. Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits. (3-29-10)

**083. -- 085. (RESERVED)**

**086. SEVERABILITY.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby. ( )

**04087. -- 999. (RESERVED)**



## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.62 – ANNUAL FINANCIAL REPORTING

DOCKET NO. 18-0162-1801

### 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 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

This proposed rule updates IDAPA 18.01.62 to include NAIC Annual Financial Reporting Model Regulation #205 provisions supporting the requirement of an independent internal audit function for large insurance companies or insurance holding company groups. The requirement would apply for insurance companies with over \$500 million in annual premiums written (or \$1 billion if a member of a group). This rulemaking will require a standard best corporate governance practice to assist company management and the board of large insurers by implementing sound business practices to maintain solvency and honor all policyholder obligations.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Volume 18-7, page 138](#).

**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 this proposed rule, contact Nathan Faragher at [nathan.faragher@doi.idaho.gov](mailto:nathan.faragher@doi.idaho.gov), or (208) 334-4314.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the above contact and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0162-1801  
(Only Those Sections With Amendments Are Shown.)

**026. INTERNAL AUDIT FUNCTION REQUIREMENTS.**

**01. Exemption.** An insurer is exempt from the requirements of this section if: ( )

**a.** The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars (\$500,000,000); and ( )

**b.** If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than one billion dollars (\$1,000,000,000). ( )

**02. Function.** The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations. ( )

**03. Independence.** In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships. ( )

**04. Reporting.** The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings. ( )

**05. Additional Requirements.** If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level. ( )

~~0267.~~ -- 999. (RESERVED)

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1801**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912, Idaho Code.

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

The rule strikes reference to the American Dental Association’s sedation documents as incorporated by reference. Qualifying course requirements were added to the moderate sedation rule.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 2, 2018 Idaho Administrative Bulletin, [Vol. 18-5, pages 132-138](#).

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

There is no fiscal impact to the state general fund or the Board of Dentistry’s dedicated fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Susan Miller, (208) 334-2369.

Dated this 1st day of August, 2018.

Susan Miller  
Executive Director  
Idaho Board of Dentistry  
350 N. 9th Street, Ste. M100  
P.O. Box 83720  
Boise, ID 83720-0021  
Phone: (208) 334-2369  
Fax: (208) 334-3247

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1803**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, 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 19, 2018.

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

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

The Board of Dentistry is proposing to eliminate the option of supplemental dosing when providing minimal sedation for patients. The current rule allows for 1.5 times the MRD of medication on the day of treatment. This rule reduces the amount of sedation that can be given to no more than the MRD on the day of treatment. The reduced amount of medication that may be administered for minimal sedation is the generally accepted standard for patient safety.

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

There are no fees associated with this rulemaking.

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

There is no fiscal impact associated with this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 78](#).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, (208) 334-2369.

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 26, 2018.

Dated this 1st day of August, 2018.

Susan Miller  
Executive Director  
Idaho Board of Dentistry  
350 N. 9th St., Ste. M100  
P.O. Box 83720  
Boise, ID 83720-0021  
Phone: (208) 334-2369  
Fax: (208) 334-3247

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**054. DEFINITIONS (RULE 54).**

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

**01. Methods of Anxiety and Pain Control.** (4-11-06)

**a.** Analgesia shall mean the diminution or elimination of pain. (4-7-11)

**b.** Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-7-11)

**c.** Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. (4-7-11)

**d.** Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (4-7-11)

**e.** Deep sedation shall mean a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-7-11)

**f.** General anesthesia shall mean a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-7-11)

**02. Sedation Terms.** (4-11-06)

**a.** Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course or a pediatric advanced life support course offered by a recognized accredited organization. (4-11-15)

**b.** Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

**c.** Operator shall mean the supervising dentist or another person who is authorized by these rules to induce and administer the proper level of anesthesia/sedation. (4-11-15)

**d.** Titration shall mean the administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug

increment. (4-7-11)

e. Maximum recommended dose (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. (3-20-14)

f. Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). (4-7-11)

~~g. Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. (4-7-11)~~

**03. Routes of Administration. (4-11-06)**

a. Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

b. Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. (4-7-11)

c. Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraosseous (IO)]. (4-7-11)

d. Transdermal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-7-11)

e. Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (4-7-11)

**055. MINIMAL SEDATION (RULE 55).**

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer minimal sedation to patients of sixteen (16) years of age or older. When the intent is minimal sedation, the appropriate ~~initial~~ dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office. ~~(3-29-17)~~ ( )

**01. Patient Safety.** The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 055 of these rules. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. (3-20-14)

**02. Personnel.** At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-7-11)

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1804**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, 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 19, 2018.

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 definition of a dental specialist was revised by the 2018 Legislature. The proposed rulemaking amends the eligibility requirements for specialty licensure and updates the provisions for specialty advertising.

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

There are no fees associated with this rulemaking.

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

There is no fiscal impact associated with this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 79](#).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Susan Miller, (208) 334-2369.

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 26, 2018.

Dated this 1st day of August, 2018.

Susan Miller  
Executive Director  
Idaho Board of Dentistry  
350 N. 9th St., Ste. M100  
P.O. Box 83720  
Boise, ID 83720-0021  
Phone: (208) 334-2369  
Fax: (208) 334-3247

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1804  
(Only Those Sections With Amendments Are Shown.)

045. LICENSURE OF DENTAL SPECIALISTS (RULE 45).

**01. Requirements for Specialty Licensure.** Each applicant shall have a general license for the practice of dentistry in the state of Idaho or another state. The Board may grant licensure in specialty areas of dentistry for which a dentist has completed a postdoctoral advanced dental education program of at least two full-time academic years and which program is accredited by the American Dental Association Commission on Dental Accreditation. Any applicant who desires to be licensed in one (1) of the a Board recognized specialties, ~~which include and are limited to Dental Public Health, Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics, Pediatric Dentistry, Periodontics, and Prosthodontics,~~ must be a graduate of ~~and hold a certificate from both~~ a dental school ~~and a Graduate Training Program that are~~ accredited by the American Dental Association Commission on Dental Accreditation ~~of the American Dental Association.~~ (3-29-10)(    )

**02. Application.** Application for license to practice a recognized dental specialty must be filed in the office of the Board of Dentistry, ~~Statehouse Mail~~ P.O. Box 83720, Boise, Idaho. The application must be attested before a notary public. (7-1-93)(    )

**03. Examination.** Specialty licensure in those specialties recognized may be granted solely at the discretion of the Idaho State Board of Dentistry. An examination covering the applicant's chosen field may be required and, if so, will be given by the Idaho State Board of Dentistry or its agent. Applicants who have met the requirements for licensure as a specialist may be required to pass an examination as follows: (3-29-10)

a. Applicants who have passed a general licensure examination acceptable to the Board may be granted specialty licensure by Board approval. (3-29-10)

b. Applicants who have passed a general licensure examination not acceptable to the Board may be required to pass a specialty examination. (3-29-10)

c. Applicants who are certified by the American Board of that particular specialty as of the date of application for specialty licensure may be granted specialty licensure by Board approval. (3-29-10)

**04. Limitation of Practice.** No dentist shall announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Idaho State Board of Dentistry for such specialty and has been issued a specialty license authorizing him to do so. Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. (3-20-04)

046. SPECIALTY ADVERTISING (RULE 46).

~~The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics.~~ The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties ~~and specialization competencies of licensees~~ and to require appropriate disclosures to avoid misperceptions on the part of the public. (3-29-17)(    )

**01. Recognized Specialty License.** An advertisement shall not state that a licensee is a specialist, ~~or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice~~ unless the licensee has been issued granted a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as ~~"Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty OP"~~ shall be prima



facie evidence that the licensee is holding himself out to the public as a licensed specialist in a specialty area of dental practice. (3-29-17)( )

**02. Disclaimer.** A licensee who has not been granted a specialty license~~d~~ by the Board ~~in a recognized specialty area of dental practice~~ may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the licensee is “licensed as a general dentist” or that the specialty services “will be provided by a general dentist.” Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-29-17)( )

**03. Unrecognized Specialty.** A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-29-17)

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.01 – DREDGE AND PLACER MINING OPERATIONS IN IDAHO**  
**DOCKET NO. 20-0301-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

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

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 2:30 p.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.01 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Addition of required Sections 001. Title and Scope; 002. Written Interpretations; 004. Incorporation by Reference; 005. Office Hours–Mailing Address-Street Address; and 006. Public Records Act Compliance. These sections are now required in rule but were not when the rules were created and last revised.
- New abbreviations have also been added to the rule.
- IDAPA 20.03.01.022.06 references water quality standards regulations established under Title 39, Chapter 1, Idaho Code. Title 39, Chapter 1 covers multiple areas of the Idaho Department of Environmental Quality’s regulatory authority. This rule change proposes adding reference to the specific water quality rules sections of IDAPA: IDAPA 58.01.02 and IDAPA 58.01.11. This change is intended to help clarify and direct potential permittees to pertinent rule sections only.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 80](#).

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

No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

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 26, 2018.

DATED this 5th day of September, 2018.

Todd Drage, Regulatory Minerals Program Manager  
Resource Protection and Assistance  
Idaho Department of Lands  
300 N. 6th St, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0247  
Fax: (208) 769-3698

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0301-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**001.—~~002.~~ ~~(RESERVED)~~ TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho,” IDAPA 20, Title 03, Chapter 01. ( )

**02. Scope.** These rules constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. These rules shall be construed in a manner consistent with the duties and responsibilities of the Board as set forth in Title 47, Chapter 13. ( )

**002. WRITTEN INTERPRETATIONS.**

The Department maintains written interpretations of its rules which may include, but may not be limited to written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise Idaho 83720. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.**

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The Department’s web address is located at

[www.idl.idaho.gov](http://www.idl.idaho.gov)

( )

**0046. PUBLIC RECORDS ACT COMPLIANCE.**

*Confidentiality of Information. Notice of exploration as required under Title 47, Chapter 1314(b), Idaho Code, shall not be disclosed by the board, director, or department employees to any person other than the board, director, and employees of the department without the written permission of the operator. However, the provisions of Title 74, Chapter 1, Idaho Code, shall apply after July 1, 1993. The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records.* (4-1-91)( )

**0057. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Act.** The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. (4-1-91)
- 02. Approximate Previous Contour.** A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (4-1-91)
- 03. Best Management Practices (“BMPs”).** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (4-1-91)( )
- 04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (4-1-91)
- 05. Department.** The Idaho Department of Lands whose business address is 300 North 6th Street, Suite 103, PO Box 83720, Boise, Idaho 83720-0050. (4-1-91)
- 06. DEQ.** The Department of Environmental Quality. (4-1-91)
- 07. Director.** The director of the Department of Lands or such representative as may be designated by the director. (4-1-91)
- 08. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, re-mining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (4-1-91)
- 09. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (4-1-91)
- 10. Hearing Officer.** That person duly appointed by the board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 030 or Section 051 of these rules. (4-1-91)
- 11. Mine Panel.** That area designated by the permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code. (4-1-91)
- 12. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (4-1-91)
- 13. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment.

- (4-1-91)
- 14. Mulch.** Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (4-1-91)
- 15. Natural Watercourse.** Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (4-1-91)
- 16. Overburden.** Material extracted by a permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (4-1-91)
- 17. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (4-1-91)
- 18. Permanent Cessation.** Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (4-1-91)
- 19. Permit Area.** That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (4-1-91)
- 20. Permittee.** The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the department. (4-1-91)
- 21. Person.** Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (4-1-91)
- 22. Pit.** An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (4-1-91)
- 23. Placer Deposit.** Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (4-1-91)
- 24. Placer Stockpile.** Placer mineral extracted during past or present placer or dredge mining operations and retained at the mine for future rather than immediate use. (4-1-91)
- 25. Placer or Dredge Exploration Operation.** Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (4-1-91)
- 26. Placer or Dredge Mining or Dredge or Other Placer Mining.** The extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (4-1-91)
- 27. Placer or Dredge Mining Operation.** Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (4-1-91)
- 28. Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (4-1-91)
- 29. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (4-1-91)

**30. Road.** A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, shall not be considered a road. (4-1-91)

**31. Settling Pond.** A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (4-1-91)

**32. Surface Waters.** The surface waters of the state of Idaho. (4-1-91)

**33. Topsoil.** The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (4-1-91)

**011. ABBREVIATIONS.**

**01. BMP. Best Management Practices.** ( )

**02. DEO. Department of Environmental Quality.** ( )

**01+2. PURPOSE AND GENERAL PROVISIONS.**

**01. Policy.** It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-1-91)

**02. Purpose.** These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (4-1-91)

**03. General Provisions.** In general, these rules establish: (4-1-91)

**a.** Requirements for placer mine exploration operations; (4-1-91)

**b.** Procedures for securing a placer and dredge mining permit; (4-1-91)

**c.** The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (4-1-91)

**d.** Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (4-1-91)

**e.** Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (4-1-91)

**f.** Prohibitions against placer and dredge mining on certain lands when not in the public interest. (4-1-91)

**04. Compliance with Other Laws.** Placer and dredge exploration operations and mining operations shall comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (4-1-91)

a. Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (4-1-91)

b. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

**0123. APPLICABILITY.**

**01. All Lands in State.** These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (4-1-91)

**02. Types of Operations.** These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.25, 010.26, and 010.27 and to the following activities: (4-1-91)

a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (4-1-91)

b. All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (4-1-91)

**03. Nonapplicability.** These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (4-1-91)

**04. Stream Channel Alterations.** These rules do not exempt the permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (4-1-91)

**05. Navigational Improvements.** These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (4-1-91)

**06. Suction Dredges.** These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (4-1-91)

**0134. ADMINISTRATION.**

The Department of Lands shall administer these rules under the direction of the director. (4-1-91)

**0145. -- 019. (RESERVED)**

**020. PLACER OR DREDGE EXPLORATION OPERATIONS.**

**01. Notice.** Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, within seven (7) days of commencing exploration, notify the director *by certified mail.* The notice shall include the following: (4-1-91) ( )

a. The name and address of the operator; (4-1-91)

and b. The legal description of the exploration operation and its starting and estimated completion date; (4-1-91)

c. The anticipated size of the exploration operation and the general method of operation. (4-1-91)

**02. Confidentiality.** The exploration notice shall be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (4-1-91)

**03. One-Half Acre Limit.** Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, shall be considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. (4-1-91)

**04. Reclamation Required.** The following reclamation activities, required to be conducted on exploration sites, shall be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: (4-1-91)

a. Drill holes will be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (4-1-91)

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. (47-1314(b)) (4-1-91)

c. Conduct revegetation activities in accordance with Subsection 040.17. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification; (4-1-91)

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator shall prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (4-1-91)

e. Abandoned lands disturbed by an exploration operation shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (4-1-91)

f. Any water containment structure created in connection with exploration operations shall be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (4-1-91)

**021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.**

**01. Approved Reclamation Plan Required.** No permittee shall conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the placer mining permit has been approved by the board, the department has received a bond meeting the requirements of these rules, and the permit has been signed by the director and the permittee. (4-1-91)

**02. Application Package.** The permittee must submit ~~five (5) copies of the placer mining~~ a complete application package, for each separate placer mine or mine panel, before the placer permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: (4-1-91)( )

a. An application completed by the applicant on a form provided by the director; (4-1-91)



**b.** A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (4-1-91)

**c.** A reclamation plan, in map and narrative form, which includes the information required under Subsection 021.06. The map and reclamation plan may be combined on one (1) sheet if practical; (4-1-91)

**d.** Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the applicant will take to control such nonpoint source impacts; (4-1-91)

**e.** When the director determines, after consultation with DEQ, that there is an unreasonably high potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the applicant shall provide to the director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director; (4-1-91)

**f.** An out-of-state permittee shall designate an in-state agent authorized to act on behalf of the permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the permittee; and (4-1-91)

**g.** An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new mining permit, or of land to be affected or added in an amended application to an existing mining permit, must be included with the application. No application fee shall exceed one thousand dollars (\$1,000). (4-1-91)

**03. Incomplete Applications.** An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or reclamation plan is incomplete or otherwise unsatisfactory. The director shall not proceed on the application until all necessary information is submitted. (4-1-91)

**a.** If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner shall endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor shall be affixed to the application or a copy of the complete lease attached to the application. (4-1-91)

**04. Requirements of Maps.** Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site shall be of sufficient scale to adequately show the following: (4-1-91)

**a.** The location of existing roads and anticipated access and main haulage roads planned for construction in connection with the mining operation, along with approximate dates for construction, reconstruction, and abandonment; (4-1-91)

**b.** The approximate location, and the names of all known streams, creeks, springs, wells, or bodies of water within one thousand (1,000) feet of the mining operation; (4-1-91)

**c.** The approximate boundaries of all lands to be disturbed in the process of mining, including legal description to the quarter-quarter section; (4-1-91)

**d.** The approximate boundaries and acreage of the lands that will become disturbed land as a result of the placer or dredge mining operation during the first year of operations following issuance of a placer mining permit; (4-1-91)

**e.** The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property; (4-1-91)

**f.** Scaled cross-sections, of length and width, which are representative of the placer or dredge mining operation, showing the surface contour prior to mining and the expected surface contour after reclamation activities have been completed; (4-1-91)

**g.** The location of required settling ponds, the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water. (4-1-91)

**h.** Surface and mineral control or ownership of appropriate scale for boundary identification. (4-1-91)

**05. Settling Ponds.** Detailed plans and specifications for settling ponds shall be drawn to a scale of one (1) inch = ten (10) feet and include the following: (4-1-91)

**a.** A detailed map of the settling pond location, including: (4-1-91)

**i.** Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (4-1-91)

**ii.** Distance from surface waters; (4-1-91)

**iii.** Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (4-1-91)

**iv.** Location of erosion control structures; and (4-1-91)

**v.** Ten (10) year flood elevation (probable high water mark). (4-1-91)

**b.** A detailed cross-section of the pond(s) including: (4-1-91)

**i.** Dimensions and orientation; (4-1-91)

**ii.** Proposed sidewall elevations; (4-1-91)

**iii.** Proposed sidewall slope; (4-1-91)

**iv.** Sidewall width; (4-1-91)

**v.** Distance from and elevation above all surface water; and (4-1-91)

**vi.** Slope of settling pond location. (4-1-91)

**c.** Narrative of the construction method(s) describing: (4-1-91)

**i.** Bottom material; (4-1-91)

**ii.** Sidewall material; (4-1-91)

**iii.** Pond volume; (4-1-91)

**iv.** Volume of water to be used in the wash plant; (4-1-91)

**v.** Discharge or land application requirements; (4-1-91)

**vi.** Any pond liners or filter materials to be installed; and (4-1-91)

- viii. Compaction techniques. (4-1-91)
- d. If the proposed ponds are: (4-1-91)
  - i. Less than two thousand five hundred (2,500) feet square surface area; (4-1-91)
  - ii. Less than four (4) feet high; (4-1-91)
  - iii. Greater than fifty (50) feet from surface water; and (4-1-91)
  - iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlings ponds shall contain information in Subsections 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (4-1-91)

**06. Requirements for Reclamation Plan.** A reclamation plan must be submitted in map and narrative form and include the following: (4-1-91)

**a.** Show how watercourses disturbed by the mining operation shall be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (4-1-91)

**b.** Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (4-1-91)

**c.** On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (4-1-91)

**d.** Show roads to be reclaimed upon completion of mining; (4-1-91)

**e.** Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (4-1-91)

**f.** The planned reclamation of tailings or sediment ponds; (4-1-91)

**g.** An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead. (4-1-91)

**h.** Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (4-1-91)

**07. State Approval Required.** Approval of a placer mining permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (4-1-91)

**08. Application Review and Inspection.** If the director determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant shall make such persons available for the purpose of inspection (see Subsection 051.01). Failure to provide a representative does not mean that the state will not conduct such inspection. (4-1-91)

**022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.**

**01. Decision on Application.** Following director review of an application for a new permit or to amend

an existing permit and opportunity to correct any deficiencies, the board shall approve or disapprove the application and the director shall notify the applicant of the board's decision by mail. Such notice shall contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit shall be issued after the bonding requirements of Section 035 are met. No mining shall be allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (4-1-91)

**02. Public Hearings.** For the purpose of determining whether a proposed application complies with these rules, the director may call for a public hearing, as described in Section 030. (4-1-91)

**03. Adverse Weather.** If weather conditions prevent the director from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (4-1-91)

**04. Interagency Comment.** Nonconfidential materials submitted under Section 021 shall be forwarded by the director to the Departments of Water Resources, Environmental Quality (DEQ), and Fish and Game for review and comment. If operations are to be located on federal lands, the department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 9, Chapter 3, Idaho Code. (4-1-91)

**05. Stream Alteration Permits.** No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources shall respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (4-1-91)

**06. Water Clarification.** No permit shall be issued until the director is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapter 1, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11, "Ground Water Quality Rule." ~~(4-1-91)~~( )

**07. Permit Denial Authority.** The State Board of Land Commissioners shall have the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel. (Section 47-1317(j), Idaho Code) (4-1-91)

**08. Permit Conditions.** If an application fails to meet the requirements of these rules, the board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit shall be considered a denial under Subsection 022.09. (4-1-91)

**09. Amended Applications.** If the board disapproves the application, the applicant shall be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application, which will be processed as described in Section 022. (4-1-91)

**10. Permit Offering.** Upon approval by the board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of board action, the approval shall be automatically rescinded, except that upon written request of the applicant, and for good cause, the director may defer decision of the board's approval for a reasonable period of time not to exceed one (1) year. The director shall notify the applicant of his decision in writing. (4-1-91)

**11. Reclamation Obligations.** The permit issued by the board shall govern and determine the nature and extent of the reclamation obligations of the permittee. (4-1-91)

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.02 – RULES GOVERNING EXPLORATION, SURFACE MINING,**  
**AND CLOSURE OF CYANIDATION FACILITIES**

**DOCKET NO. 20-0302-1801**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

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

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 4:00 p.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.02 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Updates to Section 005-Office Hours – Mailing Address and Street Address.
- Addition of new abbreviations.
- IDAPA 20.03.02.120.03 states that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent (10%). As Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation, any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. It is suggested that this section be deleted.
- Section 47-1512, Idaho Code, was changed in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 per acre, but IDAPA 20.03.02 still lists the \$2,500 maximum amount. This change will update the rules to align with statute.
- Requiring potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 82](#).

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

No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

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 26, 2018.

Dated this 5th day of September, 2018.

Todd Drage, Regulatory Minerals Program Manager  
Resource Protection and Assistance  
Idaho Department of Lands  
300 N. 6th St, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0247  
Fax: (208) 769-3698

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0302-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**005. ~~INCLUSIVE GENDER.~~**

~~For all sections and subsections of these rules, the terms and references used in the masculine sense include the feminine sense and vice versa, as appropriate.~~ (3-30-06)

**~~006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND – STREET ADDRESS – WEB ADDRESS.~~**

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-~~2339~~3698. The Department's web address is located at [www.idl.idaho.gov](http://www.idl.idaho.gov). (3-30-06)(    )

**~~007. PUBLIC RECORDS ACT COMPLIANCE.~~**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-30-06)

**~~0087. -- 009. (RESERVED)~~**

**010. DEFINITIONS.**

**01. Affected Land.** The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

**02. Approximate Previous Contour.** A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

- 03. Best Management Practices** (~~“BMPs”~~). Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (3-30-06)(    )
- 04. Board.** The State Board of Land Commissioners or any Department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (11-1-89)
- 05. Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. (3-30-06)
- 06. Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. (3-30-06)
- 07. Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. (3-30-06)
- 08. Department.** The Idaho Department of Lands. Its business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (7-1-98)
- 09. DEQ.** The Department of Environmental Quality. (11-1-89)
- 10. Director.** The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)
- 11. Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (3-30-06)
- 12. Exploration Drill Holes.** Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 13. Exploration Operations.** Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)
- 14. Exploration Roads.** Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 15. Exploration Trenches.** Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 16. Final Order of the Board.** A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (11-1-89)
- 17. Groundwater.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-06)
- 18. Hearing Officer.** That person selected by the Board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)
- 19. Land Application.** With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (3-30-06)

- 20. Material Change.** (3-30-06)
- a.** For surface mining, a change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (3-30-06)
- i.** Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)
- ii.** Substantially modifies surface water management, not to include routine implementation and maintenance of BMPs; (3-30-06)
- iii.** Exceeds the permitted acreage; or (7-1-98)
- iv.** Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)
- b.** For cyanidation facilities, a change which causes one (1) of the following to occur: (3-30-06)
- i.** A substantial adverse effect to the geotechnical stability of the cyanidation facilities; (3-30-06)
- ii.** The need for a substantial change in the water management plan. (3-30-06)
- iii.** Increases in overall estimated permanent closure costs by more than fifteen percent (15%). (3-30-06)
- 21. Material Modification or Material Expansion.** With regard to cyanidation facilities: (3-30-06)
- a.** The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or (3-30-06)
- b.** A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (3-30-06)
- c.** A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (3-30-06)
- d.** For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. (3-30-06)
- 22. Material Stabilization.** Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. (3-30-06)
- 23. Mine Panel.** That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)
- 24. Mined Area.** Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)
- 25. Mineral.** Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)



- 26. Mineral Stockpile.** Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)
- 27. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)
- 28. Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. (3-30-06)
- 29. Operator.** Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the chapter. (3-30-06)
- 30. Overburden.** Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)
- 31. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (11-1-89)
- 32. Peak.** A projecting point of overburden. (11-1-89)
- 33. Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. (3-30-06)
- 34. Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. (3-30-06)
- 35. Permit.** When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. (3-30-06)
- 36. Pilot Facility.** (3-30-06)
- a.** A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: (3-30-06)
- i.** The feasibility of metals recovery from an ore; or (3-30-06)
- ii.** The optimum operating conditions for a predetermined process to extract values from an ore. (3-30-06)
- b.** A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (3-30-06)
- 37. Pit.** An excavation created by the extraction of minerals or overburden during surface mining

operations. (11-1-89)

**38. Pollutant.** Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. (3-30-06)

**39. Post Closure.** The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. (3-30-06)

**40. Process Waters.** Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. (3-30-06)

**41. Reclamation.** The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

**42. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

**43. Ridge.** A lengthened elevation of overburden. (11-1-89)

**44. Road.** A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

**45. Small Cyanidation Processing Facility.** A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. (3-30-06)

**46. Surface Mine.** An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

**47. Surface Mining Operations.** The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

**48. Surface Waters.** The surface waters of the state of Idaho. (11-1-89)

**49. Tailings Pond.** An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

**50. Treatment.** With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (3-30-06)

**51. Water Balance.** An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. (3-30-06)

**52. Water Management Plan.** A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. (3-30-06)

**53. Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. (3-30-06)

**54. Weak Acid Dissociable ~~(#4D)~~ Cyanide.** The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN<sup>-</sup> I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ~~(3-30-06)~~( )

**011. ABBREVIATIONS.**

- 01. BMP. Best Management Practices.** ( )
- 02. DEQ. Department of Environmental Quality.** ( )
- 03. U.S.C. United States Code.** ( )
- 04. WAD. Weak Acid Dissociable.** ( )

~~0172.~~ -- 049. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.**

**01. Diligence.** All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. (11-1-89)

**02. When Exploration Is Surface Mining.** Exploration operations may under some circumstances constitute surface mining operations (see Subsection 010.46). (3-30-06)

**03. Notification.** Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department ~~by certified mail~~ within seven (7) days after beginning exploration operations. ~~(3-30-06)~~( )

- 04. Contents of Notification.** The notification shall include: (3-30-06)
  - a.** The name and address of the operator; (11-1-89)
  - b.** The legal description of the exploration and its starting and estimated completion date; and (3-30-06)

- c. The anticipated size of the exploration and the general method of operation. (3-30-06)
- 05. Confidentiality.** Any such notification shall be treated as confidential in accord with Section 180. (3-30-06)
- 06. Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: (3-30-06)
- a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)
- b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (3-30-06)
- c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (3-30-06)
- d. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to re-establish runoff conditions that existed prior to starting exploration, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (3-30-06)
- 07. Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (3-30-06)
- a. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. (3-30-06)
- b. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)
- c. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)
- d. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)
- e. Abandoned lands affected by exploration shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. (3-30-06)
- f. Any water containment structure created in connection with exploration, shall be reasonably prepared so as not to constitute a hazard to humans or animals. (3-30-06)
- 08. Additional Reclamation.** The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. (3-30-06)
- 061. -- 068. (RESERVED)**
- 069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.**

**01. Approval Required.** Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. (3-30-06)

**02. No Operator Shall Conduct Surface Mining Operations.** No operator shall conduct surface mining operations on any lands in the state until the surface mining reclamation plan has been approved by the director, and the operator has filed a bond that meets the requirements of the chapter and these rules. (3-30-06)

**03. Application Package.** The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of:

~~(3-30-06)~~( )

**a.** An application provided by the director; (7-1-98)

**b.** A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

**c.** A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04; and (3-30-06)

**d.** An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency that requires an action or actions to prevent environmental damage, both the operator and the authorized agent will be notified as well. (3-30-06)

**04. Map Requirements.** A vicinity map shall be prepared on standard United States Geological Survey ("USGS") seven and one-half (7.5) minute quadrangle maps or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to show: (3-30-06)

**a.** The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the surface mining operation and the approximate dates for construction, reconstruction, and abandonment; (3-30-06)

**b.** The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the surface mining operation; (3-30-06)

**c.** The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section; (3-30-06)

**d.** The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations; (3-30-06)

**e.** The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the surface mining operation; (3-30-06)

**f.** The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds that will be utilized; (3-30-06)

**g.** Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

**h.** A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

**05. Reclamation Plan Requirements.** Reclamation plans must be submitted in map and narrative form and include the following: (3-30-06)

**a.** Where surface waters are likely to be impacted and when requested by the director, documents

identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation; (3-30-06)

- b.** Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (3-30-06)
- c.** Roads to be reclaimed; (7-1-98)
- d.** A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)
- e.** The planned reclamation of wash plant or sediment ponds; (3-30-06)
- f.** A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities; (3-30-06)
- g.** The location of any current 100-year floodplain in relation to the mining facilities if the floodplain is within 100 feet of the facilities, and the BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ( )

**070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.**

**01. Reclamation Plan Approval Required.** Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed the required performance bond. (3-30-06)

**02. Application Package.** The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package for each separate surface mine or mine panel before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of: ~~(3-30-06)~~ ( )

- a.** All items and information required under Section 069 of these rules; (3-30-06)
- b.** Any additional information required by Subsection 070.04; and (3-30-06)
- c.** An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (3-30-06)

**03. Map Requirements.** Maps shall be prepared in accordance with Subsection 069.04 of these rules. (3-30-06)

**04. Reclamation Plan Requirements.** Reclamation plans must include all of the information required under Subsection 069.05 and the following additional information: (3-30-06)

- a.** A description of the planned reclamation of tailings or sediment ponds; and (3-30-06)
- b.** An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)
- c.** A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. (3-30-06)
- d.** Other pertinent information the Department has determined is necessary to ensure that the operator

will comply with the requirements of the chapter. (3-30-06)

**05. Operating Plan Requirements.** A complete operating plan shall consist of: (3-30-06)

**a.** Maps showing: (3-30-06)

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. (3-30-06)

ii. The boundaries and acreage of the affected lands. (3-30-06)

iii. The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (3-30-06)

iv. The location and, if known, the names of all streams, creeks, or water bodies within the area of the affected lands. (3-30-06)

v. The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)

vi. The approximate boundaries and acreage of the lands that will become affected during the first year of surface mining operations. (3-30-06)

**b.** Additional information regarding coarse and durable rock armor, if any, is proposed to be used for reclamation of mine facilities. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (3-30-06)

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (3-30-06)

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. (3-30-06)

**c.** The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by an engineer registered in the state of Idaho, which shows that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for groundwater accumulation, and the expected seismic accelerations at the site. (3-30-06)

**071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.**

**01. Permanent Closure Plan Approval Required.** No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. (3-30-06)

**02. Permanent Closure Plan Requirements.** A permanent closure plan shall: (3-30-06)

**a.** Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; (3-30-06)

**b.** Include a timeline showing: (3-30-06)

- i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and (3-30-06)
- ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. (3-30-06)
- c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; (3-30-06)
- d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. (3-30-06)
- e. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. (3-30-06)
- f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; (3-30-06)
- g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; (3-30-06)
- h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. (3-30-06)
- i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; (3-30-06)
- j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; (3-30-06)
- k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: (3-30-06)
- i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; (3-30-06)
- ii. Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: (3-30-06)
- (1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and (3-30-06)



(2) An amount acceptable to the Department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the Department will incur in association with contract administration. (3-30-06)

**l.** If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: (3-30-06)

**i.** Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and (3-30-06)

**ii.** Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. (3-30-06)

**m.** Provide any additional information that may be required by the Department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. (3-30-06)

**03. Preapplication Conference.** Prospective applicants are encouraged to meet with the Department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the Department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. (3-30-06)

**04. Application Package for Permanent Closure.** An application and its contents submitted to the Department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. ~~Five (5) copies of the A complete~~ application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: (3-30-06)( )

**a.** A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: (3-30-06)

**i.** Name, location, and mailing address of the cyanidation facility; (3-30-06)

**ii.** Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; (3-30-06)

**iii.** Land ownership status (federal, state, private or public); (3-30-06)

**iv.** The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and (3-30-06)

**v.** The legal structure (corporation, partnership, etc.) and primary place of business of the operator. (3-30-06)

**b.** Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; (3-30-06)

**c.** A permanent closure plan as prescribed in Subsection 071.02; (3-30-06)

**d.** The DEQ application and supporting materials; (3-30-06)

**e.** The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. (3-30-06)

- 05. Application Fee.** The application fee shall consist of two (2) parts: (3-30-06)
- a.** Processing and review fee. (3-30-06)
    - i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. (3-30-06)
    - ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may commence negotiations with the Department to establish a reasonable fee. (3-30-06)
    - iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: (3-30-06)
      - (1) Review the Department's estimate; (3-30-06)
      - (2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and (3-30-06)
      - (3) Establish the amount of the application review and processing fee. (3-30-06)
    - iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. (3-30-06)
    - v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. (3-30-06)
  - b.** Permanent closure cost estimate verification fee. (3-30-06)
    - i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. (3-30-06)
    - ii. The applicant shall be solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. (3-30-06)
    - iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.**

**01. Submittal of Bond Before Surface Mining.** Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a

performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed ~~two~~ **fifteen** thousand ~~five~~ **hundred** dollars (~~\$2,500~~**15,000**) for a given acre of affected land unless: (3-30-06)(    )

**a.** The Board has determined that such performance bond is necessary to meet the requirements of Sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (3-30-06)

**b.** The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary. (7-1-98)

**c.** The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. (3-30-06)

**02. Mining Operation Conducted by Public or Government.** Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (3-30-06)

~~**03. Limits.** Only surface mining reclamation bonds obtained after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by the chapter, or if a material change as defined by Subsection 010.20 of these rules. Any revision to the amount, term and conditions of a performance bond due to a material change shall apply only to the affected lands covered by the material change. (3-30-06)~~

~~**04. Annual Bond Review.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A commensurate increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the Department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the Department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (3-30-06)~~

~~**054. Bond Provided to the Federal Government.** Any bond provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. (3-30-06)~~

~~**065. Bond Reduction.** (11-1-89)~~

~~**a.** Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)~~

~~**b.** Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)~~

~~**076. Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)~~

~~**a.** Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)~~

~~**b.** If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be~~

used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the Department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

**087. Cooperative Agreements.** The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

**098. Bonding Rate.** An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

**409. Liabilities for Unbonded Reclamation Costs.** An operator who: (11-1-89)

a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

b. Does not furnish a bond required by these rules; and (11-1-89)

c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.**

Enumeration of a practice or act in Section 140 shall not be construed to require its specific inclusion in a reclamation or permanent closure plan. (3-30-06)

**01. Nonpoint Source Control.** (3-30-06)

**a.** Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state, but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by BMPs unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations. (3-30-06)

**b.** If the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such BMPs to meet the controlling, water quality standards as set forth in current laws, rules, and regulations. (~~3-30-06~~) ( )

**02. Sediment Control.** In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: (3-30-06)

- a.** Keeping the disturbed area to a minimum at any given time through progressive reclamation; (3-30-06)
- b.** Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-30-06)
- c.** Retaining sediment within the disturbed area; (3-30-06)
- d.** Diverting surface runoff around the disturbed area; (3-30-06)
- e.** Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (3-30-06)
- f.** Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (3-30-06)
- g.** Use of adequate sediment ponds, with or without chemical treatment. (3-30-06)

**03. Clearing and Grubbing.** Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet the applicable surface water quality standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (3-30-06)

**04. Overburden/Topsoil.** To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (3-30-06)

- a.** Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and (3-30-06)

iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (3-30-06)

**b. Topsoil Storage.** Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

**c. Overburden Storage.** Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

**d. Topsoil Placement.** Abandoned affected lands shall be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (3-30-06)

**e. Fill.** Backfill and fill materials should be compacted in a manner to ensure stability. (3-30-06)

**05. Roads.** (11-1-89)

**a.** Roads shall be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (3-30-06)

**b.** All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)

**c.** Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)

**d.** Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)

**e.** Roads that will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. (3-30-06)

**f.** Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. (3-30-06)

**06. Backfilling and Grading.** (11-1-89)

**a.** Every operator who conducts surface mining or cyanidation facility operations which disturb less

than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.11. (3-30-06)

**b.** An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. (3-30-06)

**c.** Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

**d.** After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. (3-30-06)

**07. Disposal of Waste in Areas Other Than Mine Excavation.** Waste material not used to backfill mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (3-30-06)

**a.** The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

**b.** All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

**c.** The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

**d.** The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state. (3-30-06)

**e.** Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

**f.** The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. (3-30-06)

**08. Settling Ponds; Minimum Criteria.** (11-1-89)

**a.** Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

**b.** Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

**c.** Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

**09. Tailings Impoundments.** All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment

area will not constitute a hazard to human or animal life. (11-1-89)

**a.** Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

**b.** Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.04. (3-30-06)

**c.** Abandonment and Decommissioning of Tailings Impoundments. (3-30-06)

**i.** Dewatering. Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (3-30-06)

**ii.** Control of surface waters. Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (3-30-06)

**iii.** Detoxification. Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (3-30-06)

**iv.** Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure shall be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11, unless specified otherwise. (3-30-06)

**d.** When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after final reclamation or permanent closure shall be required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (3-30-06)

**10. Permanent Cessation and Time Limits for Planting.** (11-1-89)

**a.** Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (3-30-06)

**b.** Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

**c.** An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be



continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

**11. Revegetation Activities.** (11-1-89)

**a.** The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (3-30-06)

**b.** Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (3-30-06)

**i.** The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

**ii.** For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

**iii.** For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (3-30-06)

**iv.** As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

**v.** For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (3-30-06)

**vi.** Vegetative cover shall not be less than that required to control erosion. (11-1-89)

**c.** Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

**d.** By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-30-06)

**e.** Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

**f.** The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass

seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

- g.** Reforestation. Tree stocking of forestlands should meet the following criteria: (3-30-06)

  - i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)
  - ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)
  - iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)
- h.** Revegetation is not required on the following areas: (11-1-89)

  - i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)
  - ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; (3-30-06)
  - iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-30-06)
  - iv. Any mineral stockpile; (11-1-89)
  - v. Any exploration trench which will become a part of a pit or an overburden disposal area; and (3-30-06)
  - vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)
  - i.** Mulching. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-30-06)

**12. Petroleum-Based Products and Chemicals.** All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. (3-30-06)

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-1801

#### 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 58-104(6), 58-105, and 58-1304, Idaho Code.

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

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 10:00 a.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

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

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

Currently, IDAPA 20.03.04.020 requires submission of paper copies of applications for encroachment permits. The Idaho Department of Lands (Department) is developing a web-based portal and information management system that will allow applications to be submitted electronically. The proposed changes would allow applicants to submit applications either on paper or electronically.

Currently, IDAPA 20.03.04.015.05 allows existing permitted boat garages to be maintained or replaced at their current size. The proposed change would allow existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint.

Currently, IDAPA 20.03.04.015.10 requires float homes to comply with the 2003 Uniform Plumbing Code and the 2008 National Electrical Code. These referenced codes are not current. The Department is proposing to reference IDAPA 07.02.06 and IDAPA 07.01.06 in this paragraph to match the proposed change to the incorporation by reference in IDAPA 20.03.04.004.

Section 58-1306, Idaho Code, requires that a notice of application for nonnavigational encroachments be published in the local newspaper. Section 58-1307, Idaho Code, provides that the applicant is responsible for the cost of publication of the notice. Currently, IDAPA 20.03.04.020 does not indicate the cost of publication is to be paid by the applicant for nonnavigational encroachments for bank stabilization and erosion control. The proposed change would align rule with statute and provide that the publication deposit be submitted with an application to permit riprap, which is the primary form of nonnavigational encroachment for bank stabilization and erosion control used in Idaho.

Currently, IDAPA 20.03.04.080 provides that the Department shall provide permittees with a notice of noncompliance/proposed permit revocation when it has determined the rules have been violated and/or a cause exists for revocation of an encroachment permit. However, non-permittees may be in violation of the rules and should receive notification as well. The proposed change would clarify that the Department shall provide notice to anyone who may be in violation of the rules.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin **Volume 18-6, Page 84**.

**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:

Currently, IDAPA 20.03.04.004.01 incorporates by reference the 2008 National Electric Code (NEC). Since 2008, the NEC has been updated three times (2011, 2014, and 2017). Furthermore, the Idaho Electrical Board has adopted IDAPA 07.01.06, the Rules Governing the Use of National Electrical Code, which prescribe which NEC edition is to be administered by the Idaho Electrical Board and identifies certain amendments to the NEC. In order to align with the Idaho Electric Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.01.06, as opposed to the NEC.

Currently, IDAPA 20.03.04.004.02 incorporates by reference the 2003 Uniform Plumbing Code (UPC). Since 2003, the UPC has been updated five times (2006, 2009, 2012, 2015, and 2018). Furthermore, the Idaho Plumbing Board has adopted IDAPA 07.02.06, the Rules Concerning Idaho State Plumbing Code, which—instead of incorporating by reference the UPC—incorporates the Idaho State Plumbing Code, which is based on the UPC. In order to align with the Idaho Plumbing Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.02.06, as opposed to the UPC.

The United States Aids to Navigation System was first incorporated by reference in IDAPA 20.03.04 in 2008; however, this incorporated material was not identified with specificity and will now include the date when the code, standard or rule was published, approved or became effective as required by Idaho Code § 67-5229(3). The United States Aids to Navigation System is found in 33 CFR Part 62. Since 2008, two sections have been modified, both in 2015:

1. Section 62.21(c) was modified to reflect discontinuation of print publication of Light List, United States Coast Pilot, Local Notices to Mariners, and Notice to Mariners, in favor of electronic-only publication.
2. § 62.52 Automatic Identification System Aids to Navigation (AIS AtoN) was added, reading:
  - (a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.
  - (b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).
  - (c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Andrew Smyth, Public Trust Program Manager, at (208) 334-0248.

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 26, 2018.

Dated this 5th day of September, 2018.

Andrew Smyth, Public Trust Program Manager  
Resource Protection and Assistance  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0248  
Fax: (208) 769-3698

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (4-2-08)

**01. ~~2008 National Electrical Code~~ IDAPA 07.01.06, “Rules Governing the Use of National Electrical Code” revised as of March 29, 2017.** ~~The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642~~ IDAPA 07.01.06 is available at <https://adminrules.idaho.gov/rules/current/07/070106.pdf>. (3-29-10)( )

**02. ~~2003 Uniform Plumbing Code~~ IDAPA 07.02.06, “Rules Concerning Idaho State Plumbing Code” revised as of March 29, 2017.** ~~The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814~~ This rule is available at <https://adminrules.idaho.gov/rules/current/07/070206.pdf>. (3-29-10)( )

**03. ~~United States Aid to Navigation System~~ 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System).** ~~Prepared by the United States Coast Guard and available on the Internet at <http://www.uscgboating.org/safety/aton/system.htm>~~ The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. ENCROACHMENT STANDARDS.**

**01. Single-Family and Two-Family Docks.** The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

**a.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

**b.** Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

**c.** No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are

encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability. (3-29-10)

**d.** A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of navigability. (3-29-10)

**02. Community Docks.** (7-1-98)

**a.** A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

**b.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

**c.** A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

**d.** If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

**e.** A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

**i.** A new application for an encroachment permit. (4-2-08)

**ii.** Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

**03. Commercial Marina.** (4-2-08)

**a.** Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. (3-29-10)

**b.** Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (3-29-10)

**c.** If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage shall be provided. In the event of conflict, the local ordinances shall prevail. (3-29-10)

**d.** If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

**e.** Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (3-29-10)

f. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f. of these rules. (3-29-10)

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

**04. Covered Slip.** (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. (3-29-10)

d. Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (3-29-10)

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

**05. Boat Garage.** (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, ~~or to~~ expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services. (4-2-08)( )

c. Existing permitted boat garages may be maintained or replaced at their with the current size square footage of their existing footprint and height. (4-2-08)( )

d. Relocation of an existing boat garage will require a permit. (4-2-08)

**06. Breakwaters.** Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

**07. Seawalls.** Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

**08. Riprap.** (4-2-08)

**a.** Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

**b.** Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

**09. Mooring Buoys.** Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

**10. Float Homes.** (4-2-08)

**a.** Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

**b.** Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

**i.** Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

**ii.** The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed ~~according to the 2003 Uniform Plumbing Code~~ in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code," as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (3-29-10)( )

**c.** Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

**d.** All plumbing ~~and electrical~~ work on float homes must be done in accordance with ~~the 2003 Uniform Plumbing Code and the 2008 National Electrical Code~~ IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code" and IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," as incorporated by reference in Section 004 of these rules. (3-29-10)( )

**e.** All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: (3-29-10)



i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. (3-29-10)

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. (3-29-10)

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. (3-29-10)

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. (3-29-10)

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. (3-29-10)

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. (3-29-10)

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. (3-29-10)

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. (3-29-10)

**11. Excavated or Dredged Channel. (4-2-08)**

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (3-29-10)

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (3-29-10)

**12. ATONs.** Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

**13. General Encroachment Standards. (4-2-08)**

- a.** Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (3-29-10)
- i. Boat lifts as allowed pursuant to Paragraph 015.13.b. (3-29-10)
  - ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. (3-29-10)
  - iii. Slip covers. (4-2-08)
  - iv. Undecked portions of breakwaters. (4-2-08)
- b.** Boat Lifts and Jet Ski Lifts. (4-2-08)
- i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
  - ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
  - iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the above conditions, the application shall be approved as submitted. Future applications shall include the lifts. (3-29-10)
  - iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (3-29-10)
- c.** Angle from Shoreline. (4-2-08)
- i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)
  - ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)
- d.** Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)
- e.** Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or

nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

**f.** Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

**g.** Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

**h.** Overhead Clearance. (4-2-08)

**i.** Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

**ii.** When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

**i.** Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

**14. Floating Toys.** (3-29-10)

**a.** Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. (3-29-10)

**b.** A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: (3-29-10)

**i.** It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; (3-29-10)

**ii.** It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-29-10)

**15. Lake Specific Encroachment Permit Terms.** (3-29-10)

**a.** The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. (3-29-10)

**b.** Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-29-10)

**c.** Lake specific encroachment permit conditions shall be used to assist with implementing lake

management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-29-10)

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. (3-29-10)

**016. -- 019. (RESERVED)**

**020. APPLICATIONS.**

**01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

**02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

**03. Other Permits.** Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

**04. Repairs, Reinstallation of Structures.** No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. (4-7-11)

**05. Dock Reconfiguration.** (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

iii. The entrances and exits of the facility do not change. (4-2-08)

**06. Redredging.** Redredging a channel or basin shall be considered a new encroachment and a permit

is required unless dredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how dredging is addressed in any existing or future permit. (4-2-08)

**07. Forms, Filing.** ~~Applications must be in writing on forms provided by the Department or copies.~~ Applications and plans shall be filed ~~in the local office of the Department, whose location is available on the internet at [www.idl.idaho.gov](http://www.idl.idaho.gov), or the director's office in Boise;~~ **on forms provided by the Department** together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)(    )

**a.** Plans shall include the following information ~~on paper no larger than eight and one half by fourteen (8 1/2"x14") inches~~ **at a scale sufficient to show the information requested:** (4-2-08)(    )

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

**b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

**c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

**d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)

**e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)

i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); **except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550).** (4-2-08)(    )

ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)

- iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)
- iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)
- f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of three hundred dollars (\$300). (4-7-11)
- ~~h. A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). (4-7-11)~~
- ~~i.~~ No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- ~~ii.~~ Applications and plans shall be stamped with the date of filing. (7-1-98)
- ~~iii.~~ Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. VIOLATIONS - PENALTIES.**

**01. Cease and Desist Order.** When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (4-2-08)

**02. Notice of Noncompliance/Proposed Permit Revocation.** When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. ~~(4-2-08)~~ ( )

**03. Noncompliance Resolution.** The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (4-2-08)

**04. Violations.** The following acts or omissions shall subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (4-2-08)

**a.** A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (4-2-08)

**b.** A violation of any special order of the director applicable to a navigable lake; or (4-2-08)

**c.** Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. (4-2-08)

**d.** Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (4-2-08)

**e.** Violating the terms of an encroachment permit. (4-2-08)

**05. Injunctions, Damages.** The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (4-2-08)

**06. Mitigation, Restoration.** The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (4-2-08)

**07. Revocation of Lake Encroachment Permits.** (4-2-08)

**a.** The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (4-2-08)

**b.** A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (4-2-08)

**c.** An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (4-2-08)

## IDAPA 22 – BOARD OF MEDICINE

### 22.01.01 – RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO

DOCKET NO. 22-0101-1801

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

**MEETING SCHEDULE:** A public meeting on this negotiated rulemaking will be held as follows:

**PUBLIC MEETING - NEGOTIATED RULEMAKING**  
**Thursday, Sept. 6, 2018 – 1:00 to 2:00 p.m.**

**Idaho State Board of Medicine**  
**1755 E. Westgate Drive, Suite 140**  
**Boise, ID 83704**

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

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

All written comments received on or before Thursday, September 6, 2018, will be included for the Board's consideration at its next meeting. For those planning to attend the open, public meeting, written and verbal comment will be accepted by Board Staff. Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The Board of Medicine is promoting regulatory reform by streamlining and combining its rules and reducing obstacles to licensure and practice. The purpose of this negotiated rulemaking is to formulate a proposed rule that will update and clarify the Board's rules regarding physician licensure and practice, and to ensure that the physician licensure rules are consistent with the Medical Practice Act. The amendments being proposed would update definitions and organizational titles, and delete unnecessary and duplicative provisions. In addition, the current provisions of IDAPA 22.01.02 regarding registration of interns and residents and the current provisions of IDAPA 22.01.04 regarding registration of supervising and directing physicians will be updated and moved into this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning the negotiated rulemaking, or to obtain a preliminary draft copy of the rule text, contact Anne K. Lawler, Executive Director, (208) 327-7000. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Board's web site at the following web address: <https://bom.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 6, 2018.

Dated this 16th day of August, 2018.

Anne K. Lawler, JD, RN  
Executive Director  
Idaho State Board of Medicine  
Phone: (208) 327-7000

1755 Westgate Drive, Suite 140  
Boise, Idaho 83704  
Fax: (208) 327-7005



## IDAPA 22 – BOARD OF MEDICINE

### 22.01.03 – RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS

DOCKET NO. 22-0103-1801

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

**MEETING SCHEDULE:** A public meeting on this negotiated rulemaking will be held as follows:

**PUBLIC MEETING - NEGOTIATED RULEMAKING**  
**Thursday, Sept. 6, 2018 – 1:00 to 2:00 p.m.**

**Idaho State Board of Medicine**  
**1755 E. Westgate Drive, Suite 140**  
**Boise, ID 83704**

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

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

All written comments received on or before Thursday, September 6, 2018, will be included for the Board's consideration at its next meeting. For those planning to attend the open, public meeting, written and verbal comment will be accepted by Board Staff. Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The purpose of this negotiated rulemaking is to formulate a proposed rule that will update and clarify the Board's rules regarding physician assistant licensure and practice, and to ensure that the physician assistant licensure rules are consistent with the Medical Practice Act. These rules update definitions and delete unnecessary and duplicative provisions. In addition, these rules add a physician assistant member and a public member to the Physician Assistant Advisory Committee and delete registration for physician assistant trainees.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning the negotiated rulemaking, or to obtain a preliminary draft copy of the rule text, contact Anne K. Lawler, Executive Director, (208) 327-7000. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Board's web site at the following web address: <https://bom.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 6, 2018.

Dated this 16th day of August, 2018.

Anne K. Lawler, JD, RN  
Executive Director  
Idaho State Board of Medicine  
Phone: (208) 327-7000

1755 Westgate Drive, Suite 140  
Boise, Idaho 83704  
Fax: (208) 327-7005

## IDAPA 22 – BOARD OF MEDICINE

### 22.01.05 – GENERAL PROVISIONS FOR THE BOARD OF MEDICINE

#### DOCKET NO. 22-0105-1801 (NEW CHAPTER)

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

**MEETING SCHEDULE:** A public meeting on this negotiated rulemaking will be held as follows:

**PUBLIC MEETING - NEGOTIATED RULEMAKING**  
**Thursday, Sept. 6, 2018 – 1:00 to 2:00 p.m.**

**Idaho State Board of Medicine**  
**1755 Westgate Drive, Suite 140**  
**Boise, ID 83704**

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

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

All written comments received on or before Thursday, September 6, 2018, will be included for the Board's consideration at its next meeting. For those planning to attend the open, public meeting, written and verbal comment will be accepted by Board Staff. Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The purpose of this negotiated rulemaking is to formulate a proposed rule that will combine the general provisions of the Board of Medicine and its allied health boards and committee into one rule chapter. The current provisions regarding complaint investigation from IDAPA 22.01.14 and telehealth practice from IDAPA 22.01.15 will be moved into this new rule to consolidate provisions that apply to all licensees of the Board of Medicine into one chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning the negotiated rulemaking, or to obtain a preliminary draft copy of the rule text, contact Anne K. Lawler, Executive Director, (208) 327-7000. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Board's web site at the following web address: <https://bom.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 6, 2018.

Dated this 16th day of August, 2018.

Anne K. Lawler, JD, RN  
Executive Director  
Idaho State Board of Medicine  
Phone: (208) 327-7000

1755 Westgate Drive, Suite 140  
Boise, Idaho 83704  
Fax: (208) 327-7005

## **IDAPA 23 – BOARD OF NURSING**

### **23.01.01 – RULES OF THE IDAHO BOARD OF NURSING**

#### **DOCKET NO. 23-0101-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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

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

Under current rule, students graduating from a nursing education program can't remain employed as a nursing assistant in a non-licensed capacity. This causes financial hardship to the graduates while they wait for confirmation of passing the licensing examination. The rulemaking seeks to alleviate this hardship by granting recent graduates a reasonable time-frame for receipt of the necessary paperwork before they are no longer eligible for nursing assistant status. Another board rule addressing multistate licensing is being deleted because it is no longer necessary given the recently passed Enhanced Nurse License Compact and withdrawal on January 19, 2018 from the previous Nurse Licensure Compact to which the rules apply. Finally, the current rule requiring certain information in prescription forms used by advanced practice nurses is unnecessarily complex and inconsistent with similar forms used by physicians and other authorized prescribers in Idaho. The rulemaking seeks to correct this irregularity.

BON Rule 76 is being amended to expand the definition of a "nurse apprentice" to include persons recently graduated (up to three months) from a nursing educational program; BON Rule 77 (multistate licensure) will be removed; and BON Rule 315 will be amended to make the information required on prescription forms used by advanced practice nurses uniform with information required on prescription forms used by physicians and other authorized prescribers licensed in Idaho.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: (1) the proposed change to the nurse apprentice rule was requested by a nurse educator, is very minor in nature and will have no opposition and will benefit nursing programs, nursing students and recent graduates, employers of nurse apprentices and the public; (2) the proposed change to the rule on multistate licensure is required by superseding statute; and (3) the proposed change to the content of prescription forms used by advanced practice nurses will fully comply with all state and federal law, while making the forms uniform with similar forms used by other Idaho prescribers.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482.

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 26, 2018.

Dated this 3rd day of August, 2018.

Sandra Evans  
Executive Director  
Idaho Board of Nursing  
280 N. 8th Street, Ste. 210  
P. O. Box 83720  
Boise, ID 83720-0061  
Phone: (208) 577-2482  
Fax: (208) 334-3262

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**076. PERSONS EXEMPTED BY BOARD.**

Licensure to practice nursing shall not be required, nor shall the practice of nursing be prohibited for persons exempted by the Board including: (11-28-84)

**01. Technicians and Technologists.** Technicians and technologists who comply with Section 491 of these rules. (3-30-07)

**02. Non-Resident Nurses.** Non-resident nurses currently licensed in good standing in another nursing jurisdiction, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction. (4-4-13)

**03. Family Members and Others.** (7-1-93)

**a.** Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)

**b.** Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)

**c.** Live-in domestics, housekeepers and companions provided they do not represent themselves as, nor receive compensation as, licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed. (3-30-01)

**04. Nurse Apprentice.** A nurse apprentice is a ~~currently enrolled~~ nursing student **or recent graduate** who is employed for remuneration in a non-licensed capacity **outside the student role** by a Board approved health care agency. (~~3-30-01~~)(    )

**a.** Applicants for nurse apprentice shall: (3-30-01)

**i.** Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/registered nursing. (6-20-92)

**ii.** Be in good academic standing at the time of application and notify the Board of any change in academic standing. (6-20-92)

**iii.** Meet the employing agency's health care skills validation requirements. (3-30-01)

- iv. Satisfactorily complete a basic nursing fundamentals course. (3-30-01)
  - v. Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)
  - b.** A completed application for nurse apprentice shall consist of: (3-30-01)
    - i. Completed application form provided by the Board, to include a fee of ten dollars (\$10); and (7-1-93)
    - ii. Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)
    - iii. Validation of successful demonstration of skills from a nursing education program; and (3-30-01)
    - iv. Verification of ~~on-going~~ good academic standing ~~in nursing education program.~~ ~~(3-30-01)~~( )
  - c.** An individual whose application is approved shall be issued a letter identifying the individual as a nurse apprentice for a designated time period ~~to extend not more than three (3) months after successful completion of the nursing education program.~~ ~~(3-30-01)~~( )
  - d.** A nurse apprentice may, under licensed registered nurse supervision, perform all functions approved by the Board for unlicensed assistive personnel as set forth in Section 490 of these rules. (3-30-07)
- 05. Employer Application.** (3-30-01)
- of:
- a.** A completed application for health care agencies wishing to employ nurse apprentices shall consist (3-30-01)
    - i. Completed application form provided by the Board; (6-20-92)
    - ii. Job descriptions for apprentice; (3-30-01)
    - iii. A written plan for orientation and skill validation; (6-20-92)
    - iv. The name of the licensed registered nurse who shall be accountable and responsible for the coordination or management of the nurse apprentice program; (3-30-01)
    - v. Assurance that a licensed registered nurse is readily available when nurse apprentice is working; (3-30-01)
    - vi. A written procedure for the nurse apprentice who is asked to perform a task that could jeopardize a patient and who declines to perform the task; and (3-30-01)
    - vii. A fee of one hundred dollars (\$100). (3-30-01)
  - b.** Following application review, the Board may grant approval to a health care agency to employ nurse apprentices for a period of up to one (1) year. (3-30-01)
  - c.** To insure continuing compliance with Board requirements, each approved agency shall submit an annual report to the Board on forms provided by the Board. Based on its findings, the Board may grant continuing approval annually for an additional one (1) year period. (6-20-92)
  - d.** At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

~~077. MULTISTATE LICENSURE.~~

- ~~01. **Definitions.** In Section 077, the following terms have the meanings indicated. (3-15-02)~~
- ~~a. **Board** means the regulatory body responsible for issuing nurse licenses. (3-15-02)~~
  - ~~b. **Compact** means the Nurse Multistate Licensing Compact. (3-15-02)~~
  - ~~c. **Coordinated Licensure Information System (CLIS)** means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)~~
  - ~~d. **Home state** means the party state that is the nurse's primary state of residence. (3-15-02)~~
  - ~~e. **Party state** means a state that is a signatory on the compact. (3-15-02)~~
  - ~~f. **Primary state of residence** means the state of a person's declared fixed permanent and principal home for legal purposes; domicile. (3-29-10)~~
  - ~~g. **Public** means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)~~
- ~~02. **Examination.** No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination): (4-4-13)~~
- ~~a. NCLEX-RN for registered nursing; or (4-6-05)~~
  - ~~b. NCLEX-PN for practical nursing. (4-6-05)~~
- ~~03. **Issuance of License in Compact Party State.** (3-15-02)~~
- ~~a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)~~
    - ~~i. Driver's license with a home address; (3-15-02)~~
    - ~~ii. Voter registration card displaying a home address; (3-29-10)~~
    - ~~iii. Federal income tax return declaring the primary state of residence; (3-29-10)~~
    - ~~iv. Military Form No. 2058—state of legal residence certificate; or (3-29-10)~~
    - ~~v. W2 from U.S. Government or any bureau, division, or agency thereof, indicating the declared state of residence. (3-29-10)~~
  - ~~b. A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (3-29-10)~~
  - ~~c. A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. (3-29-10)~~
  - ~~d. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (3-29-10)~~

~~e. A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety (90) days. (3-20-14)~~

~~f. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the ninety (90) day period in Paragraph 077.03.e. of these rules shall be stayed until resolution of the pending investigation. (3-20-14)~~

~~g. The former home state license is not valid upon the issuance of a new home state license. (3-15-02)~~

~~h. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)~~

~~**04. Multistate Licensure Privilege Limitations. (3-15-02)**~~

~~a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)~~

~~b. The requirement referred to in Paragraph 077.04.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-30-07)~~

~~e. An individual who had a license that was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued. (3-29-10)~~

~~**05. Information System. (3-15-02)**~~

~~a. Levels of Access: (3-15-02)~~

~~i. Public access to nurse licensure information shall be limited to: (3-15-02)~~

~~(1) The licensee's name; (3-15-02)~~

~~(2) Jurisdictions of licensure; (3-15-02)~~

~~(3) Licensure expiration date; (3-15-02)~~

~~(4) Licensure classification and status; (3-15-02)~~

~~(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)~~

~~(6) The status of multistate licensure privileges. (3-15-02)~~

~~ii. Non party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)~~

~~iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non party state authority. (3-15-02)~~

~~b. Right to Review: (3-15-02)~~

~~i. The licensee may request, in writing, to the home state board to review data relating to the licensee~~

- ~~in the CLIS. (3-15-02)~~
- ~~ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)~~
- ~~iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)~~
- ~~e. Changes in Disciplinary Data. (3-15-02)~~
- ~~i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)~~
- ~~(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)~~
- ~~(2) Dismissal of the complaint; and (3-15-02)~~
- ~~(3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)~~
- ~~ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)~~
- ~~(1) A disciplinary action; (3-15-02)~~
- ~~(2) An agreement or order requiring participation in alternative programs; (3-15-02)~~
- ~~(3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)~~
- ~~(4) Dismissal of a complaint. (3-15-02)~~
- ~~iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)~~

**0787. -- 089. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.**

**01. Initial Authorization.** An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-13)

**a.** An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice role, shall: (7-1-13)

**i.** Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, related to advanced nursing practice; and (7-1-13)

**ii.** Submit a completed, notarized application form provided by the Board. (7-1-99)



b. Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)

c. Prescriptions written by authorized advanced practice registered nurses shall ~~comply with~~ **contain** all ~~applicable state and federal laws and be signed by~~ **the minimum information required by Idaho Board of Pharmacy administrative rules for “prescription drug orders” (currently codified at IDAPA 27.01.03.302), as well as the printed name and signature of the nurse prescriber, with and the abbreviation for the applicable role of the advanced nursing practice, the identification number assigned by the Board and where applicable, the Idaho Board of Pharmacy nurse (i.e. “CNP,” “CNM,” “CNS,” or CRNA”). If the prescription is for a controlled substance, it shall also include the DEA registration number and address of the federal Drug Enforcement Agency registration number prescriber.** (7-1-13)(    )

**02. Temporary Authorization.** The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

**03. Expiration of Temporary Prescriptive Authorization.** Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

**04. Prescribing and Dispensing Authorization.** All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws. (7-1-13)

**05. Valid Advanced Practice Registered Nurse/Patient Relationships.** (7-1-13)

a. An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient’s medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-13)

b. A valid advanced practice registered nurse/patient relationship is not required when dispensing or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. (7-1-13)

## IDAPA 30 – IDAHO COMMISSION FOR LIBRARIES

### 30.01.01 – RULES OF THE IDAHO COMMISSION FOR LIBRARIES GOVERNING THE USE OF COMMISSION SERVICES

DOCKET NO. 30-0101-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-2503, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 168 through 174](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ann Joslin, State Librarian, at (208) 334-2150 or via email at [ann.joslin@libraries.idaho.gov](mailto:ann.joslin@libraries.idaho.gov).

Dated this 7th day of August, 2018.

Ann Joslin  
State Librarian  
Idaho Commission for Libraries  
325 W. State Street  
P. O. Box 83720  
Boise, ID 83702  
Phone: (208) 334-2150  
Fax: (208) 334-4016  
Email: [ann.joslin@libraries.idaho.gov](mailto:ann.joslin@libraries.idaho.gov)

**IDAPA 35 – STATE TAX COMMISSION**

**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1803**

**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2018.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

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

Rule 830T—INFORMATION RETURNS.

This rule is to give guidance to taxpayers who file annual reconciliation returns. Taxpayers must file those returns by the last day of January.

**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 deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Cynthia Adrian (208) 334-7670.

Dated this 31st day of August, 2018.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0101-1803  
(Only Those Sections With Amendments Are Shown.)

**830. INFORMATION RETURNS (RULE 830).**

Section 63-3037, Idaho Code

- 01. In General.** Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)
- a.** Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)
  - b.** Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)
  - c.** Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)
  - d.** Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)
  - e.** Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)
  - f.** Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)
  - g.** Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)
  - h.** Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)
- 02. Submitting Returns.** Information returns must be submitted to the Tax Commission through electronic filing or on a paper copy of federal Form 1099. (4-7-11)
- 03. Due Date of Information Returns.** Information returns are made on a calendar year basis. The due date for information returns submitted through electronic filing or on paper is the last day of February following the close of the calendar year. (4-7-11)
- 04. Voluntary Withholding.** Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: (4-7-11)
- a.** Obtain an Idaho withholding account number as required by Rule 870 of these rules; and (4-7-11)
  - b.** Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of ~~February~~ January. ~~(4-7-11)~~ (1-1-18)T

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 312** changes the time when government-owned property transferred to a private owner becomes taxable. The proposed change will conform with Section 63-602Y, Idaho Code, providing that property changing status from exempt status to taxable status becomes taxable quarterly and the assessment is prorated accordingly.

**Rule 408, Subsection 408.02** requires final values of operating properties be sent to county assessors. Subsection 408.03 currently states that July 15 is the date by which county assessors may file a complaint concerning the valuation or allocation of the value. The operating property values are not final values until after the Tax Commission meets in August as the State Board of Equalization. This rule corrects a timing problem by changing Subsection 408.02 final values to preliminary values which are available in early July.

**Rule 610** will explain that the primary guidance in determining partial ownership relative to the homeowners exemption program is the specific language found in the transfer deed.

**Rule 613** provides that rents and expenses from whole farms may be used and provides a definition for “Agricultural Area” from which rents and expenses are to be extracted. The rule provides both a narrative description and an example of how to calculate the rent attributable to exempt irrigation equipment.

**Rule 614** states and adds an example of computing the value by using a combination of both individual crop cash rent and crop share. The rule clarifies that only crops grown on a typical farm in an “Agricultural Area” should be included in the crop rotation. All examples are up-dated to show the rent attributable to exempt irrigation equipment deducted from the total rent prior to capitalization. All examples are up-dated to show amounts of rents, expenses, yields and prices that are closer to current expectations.

**Rule 630:** HB591 (2018) made operating property eligible for the New Capital Investment exemption. This rule is changed to enable the administration of the exemption for operating property owners as well as the owners of locally assessed property. The rule require taxpayers to apply to the Tax Commission for the exemption whenever operating property is involved in the exemption.

**Rule 702:** HB492 (2018) provides a benefit of property tax reduction for veterans with a 100% service connected disability. This rule clarifies that benefit continues for a surviving spouse but the surviving spouse may not transfer the benefit to a different homestead. The rule further clarifies that if an otherwise eligible claimant dies between January 1 and April 14 the spouse may file an application on behalf of the deceased veteran and receive the benefit.

**Rule 802:** HB559 (2018) created a retroactive provisional exemption which may be granted to property that will be used for an exempt purpose. This rule provides for the deduction from the new construction listing for any exemption of property that was previously added to the new construction listing. In addition, Section 63-301A, Idaho Code, and Subsection 802.06 provides that new construction is not counted in a revenue allocation area (RAA) until the RAA dissolves. This rule explains how new construction is counted when a dissolving RAA has expanded into a taxing district or when a taxing district has expanded into an RAA.

**Rule 803:** HB559 (2018) created a provisional property tax exemption, HB392 (2018) clarified the dates when solar farm gross earnings receipts are to be reported and deducted from property tax revenue, and HB567(a) revised the levy process to follow when cemetery taxing districts consolidate. The changes describe the handling of revenue distributed or refunds made pertaining to the new provisional exemption found in Section 63-602(4), Idaho Code. The dates for reporting certain gross earnings tax are changed to June 30 and the deduction of the solar revenue from the property tax budget is explained. A detailed explanation of how to compute levies for consolidating cemetery taxing districts is provided.

**Rule 804** will clarify whether or not the “base assessment roll” includes the property that existed in the revenue allocation area (RAA) at the time of RAA formation and subsequently became taxable. The rule explains a special case for exemption provided in section 63-602NN, Idaho Code. Upon loss of the exemption, any newly taxable value in excess of the taxable value of the property in the year immediately preceding the first year of the exemption is to be added to the increment value provided the property was within an RAA when the exemption was granted and remains within the RAA at the time the exemption expires. If the parcel was annexed to an RAA during the period of the exemption, the value that would have been added to the base value at the time of annexation had the property not received the exemption would be added to the base at the time the exemption expires, while any remaining taxable value would be added to the increment. If the exemption has been granted in part, the adjustments provided in this subparagraph shall only apply to the portion of the property granted the exemption.

**Rule 962** will adopt the process by which the county assessor may change a forest parcel’s productivity class. The process, at a minimum, will set forth requirements for landowner notification, inspector qualifications and retention of documents.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 2, 2018 Idaho Administrative Bulletin, [Volume 18-5, pages 143-144](#).

**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 Alan Dornfest at (208) 334-7742.

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 26, 2018.

Dated this 3rd day of August, 2018.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission/Property Tax  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1801  
(Only Those Sections With Amendments Are Shown.)

**312. PARTIAL YEAR ASSESSMENT OF REAL AND PERSONAL PROPERTY (RULE 312).**  
Sections 63-311 and 63-602Y, Idaho Code

**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~~ exempt governmental federal or state of Idaho property. ~~The~~ Such property of the United States, ~~except when taxation thereof is authorized by the Congress of the United States, the~~ this state and its instrumentalities, including counties, cities, urban renewal agencies, school districts, and other taxing districts, that is transferred to a private non-exempt 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 or otherwise ceases to qualify for a property tax exemption is to be assessed as described in Section 63-602Y, Idaho Code.~~ (3-29-12)(    )

**03. 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)

**04. Effective Date.** In the interest of addressing all property transfers made from the public sector to private ownership within the same year (2019) in a consistent manner, as per the proration schedule in Section 63-602Y, Idaho Code, the effective date for "Rule 312" is to be January 1, 2019. (    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**408. RE-EXAMINATION OF VALUE -- COMPLAINT BY ASSESSOR (RULE 408).**

**01. Request for Reexamination of Value.** Section 63-408, Idaho Code, entitles the assessor (complainant) of any county in which the value of operating property is apportioned, to request that the State Tax Commission reexamine the valuation. (7-1-99)

**02. Information to be Provided by the State Tax Commission.** After ~~final~~ preliminary values are established and sent to the respective taxpayers, the State Tax Commission shall send to each County Assessor a statement of the value allocated to Idaho for each centrally assessed taxpayer, together with the previous year's Idaho value for that taxpayer. (7-1-99)(    )

**03. Complaint.** On or before July 15, a complainant may file a complaint under Section 63-408, Idaho Code. A complaint by an assessor to the State Tax Commission to examine the valuation and allocation of value of operating property must be in writing and contain clear and concise questions regarding the valuation and allocation in question. The State Tax Commission shall send a copy of the complaint promptly to the taxpayer. (7-1-99)

**04. Meeting to Examine Valuation and Allocation.** Upon receipt of a complaint under Section 63-

408, Idaho Code, the staff of the State Tax Commission shall schedule a meeting between the staff appraiser(s) who performed the valuation and allocation and the complainant. Notice of this meeting shall be sent to the taxpayer in question. At this meeting, the staff appraiser(s) shall answer the complainant's questions to the best of his knowledge. The taxpayer or representative may participate in this meeting. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (RULE 610).**

Sections 63-602G and 63-701(2), Idaho Code

**01. Scope.** This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

**02. Definitions.** The following definitions apply to this rule: (4-7-11)

**a. Dual Residency Couples.** As used in this rule, "dual residency couple" means a husband and wife, each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 609.03 of these rules. (4-2-08)

**b. Multidwelling or Multipurpose Building.** "Multidwelling or Multipurpose Building" means a building which is the primary dwelling place of the owner and which has a portion used for any purpose other than the primary dwelling place of the owner. (4-7-11)

**c. Related Land.** "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home. (4-7-11)

**03. Dual Residency Couples -- General Principles.** (7-1-99)

**a.** Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 609.03 of these rules. (4-2-08)

**b.** If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. (7-1-99)

**c.** Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(7) Idaho Code.) Thus, there is no authority to reduce the value of the improvement proportionally to reflect one (1) spouse's ownership in community property before determining the amount of the homeowner's exemption. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. (3-15-02)

**d.** An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property except as provided in Subsection 610.07. (3-15-02)

**04. Example -- Both Residences are Community Property.** (7-1-99)



**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid because the couple can not make more than one (1) application. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**05. Example -- One Residence Is Community Property, the Other Is Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**06. Example -- Both Residences are Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. (7-1-99)

**07. Apportionment of Homeowner's Exemption by Dual Residency Couples.** Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement shall be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties shall not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. (4-5-00)

**08. Multiple Ownerships Including Community Interests as Partial Owners.** A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common provided ownership interests are not specified in the deed. The parents collectively hold a one-half (1/2) partial interest and the child holds a one-half (1/2) partial interest in the property. Ownership interests specified in the deed supersede this guidance. Qualification of the property for the homeowner's exemption is as follows: ~~(3-28-18)~~( )

**a.** If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. (3-28-18)

**b.** If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. (3-28-18)

c. If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. (3-15-02)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. The one-half (1/2) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Paragraph 610.03.c. of this rule. (3-28-18)

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. (3-15-02)

**09. Determining the Qualifying Portion of a Multidwelling or Multipurpose Building and the Related Land.** The portion of a Multidwelling or Multipurpose Building and Related Land used for the primary dwelling place of the owner qualifies for the homeowner's exemption. When determining the value of the qualifying portion, the assessor shall include the Related Land value. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).**

Section 63-602K, Idaho Code

**01. Definitions.** (4-5-00)

a. Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

b. Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

c. Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a whole farm or individual crop cash rent agreement, or a crop share rental agreement. ~~The rent attributable to exempt irrigation equipment is not included in economic rent. Only the rent solely attributable to the agricultural land is included in economic rent.~~ (4-7-11)( )

d. Net Income. Net income is determined by deducting the landlord's share of current typical expenses, and any income attributable to irrigation equipment, from the economic rent per acre. (4-5-00)( )

e. Landlord's share of typical expenses. The landlord's share of expenses, as part of a whole farm or individual crop cash rent, or crop share rental agreement may include, but not be limited to: water, electricity, materials and application of materials, management and harvest. The expenses, from the immediate preceding year, should be typical of local farming practices. ( )

f. Agricultural Area. An Agricultural Area is an identified geographic area of like or comparable agricultural land, which may have similar characteristics, such as: topography, crops grown, soil types, or irrigation practices. ( )

**02. Calculation of Rent Attributable to Exempt Irrigation Equipment.** Rent attributable to exempt irrigation equipment is calculated in the following manner. ( )

**a. Rent of irrigated cropland.** To determine the rents of irrigated cropland free of income attributable to exempt irrigation equipment, find rents of cropland that utilize non-mechanized irrigation practices, such as gravity fed furrow. If no information is available, use the reserves for replacement calculation to determine the income attributable to the exempt irrigation equipment. ( )

**b. Irrigation system.** Determine the irrigation system typically found in the area. ( )

**c. Reserves for replacement calculation of irrigation systems cost.** Determine the replacement cost new of the irrigation system. ( )

**d. Acres irrigated.** Determine the number of acres irrigated by the irrigation system. To calculate the irrigation system cost per acre, divide the irrigation equipment cost by the number of acres serviced by the irrigation equipment. ( )

**e. Reserves for replacement.** To determine the reserves required to replace the irrigation system, divide the cost of the irrigation equipment per acre by the estimated number of years in the economic life of the irrigation system. ( )

**f. Income attributable to the exempt irrigation system.** Multiply the per acre reserves for replacement of the irrigation system by the five year rolling average interest rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. ( )

**g. The rent attributable to exempt irrigation equipment.** The rent attributable to exempt irrigation equipment shall be deducted from the gross income received by the landlord as a part of a whole farm or individual crop cash rent, or crop share rental agreement. ( )

**h. The following table demonstrates the calculations of the income attributable to irrigation equipment given hypothetical data:** ( )

| <b>Calculations of the income attributable to irrigation equipment (given hypothetical data):</b> |  |
|---|--|
| Replacement Cost New of the Irrigation Equipment  | \$40,000   |
| Acres Serviced by the Irrigation Equipment  | 40 Acres   |
| Irrigation Equipment Cost Per Acre  | $\$40,000 \div 40 \text{ Acres} = \$1,000 \text{ Per Acre}$      |
| Reserves for Replacement  | $\$1,000 \div 30 \text{ Year Economic Life} =$<br><b>\$33.33</b> |
| 5 Yr Interest Rate (Section 63-602K, Idaho Code)  | 5.84%  |
| Local Levy Rate   | 1.12%  |
| <b>Capitalization Rate</b>  | <b>6.96%</b>   |

**Formula: Income = Value X Capitalization Rate**

|  |  |
|--|--|
| Income Attributable to Exempt Irrigation Equipment | <b><math>\\$33.33 \times 6.96\% = \\$2.32</math></b> |
|--|--|

( )

**023. Calculation of Net Income from Cash Rent.** Net Income from cash rent is calculated in the following manner. (4-5-00)

- a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)
- b. Economic Rent. Determine the average per acre gross income from individual crop cash rents or whole farm cash rents reported and typical ~~to~~ in the Agricultural Area over the immediate past five (5) years growing seasons. If sufficient data from local farmers is not reported, data typical in the Agricultural Area from third party providers such as the United States Department of Agriculture (USDA), or the National Agricultural Statistics Service (NASS), may be used. ~~(4-5-00)~~( )
- c. Landlord's Expenses. Determine the landlord's share of typically contracted expenses paid in the immediate~~ly~~ preceding growing season. ~~(4-5-00)~~( )
- d. Landlord's Net Income. Subtract the landlord's share of typically contracted expenses from the average gross income per acre for the immediate~~ly~~ preceding growing season to determine net income. ~~(4-5-00)~~( )

**03. Calculation of Net Income from Crop Share Rent.** Net income from crop share rent is calculated in the following manner. (4-5-00)

- a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)
- b. Average Crop Production. Determine average crop production per acre based on the most recent immediate past five (5) years growing seasons. ~~(4-5-00)~~( )
- c. Average Commodity Prices. Determine average commodity prices based on the most recent immediate past five (5) years growing seasons. ~~(4-5-00)~~( )
- d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)
- e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the Agricultural Area. ~~(4-5-00)~~( )
- f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed electricity, materials and application of materials, management and harvest cost per acre for the immediate~~ly~~ preceding growing season. ~~(4-5-00)~~( )
- g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

**~~045.~~ Determination of Five Year Average Crop Prices.** The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines in determining net income, subject to modification based on local market data. ~~(4-6-05)~~( )

**~~056.~~ Farm Credit System Interest Rate.** Annually, the State Tax Commission shall calculate the five (5) year rolling average Farm Credit System interest rate (FCSIR). Using the twenty (20) year fixed rate interest rates received bi-monthly from Northwest Farm Credit Services in Spokane, Washington, calculate the average Farm Credit System interest rate for the prior year applying the formula in Paragraph 613.0~~56~~.a. of this rule. Calculate the five (5) year rolling average Farm Credit System interest rate applying the formula in Paragraph 613.0~~56~~.b. of this rule. ~~(4-5-00)~~( )

a. Formula for Calculating Average Farm Credit System Interest Rate for Prior Year.  $FCSIR_5 = (R_1 + R_2 + R_3 + R_4 + R_5 + R_6 + R_7 + R_8 + R_9 + R_{10} + R_{11} + R_{12})/12.$

| Average Farm Credit System Interest Rate Variable Definitions: |   |
|--|---|
| FCSIR <sub>5</sub>   | is the average Farm Credit System interest rate for the prior year. |
| R <sub>1</sub>   | is the interest rate received for January of the prior year.        |
| R <sub>2</sub>   | is the interest rate received for February of the prior year.       |
| R <sub>3</sub>   | is the interest rate received for March of the prior year.          |
| R <sub>4</sub>   | is the interest rate received for April of the prior year.          |
| R <sub>5</sub>   | is the interest rate received for May of the prior year.            |
| R <sub>6</sub>   | is the interest rate received for June of the prior year.           |
| R <sub>7</sub>   | is the interest rate received for July of the prior year.           |
| R <sub>8</sub>   | is the interest rate received for August of the prior year.         |
| R <sub>9</sub>   | is the interest rate received for September of the prior year.      |
| R <sub>10</sub>  | is the interest rate received for October of the prior year.        |
| R <sub>11</sub>  | is the interest rate received for November of the prior year.       |
| R <sub>12</sub>  | is the interest rate received for December of the prior year.       |

(3-30-07)

b. Formula for Calculating Five (5) Year Rolling Average Farm Credit System Interest Rate.  $FCSIR = (FCSIR_1 + FCSIR_2 + FCSIR_3 + FCSIR_4 + FCSIR_5)/5$ .

| Five Year Rolling Average Farm Credit System Interest Rate Variable Definitions: |  |
|--|--|
| FCSIR <sub>5</sub>   | is the average Farm Credit System interest rate for the prior year.    |
| FCSIR <sub>4</sub>   | is the average Farm Credit System interest rate for two (2) years ago. |

| Five Year Rolling Average Farm Credit System Interest Rate Variable Definitions: |  |
|--|--|
| FCSIR <sub>3</sub>   | is the average Farm Credit System interest rate for three (3) years ago. |
| FCSIR <sub>2</sub>   | is the average Farm Credit System interest rate for four (4) years ago.  |
| FCSIR <sub>1</sub>   | is the average Farm Credit System interest rate for five (5) years ago.  |

(3-30-07)

**067. Notification.** In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. (4-6-05)

**078. Cross Reference.** For agricultural land taxable value calculation examples, see Rule 614 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

**614. SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND - EXAMPLES (RULE 614).** Sections 63-602K and 63-604, Idaho Code. The following examples show calculations for the taxable value of agricultural land. The example in Subsection 614.01 of this rule shows one (1) calculation of an average property tax rate, the example in Subsection 614.02 of this rule shows one (1) calculation of a capitalization rate (cap rate), the example in Subsection 614.03 of this rule shows calculations using individual crop cash rent agreements, ~~and~~ the example in Subsection 614.04 of this rule shows calculations using crop share agreements, and the example in Subsection 614.05 of this rule shows calculations using a combination of both individual crop cash rent and crop share. Only the crops grown on a typical farm in an Agricultural Area as defined in Rule 613 of these rules should be included in the crop rotation. The choice to use cash rent or crop share analysis or a combination of both in determining the taxable value of agricultural land should be predicated on the quantity and quality of data available and the analysis that produces the most reliable and supportable value conclusion. (4-7-11)( )

**01. Average Property Tax Rate Calculation Example.**

|  | Tax Code Areas | Property Tax Rates |
|--|----------------|--------------------|
|  | 8              | 1.1323951%         |
|  | 9              | 1.1186222%         |
|  | 10             | 1.1226782%         |
|  | 11             | 1.1714841%         |
|  | 12             | 1.1674300%         |
|  | 13             | 1.0692041%         |
|  | 15             | 1.1603100%         |
|  | 16             | 1.1323951%         |
|  | 17             | 1.1323951%         |

|                           | Tax Code Areas | Property Tax Rates |
|---------------------------|----------------|--------------------|
| Average Property Tax Rate |                | 1.1341015%         |

(3-30-07)

02. Capitalization Rate Calculation Example.

| Capitalization Rate Calculation Example:      |       |
|---|-------|
| Average Property Tax Rate                     | 1.13% |
| 5-Year Average Farm Credit Bank Interest Rate | 8.22% |
| Total Capitalization Rate (Cap Rate)          | 9.35% |

(3-30-07)

03. Cash Rent ~~Agreement Calculation~~ **Analysis** Examples:

Individual Crop Cash Rent Example.

| Crops                 | Contract Rents Per Acre<br><i>(Land Only)</i> | Rotation In<br>Percent | Weighted Income Per Acre  |
|-----------------------|---|------------------------|---------------------------|
| Barley                | \$ <del>100</del> 150.00                      | 14.42 <del>00</del> %  | \$ <del>14.42</del> 21.00 |
| Beans                 | \$ <del>100</del> 150.00                      | 22.46 <del>00</del> %  | \$ <del>22.46</del> 33.00 |
| Beets                 | \$ <del>170</del> 300.00                      | 20.33 11.00%           | \$ <del>34.56</del> 33.00 |
| <i>Corn/Grain</i>     | <i>\$100.00</i>                               | <i>0.00%</i>           | <i>\$0.00</i>             |
| <i>Corn/Silage</i>    | <i>\$110.00</i>                               | <i>0.00%</i>           | <i>\$0.00</i>             |
| Hay/ <i>Alfalfa</i>   | \$ <del>120</del> 150.00                      | 21.32 23.00%           | \$ <del>25.58</del> 34.50 |
| Potatoes              | \$200 <del>350</del> .00                      | 09.00%                 | \$ <del>0.00</del> 31.50  |
| Wheat                 | \$ <del>100</del> 150.00                      | 21.48 <del>00</del> %  | \$ <del>21.48</del> 31.50 |
| <i>Peas</i>           | <i>\$125.00</i>                               | <i>0.00%</i>           | <i>\$0.00</i>             |
| <i>Oats</i>           | <i>\$110.00</i>                               | <i>0.00%</i>           | <i>\$0.00</i>             |
| Total Income Per Acre |   |                        | \$ <del>118</del> 184.50  |

*Value per acre equals net income per acre divided by Cap rate:*

|  |                          |
|--|--------------------------|
| Total <b>Gross</b> Income Per Acre                             | \$ <del>118</del> 184.50 |
| Less Water Costs   | \$ <del>23</del> 26.00   |
| <b>Less Electricity Cost</b>                                   | <b>\$20.00</b>           |
| Less Management (@ 5%)   | \$ <del>5.93</del> 9.22  |
| <b>Less Income Attributable to Exempt Irrigation Equipment</b> | <b>\$2.32</b>            |
| <b>Total Net</b> Income Per Acre                               | <b>\$88.57 126.96</b>    |

|   |                           |
|---|---------------------------|
| Total <u>Gross</u> Income Per Acre              | \$ <del>118</del> 184.50  |
| Capitalization Rate                             | <del>9.35</del> 6.96%     |
| <u>Individual Crop Cash Rent</u> Value Per Acre | \$ <del>958</del> 1824.13 |

Whole Farm Cash Rent Analysis Example.

|   |           |
|---|-----------|
| <u>Total Gross Income Per Acre from Whole Farm Cash Rent Data</u> | \$200.00  |
| <u>Less Water Costs</u>   | \$26.00   |
| <u>Less Electricity Cost</u>                                      | \$20.00   |
| <u>Less Management (@ 5%)</u>                                     | \$10.00   |
| <u>Less Income Attributable to Exempt Irrigation Equipment</u>    | \$2.32    |
| <u>Total Whole Farm Cash Rent Net Income</u>                      | \$141.68  |
| <u>Capitalization Rate</u>  | 6.96%     |
| <u>Whole Farm Cash Rent Value Per Acre</u>                        | \$2035.63 |

(4711)( )

04. Crop Share Agreement Calculation Analysis Example:

| Crop                  | Yield                    | Price                        | Gross Income                    | Landlord Share             | Landlord Share Gross Income to Land | Rotation Percent           | Per Acre Share of Gross Inc. to Land |
|-----------------------|--------------------------|------------------------------|---------------------------------|----------------------------|-------------------------------------|----------------------------|--------------------------------------|
| Barley                | <del>100</del><br>130.00 | <del>\$2.83</del><br>3.00    | \$ <del>283</del><br>390.00     | <del>33.33</del><br>50.00% | \$ <del>94.32</del> 195.00          | 14.4200%                   | \$ <del>13.60</del> 27.30            |
| Beans                 | <del>20</del> 25.00      | <del>\$21.20</del><br>27.00  | \$ <del>424</del><br>675.00     | <del>33.33</del><br>50.00% | \$ <del>141.32</del> 337.50         | 22.4600%                   | \$ <del>31.74</del> 74.25            |
| Beets                 | <del>23</del> 38.00      | <del>\$39.74</del><br>45.00  | \$ <del>914.02</del><br>1710.00 | <del>25.00</del><br>33.33% | \$ <del>228.51</del> 569.94         | <del>20.33</del><br>11.00% | \$ <del>46.46</del> 62.69            |
| <u>G/Corn</u>         | 0.00                     | \$3.22                       | \$0.00                          | 33.33%                     | \$0.00                              | 0.00%                      | \$0.00                               |
| <u>S/Corn</u>         | 0.00                     | \$24.40                      | \$0.00                          | 33.33%                     | \$0.00                              | 0.00%                      | \$0.00                               |
| Hay                   | <del>5.50</del><br>6.00  | <del>\$84.10</del><br>120.00 | \$ <del>462.55</del><br>720.00  | 50.00%                     | \$ <del>231.28</del> 360.00         | <del>21.32</del><br>23.00% | \$ <del>49.31</del> 82.80            |
| Potatoes              | <del>45</del> 0.00       | <del>\$4.74</del><br>5.00    | \$ <del>0</del> 2250.00         | <del>25.00</del><br>33.33% | \$ <del>0.00</del> 749.92           | <del>0</del> 9.00%         | \$ <del>0.00</del> 67.49             |
| Wheat                 | <del>98</del><br>120.00  | <del>\$3.73</del><br>4.50    | \$ <del>365.54</del><br>540.00  | <del>33.33</del><br>50.00% | \$ <del>121.83</del> 270.00         | 21.4800%                   | \$ <del>26.17</del> 56.70            |
| <u>Peas</u>           | 0.00                     | \$8.68                       | \$0.00                          | 33.33%                     | \$0.00                              | 0.00%                      | \$0.00                               |
| <u>Oats</u>           | 0.00                     | \$1.66                       | \$0.00                          | 33.33%                     | \$0.00                              | 0.00%                      | \$0.00                               |
| Total Income Per Acre |                          |                              |                                 |                            |                                     | 100.00%                    | \$ <del>167.28</del> 371.23          |



*Value per acre equals net income per acre divided by Cap rate:*

|                                       |                               |                  |
|---------------------------------------|-------------------------------|------------------|
| <b>Total Income Per Acre \$167.28</b> |                               | <b>Expenses</b>  |
|                                       | Water                         | = \$23.00        |
|                                       | Fertilizer                    | = \$14.77        |
|                                       | Chemicals                     | = \$9.04         |
|                                       | Seed                          | = \$2.05         |
|                                       | Management                    | = \$8.36         |
|                                       | Harvest                       | = \$14.67        |
|                                       | <b>Total Expense Per Acre</b> | = <b>\$71.89</b> |
|                                       | <b>Net Income</b>             | = <b>\$95.39</b> |
|                                       | <b>Cap Rate</b>               | = <b>9.35%</b>   |
|                                       | <b>Value Per Acre</b>         | = <b>\$1,020</b> |

|  |                  |
|--|------------------|
| <u>Total Gross Income Per Acre</u>                             | <u>\$371.23</u>  |
| <u>Less Water Costs</u>  | <u>\$26.00</u>   |
| <u>Less Electricity Cost</u>                                   | <u>\$20.00</u>   |
| <u>Less Management (@ 5%)</u>                                  | <u>\$18.56</u>   |
| <u>Less Landlord Share of Fertilizer Cost</u>                  | <u>\$60.00</u>   |
| <u>Less Landlord Share of Chemicals Cost</u>                   | <u>\$32.00</u>   |
| <u>Less Landlord Share of Seed Cost</u>                        | <u>\$27.00</u>   |
| <u>Less Landlord Share of Harvest Cost</u>                     | <u>\$69.00</u>   |
| <u>Less Income Attributable to Exempt Irrigation Equipment</u> | <u>\$2.32</u>    |
| <u>Total Net Income Per Acre</u>                               | <u>\$116.35</u>  |
| <u>Capitalization Rate</u>                                     | <u>6.96%</u>     |
| <u>Crop Share Value Per Acre</u>                               | <u>\$1671.69</u> |

(4-7-11)( )

**05. Combination of Cash Rent and Crop Share Analysis Example:**

Crops in the Rotation for which Cash Rent agreement data is available.

| <u>Crop</u>     | <u>Contract Rents Per Acre</u> | <u>Rotation In Percent</u> | <u>Weighted Income Per Acre</u> |
|-----------------|--------------------------------|----------------------------|---------------------------------|
| <u>Beets</u>    | <u>\$300.00</u>                | <u>11.00%</u>              | <u>\$33.00</u>                  |
| <u>Potatoes</u> | <u>\$350.00</u>                | <u>9.00%</u>               | <u>\$31.50</u>                  |
| <u>Total</u>    |                                | <u>20.00</u>               | <u>\$64.50</u>                  |

|  |                |
|--|----------------|
| <u>Total Gross Income for Cash Rent Portion</u>                | <u>\$64.50</u> |
| <u>Less Cash Rent Rotation % of Water Cost (20%)</u>           | <u>\$5.20</u>  |
| <u>Less Cash Rent Rotation % of Electricity Cost (20%)</u>     | <u>\$4.00</u>  |
| <u>Less Management (@ 5%)</u>                                  | <u>\$3.23</u>  |
| <u>Less Income Attributable to Exempt Irrigation Equipment</u> | <u>\$0.46</u>  |
| <u>Total Net Income for Cash Rent Portion</u>                  | <u>\$51.61</u> |

Crops in the Rotation for Crop Share Agreement Analysis.

| <u>Crop</u>   | <u>Yield</u>  | <u>Price</u>    | <u>Gross Income</u> | <u>Landlord Share</u> | <u>Landlord Share Gross Income to Land</u> | <u>Rotation Percent</u> | <u>Per Acre Share of Gross Inc. to Land</u> |
|---------------|---------------|-----------------|---------------------|-----------------------|--|-------------------------|---|
| <u>Barley</u> | <u>130.00</u> | <u>\$3.00</u>   | <u>\$390.00</u>     | <u>50.00%</u>         | <u>\$195.00</u>                            | <u>14.00%</u>           | <u>\$27.30</u>                              |
| <u>Beans</u>  | <u>25.00</u>  | <u>\$27.00</u>  | <u>\$675.00</u>     | <u>50.00%</u>         | <u>\$337.50</u>                            | <u>22.00%</u>           | <u>\$74.25</u>                              |
| <u>Hay</u>    | <u>6.00</u>   | <u>\$120.00</u> | <u>\$720.00</u>     | <u>50.00%</u>         | <u>\$360.00</u>                            | <u>23.00%</u>           | <u>\$82.80</u>                              |
| <u>Wheat</u>  | <u>120.00</u> | <u>\$4.50</u>   | <u>\$540.00</u>     | <u>50.00%</u>         | <u>\$270.00</u>                            | <u>21.00%</u>           | <u>\$56.70</u>                              |
| <u>Total</u>  |               |                 |                     |                       |  | <u>80.00%</u>           | <u>\$241.05</u>                             |

|  |                  |
|--|------------------|
| <u>Total Gross Income for Crop Share Portion</u>                     | <u>\$241.05</u>  |
| <u>Less Crop Share Rotation % of Water Cost (80%)</u>                | <u>\$20.80</u>   |
| <u>Less Crop Share Rotation % of Electricity Cost (80%)</u>          | <u>\$16.00</u>   |
| <u>Less Management (@ 5%)</u>  | <u>\$12.05</u>   |
| <u>Less Fertilizer Cost for Crop Share Program</u>                   | <u>\$38.00</u>   |
| <u>Less Chemicals Cost for Crop Share Program</u>                    | <u>\$14.00</u>   |
| <u>Less Seed Cost for Crop Share Program</u>                         | <u>\$13.00</u>   |
| <u>Less Harvest Cost for Crop Share Program</u>                      | <u>\$49.00</u>   |
| <u>Less Income Attributable to Exempt Irrigation Equipment (80%)</u> | <u>\$1.86</u>    |
| <u>Total Net Income for Crop Share Portion</u>                       | <u>\$76.34</u>   |
| <u>Total Combined Cash Rent + Crop Share Net Income</u>              | <u>\$127.95</u>  |
| <u>Capitalization Rate</u>   | <u>6.96%</u>     |
| <u>Value Per Acre</u>  | <u>\$1838.36</u> |

( )

**06. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules.

(3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

**630. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).**  
Section 63-4502, Idaho Code

**01. Notification of New Capital Investment – Locally Assessed Property.** ~~(3-29-12)~~( )

**a.** Prior to receiving the benefit of the tax exemption, the taxpayer shall notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification shall be accomplished by submitting a written declaration or notification with the board of county commissioners containing the following information: (4-4-13)

- i. The name and address of the taxpayer; (3-29-12)
- ii. A description of the new capital investment project; (3-29-12)
- iii. The assessor’s parcel number(s) identifying the location of the project site; (3-29-12)
- iv. The date that the qualifying period began; (3-29-12)

v. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. (3-29-12)

**b.** The notification required hereunder may be submitted by the taxpayer to the board of county commissioners at any time after the qualifying period begins. However, if the notification is submitted after April 15 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the notification required hereunder shall constitute application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the name and address of the taxpayer and the location of the project site, but does not need to provide additional information as required in Paragraph 630.01.a. of this rule. (4-4-13)

**02. Notification of New Capital Investment – Centrally Assessed Operating Property. For taxpayers applying for the exemption for operating property subject to assessment by the State Tax Commission, the taxpayer shall provide notice to the State Tax Commission no later than April 30 of the first year the exemption is sought, as part of the operator’s statement required pursuant to Section 63-404, Idaho Code, and Rule 404 of these rules, that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption.** ( )

**a.** To be eligible for the exemption, information to be provided on the operator’s statement must include: ( )

- i. A description of the new capital investment project; ( )
- ii. The location of the project site, including county and tax code area(s); ( )
- iii. The date that the qualifying period began; ( )

iv. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. ( )

**b.** The notification required hereunder may be submitted by the taxpayer to the State Tax Commission at any time after the qualifying period begins. However, if the notification is submitted after April 30 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the operator’s statement including notification information required hereunder shall constitute

application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the location of the project site, but does not need to provide additional information as required in Paragraph 630.02.a. of this rule. ( )

**03. Notification of New Capital Investment – Taxpayers Applying on Behalf of both Locally and Centrally Assessed Property.** A taxpayer may apply for this exemption on behalf of both locally and centrally assessed property located in the same county. ( )

**a.** The taxpayer must comply with notice requirements in Subsection 630.01 of this rule for locally assessed property and for centrally assessed property the April 30 filing deadline found in Paragraph 630.02.b of this rule shall apply. ( )

**b.** Once the taxpayer notifies the State Tax Commission as provided in Subsection 630.02 of this rule, the State Tax Commission will notify the county commissioners and county assessor by the second Monday in May of the taxpayer's new capital investment project property to be locally assessed and of the taxpayer's filing an application for the exemption. By the later of the fourth Monday in July or the conclusion of the county board of equalization, as provided in Section 63-501, Idaho Code, the county clerk must provide to the State Tax Commission a statement of the equalized assessed value of the taxpayer's locally assessed property. ( )

**c.** The exemption will be granted by the State Tax Commission, which will notify the county commissioners and taxpayer by the first Monday in September of the amount of the exemption and the remaining taxable value of the centrally assessed operating property of the taxpayer. This remaining value is to be calculated so that the sum of the centrally and locally assessed property of the taxpayer in the county in which the exemption is being granted does not exceed four hundred million dollars (\$400,000,000). ( )

**d.** The exemption will apply to the combined total value of the locally and centrally assessed property of the taxpayer within the county in which the project site is located. For continuation of the exemption for both locally and centrally assessed property, Subsections 630.07 and 630.08 of this rule shall apply, and, upon satisfaction of the requirements therein, the State Tax Commission shall notify the county of the continuing exemption. ( )

**024. Property of the Taxpayer.** Property of a taxpayer includes all real, ~~or~~ personal, or operating property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. (3-29-12)( )

**035. New Construction.** Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. (3-29-12)

**046. Failure to Make the Qualifying New Capital Investment.** (4-4-13)

**a.** If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property shall lose the exemption granted by this section at the conclusion of the qualifying period. (4-4-13)

**b.** In the event that, at any time during the project qualifying period, the taxpayer receiving the exemption for locally assessed property no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the county commissioners who shall notify the county assessor. Upon receipt of such notification, the property previously granted the exemption shall become taxable for the remainder of the year in which the notification is provided, pursuant to Section 63-602Y, Idaho Code. Failure of the taxpayer to provide such notice does not prevent the county assessor from discovering the taxpayer's intent through alternate procedures and then notifying the county commissioners that the requirements for the exemption are no longer met. In such an instance, the taxpayer must be notified and may appeal loss of the exemption to the county board of equalization as provided in Section 63-501A, Idaho Code. (4-4-13)( )

**c.** In the event that, at any time during the qualifying period, the taxpayer receiving the exemption for operating property no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the State Tax Commission. Upon receipt of such notification, the property previously granted the exemption

shall become taxable. If the notification is received before the State Tax Commission has completed the assessment of the operating property for a given year, the exemption shall not be granted for that year. If the notification is received after the assessment is completed, the exemption shall be rescinded beginning the following tax year. If the taxpayer owns centrally and locally assessed property, the tax commission will also notify the county commissioners and assessor of the rescinding of the exemption. ( )

**057. Continuation of Tax Exemption Following the End of the ~~Project~~ Qualifying Period – Locally Assessed Property.** ~~(4-4-13)~~( )

**a.** At any time during the qualifying period, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the county commissioners with sufficient evidence to prove that the required qualifying new capital investment has been made. (4-4-13)

**b.** Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the county commissioners pursuant to Paragraph 630.057.a. of this rule, the county commissioners shall notify the county assessor and taxpayer of the taxpayer's continuing qualification for the exemption for all years thereafter. The county assessor shall retain this notice. ~~(4-4-13)~~( )

**c.** After the year in which the taxpayer has been notified of continuing qualification as provided in Paragraph 630.057.b. of this rule, the taxpayer must continue to notify the county annually to identify the property to be exempted pursuant to Subsection 630.057. Failure to make such notification will not invalidate the exemption; the county assessor must then apply the exemption against the assessed value of the taxpayer's highest value parcel within the county. ~~(4-4-13)~~( )

**08. Continuation of Tax Exemption Following the End of the Qualifying Period – Centrally Assessed Operating Property.** ( )

**a.** At any time during the qualifying period after the requirements for this exemption have been met, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the State Tax Commission with sufficient evidence to prove that the required qualifying new capital investment has been made. ( )

**b.** Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the State Tax Commission pursuant to Paragraph 630.08.a. of this rule, the State Tax Commission shall notify the taxpayer that the exemption will continue to be granted in perpetuity, and shall notify the taxpayer annually prior to the due date for the operator's statement that they must identify the property qualifying for the exemption in these statements. Failure to provide either notification will not invalidate the exemption; the State Tax Commission must then apply the exemption against the assessed value of the taxpayer's operating property within the county. Centrally assessed taxable property otherwise permitted to be included on the new construction roll will be reported to the county assessor for inclusion on the next available new construction roll. ( )

**069. Cross Reference.** For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**709. PROPERTY TAX REDUCTION BENEFIT PROGRAM -- SPECIAL SITUATIONS (RULE 709).**  
Section 63-701, Idaho Code

**01. Scope.** This rule addresses issues relating to the property tax reduction benefit program as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. The following examples apply to qualified property tax reduction claimants. (3-30-01)

**02. General Principles.** Benefits under the property tax reduction program are only available to owners of property that have first qualified for the homeowner's exemption under Section 63-602G, Idaho Code. See Rule 610 of these rules. (3-15-02)

**03. Dual Residency Couples.** The definition of "dual residency couple" in Rule 610.02 of these rules applies to this rule. (3-15-02)

**a.** Example -- Both residences are community property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.04 of these rules. (3-15-02)

**b.** Example -- One (1) residence is community property, the other is separate property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.05 of these rules. (3-15-02)

**c.** Example -- Both residences are separate property. Property tax reduction is available in regard to both residential improvements. See Rule 610.06 of these rules. (3-15-02)

**d.** Household income. In the three (3) examples in Subsection 709.03, the household income upon which qualification is determined is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence. (3-15-02)

**04. Apportionment of Property Tax Reduction Benefits by Dual Residency Couples.** If a dual residency couple makes the election provided in Subsection 610.07 of these rules and the applicable county assessor provided the State Tax Commission with a copy of the election required under that rule, each spouse shall be entitled to one-half (1/2) of the amount of any property tax reduction available to that spouse alone. The household income of the spouse shall be one-half (1/2) of the community income plus any separate income of the spouse residing in the residence. The total property tax reduction benefit shall not exceed the amount of benefit available to the individual spouse with the least household income if no election were made. (3-15-02)

**05. Multiple Ownerships Including Community Interests as Partial Owners.** Example: A deed conveys title to real property to a husband and wife and to an adult child of theirs. The husband and wife hold a community property interest in the improvement and the child is a tenant-in-common **provided ownership interests are not specified in the deed**. The parents collectively hold a one-half (1/2) partial interest and the child holds a one-half (1/2) partial interest in the property. **Ownership interests specific in the deed supersede this guidance**. For clarification of the calculation of the net taxable value, see Rule 700.05.b. of these rules. Qualification for the property tax reduction is as follows: ~~(3-28-18)~~ ( )

**a.** If the residential improvement is the primary dwelling of the husband and wife but not of the child, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses. (3-28-18)

**b.** If the residential improvement is the primary dwelling of the qualifying child, but neither the husband or wife, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the child's income. (3-28-18)

**c.** If the residential improvement is the primary dwelling of the husband, wife and a qualifying child, the claimant qualifies for the full benefits applied on full value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses and the income of the child. (3-15-02)

**d.** If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption unless the residential improvement of the other spouse has qualified for the homeowner's exemption. Household income is the total income of both spouses. (3-28-18)

**e.** If the residential improvement is the primary dwelling of one (1) spouse and a qualifying child, the

claimant qualifies for the full benefits applied on the full value of the property less the homeowner's exemption unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption. Household income is the total income of both spouses plus the income of the child. (3-15-02)

**(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

**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.** "Non-residential Structure." "Non-residential 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. (3-29-12)

**a.** Qualifying new construction which is valued by the State Tax Commission shall be reported to the county assessor for each applicable taxing district by October 1 and shall be listed by the assessor on the immediate next new construction roll. (3-25-16)

**b.** 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 a 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. (3-29-12)

**c.** 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, and Paragraph 802.02.e., of this rule. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. ~~(3-29-12)~~( )

**d.** Determining the amount of taxable market value to be deducted – appeals. 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. ~~(3-29-12)~~( )

**e.** Determining the amount of taxable market value to be deducted – provisional exemptions. Provided the addition occurred within the immediate preceding five (5) years but not earlier than 2016, the amount of taxable market value added to any new construction roll for property subsequently granted a provisional exemption under Section 63-1305C, Idaho Code, shall be deducted from the taxable market value otherwise included on the immediate next new construction roll prepared following the granting of the provisional exemption. ( )

**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 or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (4-4-13)

**a.** Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

**i.** Except as provided in Subparagraph 802.03.a.iii., 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. (4-4-13)

**ii.** Except as provided in Subparagraph 802.03.a.iii., 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. (4-4-13)

**iii.** Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. (4-4-13)

**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. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-4-13)

**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 or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (4-4-13)

**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. Provided the criteria in Subparagraph 802.03.b.i. are met, value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-4-13)

v. Except as provided in Subparagraph 802.03.b.vi., 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. (4-4-13)

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum allowable property tax budget. (4-4-13)

vii. Table A - Effect on New Construction Roll:

| Table A - Effect on New Construction Roll |   |   |
|---|---|---|
| Year                                      | Occurrence                                      | Effect on New Construction Roll (for that year) |
| 2011                                      | Site improvements added and taxable             | + \$500,000                                     |
| 2012                                      | Site improvements exempt                        | NA (no prior year's exemption)                  |
| 2013                                      | Site improvements exempt                        | - \$500,000                                     |
| 2014                                      | Site improvements exempt                        | - \$500,000                                     |
| 2015                                      | Loses site improvement exemption before June 30 | + \$400,000                                     |

(4-4-13)

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three

(1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. (4-4-13)

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

| Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget |   |   |                                       |  |
|--|---|---|---------------------------------------|--|
| Year   | Occurrence                                      | Effect on New Construction Roll (for that year)           | Maximum Allowable Property Tax Budget | Calculations   |
| 2011   | Site improvements added and taxable             | + \$500,000   | \$258,750                             | $(\$250,000 \times 1.03) + (\$500,000 \times 0.0025)$<br>(tax levy rate = $\$258,750 / \$100,500,000 = 0.002574627$ )      |
| 2012   | Site improvements exempt                        | NA (no prior year's exemption; no new construction value) | \$266,512                             | $\$258,750 \times 1.03$<br>(tax levy rate = $\$266,512 / \$100,000,000 = 0.002665120$ )                                    |
| 2013   | Site improvements exempt                        | - \$500,000   | \$273,174                             | $(\$266,512 \times 1.03) - (\$500,000 \times 0.002665120)$<br>(tax levy rate = $\$273,174 / \$100,000,000 = 0.002731744$ ) |
| 2014   | Site improvements exempt                        | - \$500,000   | \$280,003                             | $(\$273,174 \times 1.03) - (\$500,000 \times 0.002731744)$<br>(tax levy rate = $\$280,003 / \$100,000,000 = 0.002800033$ ) |
| 2015   | Loses site improvement exemption before June 30 | + \$400,000   | \$289,523                             | $(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$<br>(tax levy rate = $\$289,523 / \$100,400,000 = 0.002883696$ ) |

(4-4-13)

**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 non-residential 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, non-residential 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(3) or (4), 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. For otherwise qualifying property that loses the exemption provided in Section 63-602NN, Idaho Code, but that has had its value added to the base assessment roll in a revenue allocation area as provided in Rule 804 of these rules, the value so added may be added to the new construction roll. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-4-13)( )

i. If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. (4-4-13)

ii. If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be added to the new construction roll following loss of the exemption. (4-4-13)

b. ~~Except as provided in Paragraph 802.06.e. of this rule,~~ 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 not previously included positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” or the entire current increment value, if there was no such value as of December 31, 2006, shall be added to the appropriate year’s new construction roll. Upon the effective date of any de-annexation of a portion of an RAA, the immediate prior year’s increment value associated with the parcels in the de-annexed area is to be included in the appropriate year’s new construction roll as described in Paragraph 802.06.d. of this rule, provided such value has not been previously included on any 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. (3-29-17)( )

c. Taxable value included in the base value in an RAA, but not previously on any new construction roll and otherwise eligible to be included on a new construction roll due to change of land use classification, shall be included on the next new construction roll prepared following dissolution of the RAA or deannexation of any affected parcel from the RAA. The value to be included shall be the value that would have been included at the time the change of land use classification occurred had the parcel not been located in the RAA. ( )

d. Upon receipt by the State Tax Commission of an attestation indicating that an urban renewal plan has been modified in such a way as to result in resetting the base value in an RAA, as provided in Section 50-2903A, Idaho Code, increases in base value due to the addition of previously determined increment value may be added to the new construction roll as described in Section 63-301A(3)(j), Idaho Code, provided such value has not previously been included on any new construction roll. In such a case, at termination of the RAA, only new additional increment value following the reset of the base value shall be included on the new construction roll. (3-29-17)

e. 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 immediate prior year’s

increment value for the parcels in the de-annexed area. (3-29-17)

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, 2016.

| <b>Steps (as designated in Paragraph 802.06.d.)</b> | <b>Area</b>   | <b>Value</b>  |
|---|---|---------------|
|   | 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   |
|   | December 31, 2015, 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 2017 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   |

(3-29-17)

vi. If the de-annexation in the example in sub-paragraph v. had taken effect prior to the fourth Monday of July 2016, the 2015 increment value for the affected parcels would have been added to the 2016 new construction roll after subtracting the 2006 increment value. (3-29-17)

vii. The value of operating property increment value to be included on the new construction roll when a de-annexation occurs is computed as shown in the following example:

|   |   |
|---|---|
| Sum the previous year’s increment values of the locally assessed parcels in the area to be de-annexed   | \$15,000,000                              |
| Divide this sum by the previous year’s increment value of all locally assessed parcels in the RAA   | $\$15,000,000 \div \$130,000,000 = .1154$ |
| Multiply by 100 to determine the percentage applicable to the locally assessed parcels located within the area to be de-annexed   | $.1154 \times 100 = 11.54\%$              |
| Determine the difference between the operating property increment value in the whole RAA for the year preceding the de-annexation from the 2006 increment value of all operating in the whole RAA | $\$2,000,000 - \$500,000 = \$1,500,000$   |
| Multiply the locally assessed percentage by the increase in the operating property increment value  | $11.54\% \times \$1,500,000 = \$173,100$  |
| The value of operating property increment to be included on the new construction roll when a de-annexation occurs   | \$173,100                                 |

(3-29-17)

f. For taxing districts formed after December 31, 2006, or annexing or being annexed into a revenue allocation area after that date, the amount of increment value to be added to the new construction roll will equal any positive difference between the increment value at the time of formation of the taxing district or annexation by or into the revenue allocation area and the increment value at the time of dissolution of the revenue allocation area or the increment value within the area deannexed from the revenue allocation area. ( )

**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 of locally assessed property within annexed areas for each appropriate taxing district or unit to that taxing district or unit. Annexation value contributed by centrally assessed operating property will be provided to each county auditor by the first Monday in September. (3-20-04)( )

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).**  
Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), 63-3502B, 50-2903A, 50-2913, 63-3638(11), and (13), and 63-1305C, Idaho Code

**01. Definitions.** (4-5-00)

**a.** “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each board of county commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

**b.** “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(fg), Idaho Code. (4-2-05)( )

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(fg) or 63-802(1)(gh), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(fg) or 63-802(1)(gh), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

| CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT* |          |                  |                  |          |
|---|----------|------------------|------------------|----------|
|   | FY 1999  | FY 2000          | FY 2001          | FY 2002  |
| Annual Budget                                   | \$10,000 | \$10,000         | \$10,700         | \$11,621 |
| 3% Increase                                     | \$0      | \$300            | \$321            | \$349    |
| Subtotal  | \$10,000 | \$10,300         | \$11,021         | \$11,970 |
| 1999 Election Amount                            | \$0      | \$400 of \$1,000 | \$600 of \$1,000 | \$0      |
| Certified Budget                                | \$10,000 | \$10,700         | \$11,621         | \$11,970 |

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional

budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)( )

d. "Property Tax Funded Budget." Property tax funded budget means that portion of any taxing district's budget certified to the board of county commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

e. "Recovered/Recaptured Property ~~Substitute Funds~~ Tax and Refund List." Recovered/recaptured property tax ~~substitute funds and refund~~ list means the report sent by the county auditor to the appropriate taxing district(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed, or refunds charged, to each appropriate taxing district ~~unit as recovery of property tax or other payments~~ during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)( )

i. Section 63-602G(5), Idaho Code; ~~and~~ (5-8-09)( )

ii. Section 63-3029B(4), Idaho Code; ~~and~~ (5-8-09)( )

iii. Section 63-602KK(7), Idaho Code, for personal property exempted after 2013 for which no replacement money was paid; ~~and~~ (3-29-17)( )

iv. Section 63-3502B(2), Idaho Code, for distributions of gross earnings tax on solar farms; ~~and~~ (3-29-17)( )

v. Section 50-2903A(3), Idaho Code, for distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, when required; ~~and~~ (3-29-17)( )

vi. Section 50-2913(3)(c), Idaho Code, for distributions of urban renewal allocations in excess of the amount received during the immediate prior tax year, when required; (3-29-17)

vii. Section 63-1305C(3), Idaho Code, for revoked provisional property tax exemptions; and ( )

viii. Section 63-1305C(6), Idaho Code, for refunds related to provisional property tax exemptions. ( )

f. "Taxing District/Unit." Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those ~~non-countywide~~ governmental entities without authority to levy property taxes but on whose behalf such taxes are levied ~~or allocated~~ by an authorized entity such as the county or city ~~for such entities as county road and bridge funds or urban renewal agencies, respectively.~~ (4-6-05)( )

g. "New Taxing District." For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

**02. Budget Certification.** The required budget certification shall be made to each board of county commissioners representing each county in which the district is located by submitting the completed and signed L-2 Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed using the amount shown in the notice of budget hearing. (3-20-14)

**03. Budget Certification Requested Documents.** Using the completed L-2 Form, each board of county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of

county commissioners shall only submit documentation specifically requested by the State Tax Commission. (3-28-18)

**a.** Foregone Increase Documentation. For any taxing district submitting a budget including previously forgone increases, required documentation includes a copy of the resolution certifying the amount of the forgone increase being included and the specific purpose for which this increase is being budgeted. Each such taxing district must submit the resolution to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the State Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the State Tax Commission. (3-28-18)

**b.** Foregone increase disclaimer. Any resolution to disclaim the right to recover an annual increase in the forgone amount must state the amount of such forgone increase being disclaimed and must be submitted to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the State Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the State Tax Commission. The following table illustrates calculation of the maximum forgone amount that may be disclaimed in 2018:

| Step | Description  | Comments   |
|------|--|--|
| 1    | 2017 maximum property tax \$10,000. This is an increase of \$1,000 from 2016.            | The district has no prior forgone balance.   |
| 2    | The district certifies \$9,800 in 2017.  | The district now has \$200 in forgone balance.   |
| 3    | 2018 maximum property tax \$11,000 (not including \$200 forgone).                        |  |
| 4    | 2018 property tax budgeted (to be submitted for certification) is \$10,600.              | This amount is approved to be levied and would generate \$400 in additional forgone balance. |
| 5    | 2018 maximum amount of forgone increase that may be disclaimed by the district is \$400. | If the district disclaims the full \$400, their forgone balance remains at \$200.            |

(3-28-18)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money retained, but intended *to-be-spent* to fund the approved budget being certified on the L-2 form. (4-11-15)( )

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the following amounts received for the twelve (12) month period ending June 30 of the current tax year: (5-8-09)( )

**i.** The amount of money received annually under Section 63-3638(11), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-11-15)

- ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax *substitute funds and refund* list”; ~~(5-8-09)~~( )
- iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax *substitute funds and refund* list”; ~~(4-11-15)~~( )
- iv. The amount of money received *annually* under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code; ~~(3-29-17)~~( )
- v. The amount of money received *annually* under Section 63-602KK(7), Idaho Code, for personal property exempted after 2013, for which no replacement money was paid, and listed on the “Recovered/recaptured property tax *substitute funds and refund* list”; ~~(3-29-17)~~( )
- vi. The amount of money received *in the 12 month period ending June 30 of the current tax year* as a result of distributions of the gross earning tax on solar farms, as provided in Section 63-3502B(2), Idaho Code., and listed on the “Recovered/recaptured property tax *substitute funds and refund* list”; ~~(3-29-17)~~( )
- vii. The amount of money received *in the 12 month period ending June 30 of the current tax year* as a result of distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, as provided in Section 50-2903A(3), Idaho Code, and listed on the “Recovered/recaptured property tax *substitute funds and refund* list”; ~~(3-29-17)~~( )
- viii. The amount of money received *in the 12 month period ending June 30 of the current tax year* as a result of distributions of urban renewal allocations in excess of the amount received by the urban renewal agency in the immediate prior year, as provided in Section 50-2913(3)(c), Idaho Code and listed on the “Recovered/recaptured property tax *substitute funds and refund* list.”; ~~and~~ ~~(3-29-17)~~( )
- ix. The amount of money received as a result of distributions of recovered property tax for revoked provisional property tax exemptions pursuant to Section 63-1305C(3), Idaho Code. ( )
- f. “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)
- g. Other Information. Provide the following additional information. (4-5-00)
- i. The name of the taxing district or unit; (3-20-04)
- ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)
- iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)
- iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)
- v. For any taxing district including previously forgone increases in their budget or disclaiming any forgone increase, an attestation to having held the required public hearing on the resolution to include or disclaim the forgone amount. (3-28-18)
- h. Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)
- i. For all taxing districts, L-2 worksheet. (3-20-04)
- ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)



iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, cooperative service agency funds, and plant facility funds), notice of election and election results. (3-20-04)( )

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the board of county commissioners and the board of the library district reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the board of county commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

viii. For any taxing district including previously forgone increases in their budget or disclaiming any forgone increase, a copy of the resolution describing the amount of the forgone increase being disclaimed, or the amount included and specific purpose for which it is being included. (3-28-18)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement and Refunds Pursuant to Section 63-1305C(6), Idaho Code.** Property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. Except as provided in Paragraph 803.06.f. of this rule, for all taxing districts, these monies must be subtracted from or, in the case of refunds, not included in, the "balance to be levied". The reduced balance shall be used to compute levies. ~~but~~ The maximum amount permitted pursuant to Section 63-802(1), Idaho Code, shall be based on the sum of these property tax replacement monies including recoveries received pursuant to Section 63-1305C(3), Idaho Code, but excluding monies received pursuant to Section 63-3502B(2), Idaho Code, and the amount actually levied. Each taxing district's proportionate share of refunds pursuant to Section 63-1305C(6), Idaho Code, as reported in Paragraph 803.01.e. of this rule, must be subtracted from the maximum amount permitted pursuant to Section 63-802(1), Idaho Code. (3-29-17)( )

a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Sections 63-3638(11) and (13), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Sections 63-3638(11) and (13), Idaho Code. (4-11-15)

b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies, and the type of replacement money, as described in Paragraph 803.04.e. of this rule. For charter school districts subject to the provisions of Paragraph 803.06.f. of this rule, the amount to be subtracted shall be reported. (3-29-17)

c. Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts ~~this~~ these ~~subtractions~~ must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (~~5-8-09~~) ( )

d. For taxing districts receiving distributions of the gross earning tax on solar farms described in Section 63-3502B(2), Idaho Code, the amount of any such distribution received during the 12 (twelve) months ending June 30 of the current tax year shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. In addition to the amounts reported as described in Paragraph 803.06.b. of this rule, the county clerk shall, by the ~~third~~ first Monday in August, notify each taxing unit of the total amount of the gross earnings tax on solar farms billed for the current tax year. (~~3-29-17~~) ( )

e. Levy limits shall be tested against the amount actually levied. (3-15-02)

f. For charter school districts with a levy in 2013 for maintenance and operations, as provided in Section 33-802(6), Idaho Code, a portion of the property tax replacement money received for property subject to the exemption in Section 63-602KK, Idaho Code, is not required to be subtracted in determining the “balance to be levied.” Said portion shall be the amount calculated by applying the 2013 levy rate for the maintenance and operations levy amount, as authorized in the district’s charter, to the 2013 exempt value of personal property used to compute replacement money provided to the school district. (4-11-15)

g. For recovered personal property exemptions, as provided in Section 63-602KK(7), Idaho Code, for personal property exempted in 2013 for which replacement money was paid, recovered amounts shall be distributed to the State Tax Commission. Once received, the amount of future payments to the affected taxing districts shall be reduced by the amount received. (3-25-16)

**07. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services.** For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**09. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

**10. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this hypothetical levy, sum the amount of the school district's tort fund levied for the prior year, the agricultural equipment replacement revenue, and

the personal property replacement revenue, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (3-25-16)

**11. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**12. Special Provisions for Consolidating Cemetery Districts.** When two (2) or more cemetery districts consolidate, the first year in which the consolidated cemetery district levies property tax, the maximum budget subject to the limitations of Section 63-802, Idaho Code, shall be computed as follows: ( )

**a.** Determine the highest levy rate of any of the former cemetery districts now consolidating, based on the sum of the immediate prior year's levies subject to the limitations of Section 63-802, Idaho Code. ( )

**b.** Multiply this levy rate by the current taxable value of property within the area of the former cemetery districts other than the district with the highest rate. ( )

**c.** Multiply this levy rate by the current taxable value of new construction, as reported on the new construction roll, within the area of the former cemetery district with the highest levy rate. ( )

**d.** Add: ( )

**i.** The amounts computed in Paragraphs 803.12.b. and 803.12.c., of this rule; ( )

**ii.** Three percent (3%) of the highest amount of property taxes certified by the former cemetery district determined in Paragraph 803.12.a. of this rule, to have had the highest levy rate, for its annual budget, as defined in Section 63-802(1)(a), Idaho Code; and ( )

**iii.** Any forgone amounts of the former cemetery districts now consolidating. ( )

**123. Cross Reference for School Districts with Tuition Funds.** School district tuition fund levies are exempt from the limitations of Section 63-802, Idaho Code. See Section 33-1408, Idaho Code. (4-11-15)

**804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).**  
Sections 50-2908, 50-2033, 50-1903, 50-2903A, 50-2905A, 50-2913, 63-803, and 63-811, Idaho Code

**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. A new urban renewal plan is required when an urban renewal agency establishes a new RAA. Revenue allocation areas (RAAs) are not taxing districts. (3-29-17)

**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. In the case of annexation to an RAA, initial base value of each annexed parcel shall be the value of that parcel as of January 1 of the year in which the annexation takes place. (4-11-15)

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)

f. "Revenue allocation financing provision." A revenue allocation area (RAA) shall be considered to be a revenue allocation financing provision. (3-29-17)

**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. Proportions used to determine the amount of base value assigned to each of the new parcels shall be based on the value of the new parcels had they existed in the year preceding the year for which the value of the new parcels is first established. (4-11-15)

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 Subparagraph 804.02.c.i. and then the value of the combination will be calculated as set forth in Subparagraph 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 as it existed 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 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 this parcel had 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 forty-nine thousand five hundred dollars (\$49,500), the difference between fifty thousand dollars (\$50,000) 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 Subparagraph 804.02.d.iii. of this rule. (3-29-12)

iii. Partially exempt parcels other than those losing the speculative value exemption. Except as provided in Subparagraph 804.02.d.vi. of this rule, ~~wh~~ 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. (~~3-29-12~~)(    )

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). (3-29-12)

v. Change of exempt status. Except as provided in Subparagraph 804.02.d.vi. of this rule. ~~When~~ 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 most current 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). One (1) year later the parcel has a value of nineteen thousand dollars (\$19,000), so the base value is reduced to nineteen thousand dollars (\$19,000). 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 nineteen thousand dollars (\$19,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by nineteen thousand dollars (\$19,000). ~~(4-11-15)~~( )

vi. Special case for exemption provided in Section 63-602NN, Idaho Code. Upon loss of the exemption, any newly taxable value in excess of the taxable value of the property in the year immediately preceding the first year of the exemption is to be added to the increment value provided the property was within an RAA when the exemption was granted and remains within the RAA at the time the exemption expires. If the parcel was annexed to an RAA during the period of the exemption, the value that would have been added to the base value at the time of annexation had the property not received the exemption would be added to the base at the time the exemption expires, while any remaining taxable value would be added to the increment. If the exemption has been granted in part, the adjustments provided in this subparagraph shall only apply to the portion of the property granted the exemption. ( )

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 or any of the personal property associated with a parcel becomes exempt. In the case of exemption applying to personal property, the downward adjustment will first be applied to the increment value and then, if the remaining taxable value of the parcel is less than the most current base value, to the base value. Assume, for example that a parcel consists entirely of personal property with a base value of twenty thousand dollars (\$20,000) and an increment value of ninety thousand dollars (\$90,000). The next year the property receives a one hundred thousand (\$100,000) personal property exemption. The increment value is reduced to zero and the base value is reduced to ten thousand dollars (\$10,000). (4-11-15)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to base value for annexation. When property is annexed into an RAA, the base value in the RAA shall be adjusted upwards to reflect the value of the annexed property as of January 1 of the year in which the annexation takes effect. As an example, assume that parcels with current taxable value of one million dollars (\$1,000,000) are annexed into an RAA with an existing base value of two million dollars (\$2,000,000). The base value of the RAA is adjusted upwards to three million dollars (\$3,000,000). (4-11-15)

g. Adjustments to increment values. In addition to the adjustment illustrated in Subparagraph 804.02.e.ii. of this rule, 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). (4-11-15)

**h.** 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 Subsections 804.05 and 804.07 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). (3-28-18)

**04. Modification of an Urban Renewal Plan.** Except when inapplicable as described in Paragraphs 804.04.a, b, or c, of this rule, when an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, for the tax year immediately following the year in which the modification occurs, the base value of property in the RAA shall be reset by being adjusted to reflect the current taxable value of the property. All modifications to boundaries of RAAs must comply with the provisions of Rule 225 of these rules. (3-29-17)

**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 annexation (B) increment | \$10 Million  |

|  |   |   |
|--|---|---|
| <p>School District Area<br/>\$500 M base</p> <p>2008 RAA<br/>Annexation (B)<br/>\$10 M Increment</p> <p>Pre 2008 RAA (A)<br/>Boundaries<br/>\$40 M Increment</p> | 2009 School Levies                          |   |
|  | Fund  | Value for Setting Levies<br>\$ Millions |
|  | Tort  | 500                                     |
|  | 2001 Plant                                  | 510                                     |
|  | 2008 Bond (Passed and first levied in 2008) | 550                                     |
| 2009 Supplemental  | 550   |   |

(3-29-17)

iii. An annexation permitted pursuant to section 50-2033, Idaho Code, to an RAA in existence prior to July 1, 2016 shall not change the status of the urban renewal agency or the RAA and its related plan regarding inapplicability of the base reset or attestation provisions found in section 50-2903A, Idaho Code. (3-29-17)

c. Other modifications – attestation requirements. Modification resulting in adjustment of base value to reflect the current taxable value of the property within the RAA shall not be deemed to have occurred when the urban renewal agency attests to having made no modifications to a plan or is not required to attest to plan modifications. Certain urban renewal agencies are required to attest annually to having made or not made plan modifications. These include: (3-29-17)

i. Urban renewal agencies that establish new RAAs on or after July 1, 2016, provided however that such agencies are only required to attest to having made or not made modifications with regard to any new RAA. (3-29-17)

ii. Urban renewal agencies that enact new plans including an RAA on or after July 1, 2016. (3-29-17)

d. Modifications when there is outstanding indebtedness. When any urban renewal agency attests to having had a plan modification that is not an exception identified in Paragraphs 804.04.a. or b. or c. of this rule or fails to provide the required attestation, the base value will be determined without regard to the modification, provided that the agency certifies to the State Tax Commission by June 30 of the tax year that there is outstanding indebtedness as defined in Section 50-2903A(2), Idaho Code. In this case, the allocation of revenue to the urban renewal agency shall be limited to the amount certified as necessary to pay the indebtedness. Any additional revenue shall be distributed to each taxing district or unit in the same manner as property taxes. Such revenue shall be treated as property tax revenue for the purpose of the limitations in Section 63-802, Idaho Code. The county clerk will notify the tax commission of the amount so distributed for each year beginning July 1 of the prior year and ending June 30 of the current tax year. (3-28-18)

e. Failure to submit attestation regarding plan modification. For any urban renewal agency subject to the requirements of Section 50-2903A, Idaho Code, attestation of plan modification or attestation that there has been no plan modification is required to be made to the State Tax Commission by the first Monday of June each year. Except as provided in Paragraph 804.04.d. of this rule, if such agency fails to provide the required attestation, the State Tax Commission will proceed to reset the base value or limit allocation of property tax to the urban renewal agency as otherwise required in Section 50-2903A, Idaho Code. Provided there is no new plan, an urban renewal



agency with a plan including one or more revenue allocation financing provisions (RAAs) in existence prior to July 1, 2016 shall only be required to provide this attestation or be subject to base resetting or other limitations for failure to submit this attestation with respect to new RAAs formed on or after July 1, 2016. If such an agency develops a new plan, on or after July 1, 2016, or provides for a new RAA under an existing plan, the agency shall be subject to the attestation requirements and other provisions of Section 50-2903A, Idaho Code, with respect to any RAAs formed July 1, 2016 or later. (3-28-18)

f. Notice of actions related to base reset or revenue allocation limitations. (3-29-17)

i. The State Tax Commission will notify any urban renewal agency within thirty (30) days of the time the State Tax Commission receives an attestation that an urban renewal plan has been modified, or by July 30 in any year in which an attestation is required but none is received, of the State Tax Commission's intent to initiate the process to reset the base value in the following tax year. Said notice will be provided to affected county commissioners and city officials. (3-29-17)

ii. In the case of base reset due to failure to attest to a modification or to having made no modification in an urban renewal plan, despite being required to provide this attestation, the agency and county and city officials will be so notified and will be given an opportunity to provide the necessary attestation. This further notice will provide that, if the State Tax Commission has not received the attestation by December 31 of the tax year, the base will be reset in the immediate following year. (3-29-17)

iii. In the case of a revenue allocation limitation pursuant to Section 50-2913, Idaho Code, notice will be provided to the agency, county, and city officials including the county assessor and county clerk, within thirty (30) days of the due date of the plan or plan update. (3-29-17)

iv. In the case of a revenue allocation limitation due to a plan modification but outstanding indebtedness, notice will be provided to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of receipt by the State Tax Commission of the certification of the amount needed to repay the indebtedness. (3-29-17)

v. Once decisions about base reset or revenue allocation limitations are final, additional notice will be sent to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of any such final decision. Said notice will include an identification of the year in which the reset or revenue allocation limitation will take effect and the amount of any revenue allocation limitation. (3-29-17)

**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)

g. Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. (4-11-15)

h. Levies authorized by Section 33-805, Idaho Code, known as school emergency fund levy. (3-29-17)

**06. Setting Levies When There is a De-annexation From an RAA.** In any de-annexation from an RAA, levies will be set using the base value and, as indicated in Subsection 804.05 of this rule, the appropriate amount of increment value associated with the parcels and operating property remaining in the RAA after the de-annexation, provided that the de-annexation is in effect no later than September 1 of the current tax year and provided further that the de-annexation is approved by the State Tax Commission in accordance with Section 225 of these rules. (3-29-17)

**07. Setting Levies When There is a Refinancing of Bonded Indebtedness.** Refinancing of bonded indebtedness in existence as of December 31, 2007 does not create new bonded indebtedness for any taxing district with respect to the levy setting criteria in Subsection 804.05 of this rule. (3-28-18)

**08. Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. See also Rule 802 of these rules for calculation of new construction given de-annexation from an RAA and see Rule 805 of these rules for penalties for failure to submit plans. (3-29-17)

**(BREAK IN CONTINUITY OF SECTIONS)**

**962. TAXATION OF DESIGNATED FORESTLANDS UNDER THE PRODUCTIVITY OPTION (RULE 962).** Section 63-1705, Idaho Code

**01. Forestland Valuation Process.** The process used to determine the forestland value under the productivity option shall be as specified in the User's Guide referenced in Section 63-1701, Idaho Code. (4-11-06)

**02. Forest Valuation Zones.** The state shall be divided into four (4) forest valuation zones: (7-1-99)

a. ZONE 1 - Boundary, Bonner, Kootenai counties. (7-1-97)

b. ZONE 2 - Benewah, Shoshone, Latah, Clearwater, Nez Perce, Lewis, Idaho counties. (7-1-97)

c. ZONE 3 - Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore, Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka counties. (7-1-97)

d. ZONE 4 - The remaining nineteen (19) counties. (7-1-97)

**03. Classification of Forestlands.** In all forest valuation zones, there shall be three (3) separate productivity classes of forestland: poor, medium, and good. These broad classes are related in the following manner by definition to the "Meyer Tables" published in "Yield of Even-Aged Stands of Ponderosa Pine" and "Haig Tables" published in "Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type" as both documents are referenced in Rule 006 of these rules. These classes apply to forestland which may or may not be stocked with commercial or young growth timber. (4-11-06)

a. Poor productivity class is defined as forestland having a mean annual increment, MAI, of one hundred twenty-five (125) board feet per acre per year, based on a seventy-three (73) year rotation. This productivity class includes western white pine site index 35-45 and Ponderosa pine site index 45-80. One hundred twenty-five (125) board feet per acre MAI shall be used in the valuation process. (4-11-06)

b. Medium productivity class is defined as forestland having a mean annual increment, MAI, of two hundred twenty-five (225) board feet per acre per year, based on an sixty-eight (68) year rotation. This productivity class includes western white pine site index 46-60 and Ponderosa pine site index 81-110. Two hundred twenty-five (225) board feet per acre MAI shall be used in the valuation process. (4-11-06)

c. Good productivity class is defined as forestland having a mean annual increment, MAI, of three hundred fifty (350) board feet per acre per year, based on an sixty-three (63) year rotation. This productivity class includes western white pine site index 61 and above and Ponderosa pine site index 111 and above. Three hundred fifty (350) board feet per acre MAI shall be used in the valuation process. (4-11-06)

d. For forest valuation zones 1 and 2, forestland shall be stratified into areas of similar productive potential using the habitat typing methodology described in "Forest Habitat Types of Northern Idaho: A Second Approximation," referenced in Rule 006 of these rules. Within these stratified areas, site index trees will be selected and measured that will identify the site index to be used to place the land in one (1) of the three (3) productivity classes listed above. (5-3-03)

e. For forest valuation zones 3 and 4, the criteria for stratification shall be generally the same as that used in zones 1 and 2 based on the habitat typing methodology described in "Forest Habitat Types of Central Idaho," as referenced in Rule 006 of these rules, with the following adjustments made in growth rates for lower moisture levels: ( )

i. For ~~P~~poor productivity class, one hundred twenty-five (125) board feet per acre MAI shall be used in the valuation process: ( )

ii. For ~~M~~medium productivity class, two hundred thirteen (213) board feet per acre MAI shall be used in the valuation process: and ( )

iii. For ~~G~~good productivity class, three hundred twenty (320) board feet per acre MAI shall be used in the valuation process. (4-11-06) ( )

04. **Deficient Areas.** Lakes, solid rock bluffs, talus slopes, and continuously flooded swampy areas, larger than five contiguous acres in size which can be identified through remote sensing shall be valued at forty percent (40%) of the poor bare land value as defined in Section 63-1706, Idaho Code. These areas are defined as being incapable of growing trees. (4-11-06)

05. **Reclassification of Forestlands.** Except as provided in Subsection 962.06 of this rule, no parcel's productivity classification can be changed from the classification as of January 1, 2016, until requirements for landowner notification, inspector qualifications, and document retention have been met. ( )

a. Landowner notification. Notice of intent to change classification must be provided in writing to the landowner of record or their designee within two (2) weeks of any determination by the county assessor of intent to change classification. Such notice must be provided no later than the first Monday in November for the change to be in effect during the following year. Notice may be delivered in person or by U.S. mail, or, if agreed to by the assessor and the landowner, by electronic mail. Notice of intent to change classification includes: ( )

i. A statement of intent to change the classification; ( )

ii. A statement of the present classification and the intended new classification; ( )

iii. A statement that the intent notice is not an assessment notice and that the assessment notice will be sent by the first Monday in June in the following year; ( )

iv. A statement that both the taxable value stated on the assessment notice and the classification may be appealed to the county board of equalization as provided in Section 63-501A, Idaho Code; ( )

v. Contact information indicating assessor's office staff who may be contacted and how to do so. ( )

**b.** Inspector qualifications. The inspector is the person assigned by the county assessor to review property characteristics and complete a timberland classification form provided by the state tax commission. The inspector must be proficient in each of the following: ( )

- i. Navigating forest locations: ( )
- ii. Skilled mapping techniques: ( )
- iii. Establishment of plot locations: ( )
- iv. Plant and tree identification; and ( )
- v. Site tree identification and measurements. ( )

**c.** Inspector proficiency. Inspector proficiency must be established by a minimum of twelve (12) months of experience doing fieldwork, including reviewing the characteristics of timberland and: ( )

- i. Passing a tax commission sponsored class on timberland appraisal and inspection; or ( )
- ii. Passing equivalent courses from an accredited college or university; or ( )
- iii. Obtaining a degree in forestry or a related field from an accredited institution. ( )

**d.** Documentation and retention. Documentation related to timberland productivity classification shall be retained for no less than ten (10) years following classification determination. Documentation shall include, but is not limited to: ( )

- i. Timberland characteristics, on a form provided by the tax commission, with sufficient detail to verify the classification, including the calculation of productivity class as set forth in Subsection 962.03 of this rule; ( )
- ii. The location of the field plot and any site trees using map or Global Positioning System (GPS) coordinates; ( )
- iii. A map illustrating property boundaries, habitat type based stratifications as provided in Subsection 962.03 of these rules, and plot locations used in the determination of productivity class; ( )
- iv. Any imagery used to assess the parcel prior to field review; ( )

**06. Alternate Method to Establish Productivity Classification.** Provided the county assessor and forestland owner agree and the data is deemed by the county to be acceptable and accurate, the data used to establish any parcel's productivity classification may be provided by the forestland owner. In this case, inspector qualifications and proficiency provisions of this rule will not apply. ( )

**a.** Data to be considered confidential. When productivity data is provided to the county by the forestland owner, it shall be deemed confidential financial information and not subject to public disclosure, as provided in Section 004 of these rules. ( )

**b.** Inspector certification not required. When the alternate method described in this section is to be used, the county shall not be required to have a certified inspector to review property characteristics. ( )

**c.** Acceptable classification. To be considered acceptable, the classification of the timberland so established must result in market value for assessment purposes as defined in Section 63-1705(3), Idaho Code. ( )

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1802**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 702:** HB492 (2018) provides a benefit of property tax reduction for veterans with a 100% service connected disability. This rule clarifies that benefit continues for a surviving spouse but the surviving spouse may not transfer the benefit to a different homestead. The rule further clarifies that if an otherwise eligible claimant dies between January 1 and April 14 the spouse may file an application on behalf of the deceased veteran and receive the benefit.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Volume 18-6, page 110](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742.

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 26, 2018.

Dated this 31st day of July, 2018.

Alan Dornfest, Tax Policy Supervisor  
State Tax Commission/Property Tax  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1802  
(Only Those Sections With Amendments Are Shown.)

**702. VETERAN'S BENEFIT – CONTINUED ELIGIBILITY AFTER DEATH OF CLAIMANT (RULE 702).**

Sections 63-701 and 63-705A, Idaho Code

**01. Surviving Spouse.** The veteran's benefit applies to the qualifying homestead, as defined in Section 63-701(2), Idaho Code, of the veteran and surviving spouse. The surviving spouse may not transfer the benefit to a different homestead. ( )

**02. Application By Surviving Spouse.** The surviving spouse may file an application on behalf of the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 or before April 15 of the year in which the claim is filed. ( )

**7023.** -- 708. (RESERVED)

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1803

#### NOTICE OF RULEMAKING – PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 600** explains the newly enacted provisional exemption (HB559 - 2018) which may be granted to property to be used for a tax exempt purpose. The rule points out that the date (May 15) found in Section 63-602(C), Idaho Code, which is the date by which the county commissioners must notify the taxpayer of their decision to grant or deny most exemptions, does not apply to this provisional exemption found in Section 63-1305C, Idaho Code. The exemption may be applied for at the time the building permit is applied for or at the time renovation starts, whichever date is earlier. Only the part of the property that will be used for an exempt purpose may be included in the exemption. The rule defines “property that is being constructed” to include land and associated personal property. The exemption does not apply to the property included on the current tax roll until the next tax year (January 1), however any additions to the property during the year in which the exemption is granted shall not be taxed.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 5, 2018 Idaho Administrative Bulletin, [Volume 18-7, page 177](#).

**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 Alan Dornfest at (208) 334-7742.

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 26, 2018.

Dated this 31st day of July, 2018.

Alan Dornfest, Tax Policy Supervisor  
State Tax Commission/Property Tax  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1803  
(Only Those Sections With Amendments Are Shown.)

**600. PROPERTY EXEMPT FROM TAXATION (RULE 600).**

Sections 63-602 and 63-1305C, Idaho Code

**01. Burden of Proof.** The burden of proof of entitlement to the exemption is on the person claiming exemption for the property. (4-4-13)

**02. Notice of Decision.** (4-4-13)

**a.** For property subject to local assessment with exemptions requiring annual application as specified in the statute providing the exemption or in Section 63-602(3), Idaho Code, the taxpayer must be notified of the decision of the county commissioners to grant or deny the exemption by May 15 unless a different date is prescribed in the law providing the exemption, or if the exemption is provisional pursuant to Section 63-1305C, Idaho Code. (4-4-13)( )

**b.** For property subject to assessment by the State Tax Commission, application for any exemption shall be included with the operator's statement to be submitted as provided in Section 404, of these rules. (4-4-13)

**03. Confidentiality.** Information disclosed as part of an application for an exemption is confidential to the extent provided by in Section 74-107, Idaho Code, or elsewhere in law. Information disclosed to the county commissioners as part of the application process for an exemption shall be deemed submitted to the assessor and entitled to any confidentiality that would have been conferred had such information been disclosed initially to the assessor. (4-4-13)

**04. Provisional Exemptions.** The following definitions apply in determining the extent and process for applying for the provisional exemption provided in Section 63-1305C, Idaho Code. ( )

**a.** "Property that is being constructed." Property that is being constructed or renovated may include land, buildings, and associated personal property that would receive an exemption once the construction is complete and the property is used for exempt purposes. ( )

**i.** If part of the land or other property owned by the entity seeking the exemption is to be used for non-exempt purposes, that part shall not be eligible for the provisional exemption. ( )

**ii.** Land and existing buildings that will be considered exempt upon use of the property for exempt purposes, but that were taxable on January 1 of a tax year during which the provisional exemption was granted may be granted the provisional exemption beginning the immediately following tax year. Renovations and personal property related to the exempt purpose of the property, but that add otherwise taxable value during the tax year during which the provisional exemption is granted, shall not be taxed. ( )

**iii.** Application for the provisional exemption may be filed with the county commissioners at any time once a building permit is issued or renovation begins. Deadlines for application and notification of the decision of the county commissioners found in Section 63-602(3), Idaho Code, do not apply. ( )

**b.** "Property owner." The property owner may apply for the provisional exemption provided the intended use of the property is to fulfill a purpose that is exempt from property tax. The owner must apply for the exemption, but need not be an exempt entity or the intended user. ( )



## IDAPA 35 – STATE TAX COMMISSION

### 35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-0105(2), 63-3624(a), 63-3635, 63-3039, and 63-1801 through 63-1804, 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 19, 2018.

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 003** – This rule provides guidance on where a taxpayer can find information about the administrative appeals process available to them. Currently the rule contains only one statutory reference. The proposed rulemaking will add references to additional areas within Idaho Code and Administrative Rules. Specifically, Sections 63-3626, 63-3631, 63-3633, and 63-3634, Idaho Code, a reference to Rule 121 of the Sales and Use Tax Administrative Rules, and IDAPA 35.02.01, “The Tax Commission Administration and Enforcement Rules.”

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 112](#).

**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 Leah Parsons, (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 3rd day of August, 2018.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0106-1801  
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS (RULE 003).

- 01. Administrative Relief.** This chapter ~~of the provisions outlined herein under~~ *does* allow administrative relief *as provided in* Sections 63-3626, 63-3631, 63-3633, 63-3634, and 63-3049, Idaho Code. (7-1-93) ( )
- 02. Cross Reference.** ( )
- a.** See IDAPA 35.01.02.121 “Idaho Sales and Use Tax Administrative Rules.” ( )
- b.** See IDAPA 35.02.01. “Tax Commission Administration and Enforcement Rules.” ( )

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-2516, 63-2523, and 63-3039, Idaho Code, and Sections 63-2510 and 63-22510A, 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 19, 2018.

The hearing site(s) will be accessible to persons with disabilities. Send requests for accommodation at least five (5) days prior to the hearing, to the agency contact below.

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

**Rule 015, Stamps--Source, Amount, and Limitations –** The proposed rule limits all wholesalers that stamp cigarettes to an unused stamp inventory equal to two times their average tax liability. Bonded and unbonded wholesalers will have the same limitations on their unused stamp inventory.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 116](#).

**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 the undersigned using the information below.

Anyone may submit written comments regarding this proposed rulemaking. Send all written comments to the undersigned on or before September 26, 2018.

Dated this 31st day of July, 2018.

Don Williams, Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7855  
Fax: (208) 334-7846  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1801  
(Only Those Sections With Amendments Are Shown.)

015. STAMPS-SOURCE, AMOUNT, **AND** LIMITATIONS (RULE 015).  
Sections 63-2510 and 63-2510A, Idaho Code

01. **Obtaining Stamps.** Cigarette stamps may only be obtained ~~at~~ from the Boise office of the Commission. (7-1-93)( )

02. **Unused Stamp Inventory.** Wholesalers may not hold an inventory of unused Idaho ~~cigarette~~ stamps, the face value of which exceeds the amount of their bonding ~~ing or three months estimated average tax liability~~ whichever is greater. See Rule 017 of these rules regarding bonding. Where no bond is required, wholesalers may not hold an inventory of unused Idaho cigarette stamps, the face value of which exceeds two (2) times the wholesaler's average monthly tax liability. (7-1-93)( )

03. **Filing and Paying Timely.** Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Commission to a wholesaler until clear and convincing evidence is received by the Commission that the return has been filed or ~~that~~ the tax has been paid. (7-1-93)( )

04. **Physical Security.** Wholesalers are responsible for the face value of all stamps received from the Commission. Wholesalers must provide ~~proper~~ physical security for the stamps in their possession. (7-1-93)( )

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.14 – PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES

DOCKET NO. 35-0114-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105(2), 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, 63-3049, 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 19, 2018.

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 003** – Currently the Prepaid Wireless E911 Fee Administrative Rules only reference statutes related to administrative appeals and lack a reference to IDAPA 35.02.01 and IDAPA 35.01.02.121. We will add reference to IDAPA 35.02.01 and 35.01.02.121 (Rules relating to appeals in the Tax Commission Administration and Enforcement Rules and Sales Tax Rules).

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 193](#).

**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 Leah Parsons, (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 20th day of August, 2018.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0114-1801  
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS.

01. Administrative Relief. This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ~~(3-20-14)~~ ( )

02. Cross Reference. ( )

a. See IDAPA 35.01.02.121 "Idaho Sales and Use Tax Administrative Rules." ( )

b. See IDAPA 35.02.01. "Tax Commission Administration and Enforcement Rules." ( )

## **IDAPA 38 – DEPARTMENT OF ADMINISTRATION**

### **38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX**

#### **DOCKET NO. 38-0409-1801 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is December 21, 2017 and the effective date of the amendments to the temporary rule is September 5, 2018.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted amendments to the temporary rule. The action is authorized pursuant to Section 67-5708, Idaho Code.

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

The Chinden Office Complex property was transferred to state control on December 21, 2017 and required immediately applicable rules to govern its use. Temporary rules, effective December 21, 2017, were promulgated and published in the February 7, 2018 Administrative Bulletin, **Vol. 18-2, pages 30 through 38**. The proposed rules are now being promulgated under a separate docket number and published in this Bulletin and the temporary rule is being amended to mirror the proposed rule. The rulemaking uses the existing rules framework for the capitol mall and multi-tenant facilities and applies it in a single chapter to the new office complex. Variations to accommodate the sports facilities and private entity tenants are included, however, the majority of the provisions are those in place for the capitol mall and multi-tenant facilities elsewhere in the state.

Amendments to the temporary rules provide revisions related to the nature of the office campus complex that differ from the capitol mall and that have come to light as the Department of Administration has assumed management of the campus. Changes include provisions regarding parking in fire lanes and other restricted areas, placing literature on parked cars, the elimination of a reservation system for public use of the sports fields, and addressing the danger to pets and persons in the campus waterways.

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

The State of Idaho took responsibility for the former HP Office Complex on December 21, 2017. Imposition of temporary rules governing the use of the property was necessary protect the property, its tenants and the public. The amendments being made to those temporary rules further clarify use of the property. The temporary rule published in the February 7, 2018 Idaho Administrative Bulletin, Volume 18-2.

**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 rules or the amendments to the temporary rules, contact Keith Reynolds, Deputy Director, at 208-332-1812 or via email at [keith.reynolds@adm.idaho.gov](mailto:keith.reynolds@adm.idaho.gov).

DATED this 15th day of August, 2018.

Keith Reynolds, Deputy Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: 208-332-1812  
Fax: 208-334-2307

**THE FOLLOWING IS THE TEXT OF THE AMENDED TEMPORARY RULE  
OF DOCKET NO. 38-0409-1801  
(Only Those Sections With Amendments Are Shown.)**

The original text of the temporary rule was published in the Idaho Administrative Bulletin,  
Volume 18-2, February 7, 2018, pages 30 through 38.

**IDAPA 38  
TITLE 04  
CHAPTER 09**

**38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (12-21-17)T

**02. Chinden Office Complex.** The Chinden Office Complex is bounded to the north by West Chinden Boulevard, to the west by North Cloverdale Road, to the east by North Five Mile Road, and to the south by the Jones-Stiburek, Orchid Point, De Meyer Estates No. 7, Hickories No. 1, 9 and 12, Hickories East and EMS Avenue Subdivisions. The following buildings and the grounds adjacent to such buildings located in Boise, Idaho shall be the Chinden Office Complex under these rules: (12-21-17)T

**a.** 11301 West Chinden Boulevard, identified as Building 1 of the Chinden Office Complex. (12-21-17)T

**b.** 11311 West Chinden Boulevard, identified as Building 3 of the Chinden Office Complex. (12-21-17)T

**c.** 11321 West Chinden Boulevard, identified as Building 2 of the Chinden Office Complex. (12-21-17)T

**d.** 11331 West Chinden Boulevard, identified as Building 8 of the Chinden Office Complex. (12-21-17)T

**e.** 11341 West Chinden Boulevard, identified as Building 4 of the Chinden Office Complex. (12-21-17)T

**f.** 11351 West Chinden Boulevard, identified as Building 6 of the Chinden Office Complex. (12-21-17)T

**g.** 11361 West Chinden Boulevard, identified as Building 7 of the Chinden Office Complex. (12-21-17)T

**h.** 11371 West Chinden Boulevard, identified as Building 5 of the Chinden Office Complex. (12-21-17)T

**03. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (12-21-17)T



- 04. Common Space.** The portion of the Chinden Office Complex that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tenant Space and restrooms not accessed through Tenant Space. Common Space does not include Tenant Space or any area marked “private,” “no admission,” “staff only” or similarly designated as not open to the public. (12-21-17)T
- 05. Department.** The Department of Administration. (12-21-17)T
- 06. Director.** The Director of the Department of Administration or his designee. (12-21-17)T
- 07. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (12-21-17)T
- 08. Public Use.** Use that is not: (12-21-17)T
- a.** A State Event or Exhibit; (12-21-17)T
  - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; (12-21-17)T
  - c.** State Maintenance and Improvements; or (12-21-17)T
  - d.** Use by a Tenant. (12-21-17)T
- 09. Recreational Facilities.** Facilities designated by the Director for Recreational Use. (12-21-17)T
- 10. Recreational Use.** Use for leisure or athletic purposes such as picnicking and sports practices or informal sports games. (12-21-17)T
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (12-21-17)T
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (12-21-17)T
- 13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (12-21-17)T
- 14. State Maintenance and Improvements.** Maintenance or improvement of the Chinden Office Complex by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, ~~resodding~~ **turf installation and repair**, fertilizing and planting, and structural maintenance such as pressure washing, painting, and window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. ~~(12-21-17)T~~ **(9-5-18)T**
- 15. Tenant.** A state of Idaho officer, official, agency, board or commission or a public agency or a private individual or entity with a license or lease to use the Chinden Office Complex. (12-21-17)T
- 16. Tenant Space.** The portion of the exterior of the Chinden Office Complex licensed or leased to a private individual or entity and the portion of the interior of the Chinden Office Complex occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. (12-21-17)T

(BREAK IN CONTINUITY OF SECTIONS)

201. HOURS OF USE.

01. **Hours for Use by the Public.** The hours for public access to the exterior of the Chinden Office Complex are from sunrise to sunset. The hours for public access to interior Common Space shall be as posted on the public entrance to each building at the Chinden Office Complex. (12-21-17)T

02. **Public Parking Hours.** Unless approved by the Director, the public shall not park motorized vehicles ~~shall not park~~ overnight at the Chinden Office Complex. (12-21-17)T(9-5-18)T

202. USE OF RECREATIONAL FACILITIES.

The Director may authorize reservation of Recreational Facilities under this subsection ~~for Recreational Use by a Tenant~~ and the exclusion of members of the public from use of Recreational Facilities during reserved periods. ~~The Director will not approve a reservation for a Private Event or Private Exhibit under this section.~~ (12-21-17)T

~~01. **Recreational Facilities Available for Reservation.** Recreational Facilities available for reservation are identified by a sign at facility. Unless reserved by a Tenant, Recreational Facilities are available for Recreational Use by the public on a first-come, first-used basis from sunrise to sunset daily.~~ (12-21-17)T(9-5-18)T

~~02. **Effect of Reservation.** A reservation provides priority for use of the area specified in the reservation. Unless reserved, Recreational Facilities are available for use on a first-come, first-used basis during the permitted hours for Recreational Use.~~ (12-21-17)T

~~03. **Application Process.** Reservation applications shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application.~~ (12-21-17)T

~~04. **Timing of Application.** Reservation applications shall be submitted to the Department at least two (2) State business days prior to the requested date and time period of the reservation. The Department will not accept reservation applications submitted more than six (6) months prior to the requested date of the reservation, however, reservations for Recreational Use at the same times and days of the week for a successive period will be accepted six (6) months prior to the first requested date of reservation. The Department will not grant reservations for Recreational Use at the same times and days of the week for a successive period longer than ninety (90) days under a single reservation application.~~ (12-21-17)T

~~05. **Validity.** Reservations are valid only for the dates, times, and locations specified on the reservation issued by the Department. The Director may impose reasonable conditions on Recreational Use for the purpose of protecting persons and property. Reservations are non-transferable.~~ (12-21-17)T

(BREAK IN CONTINUITY OF SECTIONS)

303. MOTORIZED VEHICLES.

Motorized vehicles ~~not owned or operated by the state of Idaho or law enforcement must remain on~~ parked outside of designated ~~roadways and~~ parking areas may be towed without notice at the vehicle owner's expense. Public parking at the Chinden Office Complex is limited to the period the operator or passengers are using the Chinden Office Complex. Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (12-21-17)T(9-5-18)T

**304. ~~BICYCLES,~~ SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

~~Bicycles,~~Skates, skateboards, and scooters may not be used at the Chinden Office Complex. Users of all other non-motorized transportation must remain on roadways or designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement, a state employee, or agent supervising the Chinden Office Complex, users must store non-motorized transportation in a designated storage area on the exterior of the Chinden Office Complex. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. ~~(12-21-17)T~~(9-5-18)T

**305. ANIMALS.**

The following shall apply to animals at the Chinden Office Complex: (12-21-17)T

**01. Wildlife.** Unless authorized by the Director no person shall: (12-21-17)T

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the Chinden Office Complex. (12-21-17)T

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the Chinden Office Complex. (12-21-17)T

**02. Domestic Animals.** (12-21-17)T

**a.** Domestic animals are not allowed at the Chinden Office Complex unless leashed and under the control of the person bringing the animal to the ~~state facility~~ Chinden Office Complex. ~~(12-21-17)T~~(9-5-18)T

**b.** The person bringing the animal to the Chinden Office Complex shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (12-21-17)T

**c.** Persons bringing domestic animals to the Chinden Office Complex shall not permit the animal to swim or wade in irrigation ponds or canals at the Chinden Office Complex. ~~(12-21-17)T~~(9-5-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (12-21-17)T

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (12-21-17)T

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (12-21-17)T

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Chinden Office Complex, or to restrict the follow flow of individuals or motor vehicles using the facility, or to restrict emergency egress or ingress. ~~(12-21-17)T~~(9-5-18)T

**05. Attaching, Affixing, Leaning, or Propping Materials.** Materials, including Pposters, placards, banners, signs, and displays, including any printed materials, ropes, and chains shall not be affixed on any exterior surface of the Chinden Office Complex not designed for that purpose or on any permanent commemorative installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays

must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the Chinden Office Complex or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. ~~(12-21-17)T~~(9-5-18)T

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the Chinden Office Complex or any systems or utilities of the Chinden Office Complex including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (12-21-17)T

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the Chinden Office Complex that such material is not discarded outside of designated trash receptacles. Literature and printed materials shall not be placed on parked vehicles at the Chinden Office Complex. ~~(12-21-17)T~~(9-5-18)T

**08. Surface Markings.** Users shall not use any material to mark on any surface of the Chinden Office Complex including chalk, paint, pens, ink, or dye. (12-21-17)T

**09. Removal of Items.** All items brought to the Chinden Office Complex by the public shall be removed prior to the expiration of each day's hours of use by the public. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the Chinden Office Complex. (9-5-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**314. UTILITY SERVICE.**

The public may not use the utility services of the Chinden Office Complex other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, and heating,~~and geothermal~~ services. The Director may terminate the use of utilities if such use interferes with the utility services of the Chinden Office Complex or the equipment or apparatus using utility service fails to comply with applicable rules or codes. ~~(12-21-17)T~~(9-5-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**317. HEALTH, SAFETY, AND MAINTENANCE OF CHINDEN OFFICE COMPLEX.**

**01. Clean Condition After Use.** Users shall leave the Chinden Office Complex in reasonably clean condition after use, including depositing all trash in designated receptacles. (12-21-17)T

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the use. (12-21-17)T

**03. Public Health.** No person shall excrete human waste at the Chinden Office Complex except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (12-21-17)T

**04. Fireworks.** No person shall possess or use fireworks at the Chinden Office Complex. (12-21-17)T

**05. Use of Waterways.** No person shall swim, fish, or wade in waterways at the Chinden Office Complex. (9-5-18)T

## IDAPA 38 – DEPARTMENT OF ADMINISTRATION

### 38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX

#### DOCKET NO. 38-0409-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5708, 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 19, 2018.

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 Chinden Office Complex property was transferred to state control on December 21, 2017 and required immediately applicable rules to govern its use. Temporary rules effective December 21, 2017 were promulgated and published in the February 7, 2018 Administrative Bulletin, **Vol. 18-2, pages 30 through 38**. The proposed rules are now being promulgated. The rulemaking uses the existing rules framework for the capitol mall and multi-tenant facilities and applies it in a single chapter to the new office complex. Variations to accommodate the sports facilities and private entity tenants are included, however, the majority of the provisions are those in place for the capitol mall and multi-tenant facilities elsewhere in the state.

Amendments to the temporary rules, published in this Bulletin under Docket No. 38-0409-1801, provide revisions related to the nature of the office campus complex that differ from the capitol mall and that have come to light as the Department of Administration has assumed management of the campus. Changes include provisions regarding parking in fire lanes and other restricted areas, placing literature on parked cars, the elimination of a reservation system for public use of the sports fields, and addressing the danger to pets and persons in the campus waterways. These changes have been incorporated into the proposed rule published following this notice.

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

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

Funding for management of the property has been legislatively provided. Existing resources will be used to implement the administrative rules governing use of the property.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because temporary rulemaking was appropriate pursuant to Section 67-5226(1)(a), Idaho Code, in order to protect the property, its tenants and the public. The Department will consider all public comment on the proposed rules received from all affected parties.

**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 rules, contact Keith Reynolds, Deputy Director, at 208-332-1812 or via email at [keith.reynolds@adm.idaho.gov](mailto:keith.reynolds@adm.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 26, 2018.

DATED this 15th day of August, 2018.

Keith Reynolds, Deputy Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: 208-332-1812  
Fax: 208-334-2307

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0409-1802**

**This docket has been previously published as a temporary rule.  
The temporary effective date is December 21, 2017.**

**The text of the temporary rule was published in the Idaho Administrative Bulletin,  
Volume 18-2, February 7, 2018, pages 30 through 38.**

**IDAPA 38  
TITLE 04  
CHAPTER 09**

**38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to manage state facilities and to promulgate rules governing state facilities. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.09, “Rules Governing Use of the Chinden Office Complex.” ( )

**02. Scope.** These rules contain the provisions for use of the exterior and interior of the Chinden Office Complex. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the Chinden Office Complex. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. ( )

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

- 01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. ( )
- 02. Mailing Address.** The Department’s mailing address is P. O. Box 83720, Boise, Idaho 83720-0013. ( )
- 03. Street Address.** The Department’s principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. ( )
- 04. Website Address.** The Department’s website address is <http://adm.idaho.gov/>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. SEVERABILITY IN CHINDEN OFFICE COMPLEX.**

Pursuant to IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator,” all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. ( )
- 02. Chinden Office Complex.** The Chinden Office Complex is bounded to the north by West Chinden Boulevard, to the west by North Cloverdale Road, to the east by North Five Mile Road, and to the south by the Jones-Stiburek, Orchid Point, De Meyer Estates No. 7, Hickories No. 1, 9 and 12, Hickories East and EMS Avenue Subdivisions. The following buildings and the grounds adjacent to such buildings located in Boise, Idaho shall be the Chinden Office Complex under these rules: ( )
- a.** 11301 West Chinden Boulevard, identified as Building 1 of the Chinden Office Complex. ( )
  - b.** 11311 West Chinden Boulevard, identified as Building 3 of the Chinden Office Complex. ( )
  - c.** 11321 West Chinden Boulevard, identified as Building 2 of the Chinden Office Complex. ( )
  - d.** 11331 West Chinden Boulevard, identified as Building 8 of the Chinden Office Complex. ( )
  - e.** 11341 West Chinden Boulevard, identified as Building 4 of the Chinden Office Complex. ( )
  - f.** 11351 West Chinden Boulevard, identified as Building 6 of the Chinden Office Complex. ( )
  - g.** 11361 West Chinden Boulevard, identified as Building 7 of the Chinden Office Complex. ( )
  - h.** 11371 West Chinden Boulevard, identified as Building 5 of the Chinden Office Complex. ( )
- 03. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. ( )
- 04. Common Space.** The portion of the Chinden Office Complex that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tenant Space and restrooms not accessed through Tenant Space. Common Space does not include Tenant Space or any area marked “private,” “no admission,” “staff



- only” or similarly designated as not open to the public. ( )
- 05. Department.** The Department of Administration. ( )
- 06. Director.** The Director of the Department of Administration or his designee. ( )
- 07. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. ( )
- 08. Public Use.** Use that is not: ( )
- a.** A State Event or Exhibit; ( )
- b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; ( )
- c.** State Maintenance and Improvements; or ( )
- d.** Use by a Tenant. ( )
- 09. Recreational Facilities.** Facilities designated by the Director for Recreational Use. ( )
- 10. Recreational Use.** Use for leisure or athletic purposes such as picnicking and sports practices or informal sports games. ( )
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. ( )
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ( )
- 13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ( )
- 14. State Maintenance and Improvements.** Maintenance or improvement of the Chinden Office Complex by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, turf installation and repair, fertilizing and planting, and structural maintenance such as pressure washing, painting, and window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. ( )
- 15. Tenant.** A state of Idaho officer, official, agency, board or commission or a public agency or a private individual or entity with a license or lease to use the Chinden Office Complex. ( )
- 16. Tenant Space.** The portion of the exterior of the Chinden Office Complex licensed or leased to a private individual or entity and the portion of the interior of the Chinden Office Complex occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. ( )
- 011. – 199. (RESERVED)**
- 200. USE OF THE CHINDEN OFFICE COMPLEX.**
- 01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the Chinden Office Complex is available for Public Use. ( )



**02. Prohibited Uses.** The following uses are prohibited at the Chinden Office Complex: ( )

**a. Commercial Activity.** The Chinden Office Complex shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the Chinden Office Complex. The following are not commercial activity prohibited by this subsection: ( )

**i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency.** ( )

**ii. Concessions authorized by law.** ( )

**iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official.** ( )

**iv. The conduct of business by a Tenant.** ( )

**b. Camping.** ( )

**c. Private Events and Exhibits, except use of the Recreational Facilities as authorized by these rules.** ( )

**d. Use by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings.** ( )

**e. Use by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays.** ( )

**03. Public Access to Interior.** Public access to the interior of the buildings at the Chinden Office Complex and to exterior Tenant Space at the Chinden Office Complex is limited to the conduct of business with the Tenant. ( )

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the Chinden Office Complex. ( )

## **201. HOURS OF USE.**

**01. Hours for Use by the Public.** The hours for public access to the exterior of the Chinden Office Complex are from sunrise to sunset. The hours for public access to interior Common Space shall be as posted on the public entrance to each building at the Chinden Office Complex. ( )

**02. Public Parking Hours.** Unless approved by the Director, the public shall not park motorized vehicles overnight at the Chinden Office Complex. ( )

## **202. USE OF RECREATIONAL FACILITIES.**

The Director may authorize reservation of Recreational Facilities under this subsection by a Tenant and the exclusion of members of the public from use of Recreational Facilities during reserved periods. Unless reserved by a Tenant, Recreational Facilities are available for Recreational Use by the public on a first-come, first-used basis from sunrise to sunset daily. ( )

## **203. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the Chinden Office Complex. ( )

## **204. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Public Use of the

Chinden Office Complex or State Events and Exhibits. Participants in and observers of any Public Use or State Events and Exhibits shall observe perimeters set pursuant to this section. ( )

**205. AREA CLOSURES.**

The Director may direct that any portion of the Chinden Office Complex be closed for Public Use upon a finding that the closed portion of the Chinden Office Complex has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the Chinden Office Complex closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the Chinden Office Complex. Circumstances presenting an imminent danger of damage to the Chinden Office Complex include, but are not limited to, the saturation of soil, turf or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. ( )

**206. – 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the Chinden Office Complex set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the Chinden Office Complex. The lease or license of Tenant Space may vary these rules for use by the Tenant, its employees, and its invited guests. ( )

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Public Use of the Chinden Office Complex shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the Chinden Office Complex include, but are not limited to, the conduct of business by private Tenants leasing or licensing a portion of the Chinden Office Complex, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. ( )

**02. Interference with Access.** Public Use of the Chinden Office Complex shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Chinden Office Complex. ( )

**302. MAINTENANCE AND IMPROVEMENTS.**

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. ( )

**303. MOTORIZED VEHICLES.**

Motorized vehicles parked outside of designated parking areas may be towed without notice at the vehicle owner's expense. Public parking at the Chinden Office Complex is limited to the period the operator or passengers are using the Chinden Office Complex. Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. ( )

**304. SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Skates, skateboards, and scooters may not be used at the Chinden Office Complex. Users of all other non-motorized transportation must remain on roadways or designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the Chinden Office Complex, users must store non-motorized transportation in a designated storage area on the exterior of the Chinden Office Complex. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. ( )

**305. ANIMALS.**

The following shall apply to animals at the Chinden Office Complex: ( )

**01. Wildlife.** Unless authorized by the Director no person shall: ( )

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the Chinden Office Complex. ( )

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the Chinden Office Complex. ( )

**02. Domestic Animals.** ( )

**a.** Domestic animals are not allowed at the Chinden Office Complex unless leashed and under the control of the person bringing the animal to the Chinden Office Complex. ( )

**b.** The person bringing the animal to the Chinden Office Complex shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. ( )

**c.** Persons bringing domestic animals to the Chinden Office Complex shall not permit the animal to swim or wade in irrigation ponds or canals at the Chinden Office Complex. ( )

**306. LANDSCAPING.** Unless authorized by the Director, no person shall: ( )

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the Chinden Office Complex. ( )

**02. Grass.** Dig in or otherwise damage grass areas at the Chinden Office Complex. ( )

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the Chinden Office Complex. ( )

**04. Landscaping Materials.** Move or alter landscaping materials at the Chinden Office Complex including, but not limited to, rock, edging materials, and bark or mulch. ( )

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the Chinden Office Complex. ( )

**307. FOOD AND BEVERAGES.** Consumption of food and beverages at the Chinden Office Complex is subject to the following: ( )

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Chinden Office Complex. ( )

**02. Alcohol.** Alcohol may not be consumed or distributed in the Common Space. ( )

**308. SMOKING.** All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the Chinden Office Complex. ( )

**309. FIRES, CANDLES, AND FLAMES.** Except in designated barbecue facilities, no fires, candles, or other sources of open flame are permitted at the Chinden Office Complex. ( )

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. ( )

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. ( )

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. ( )

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Chinden Office Complex, or to restrict the flow of individuals or motor vehicles using the facility, or to restrict emergency egress or ingress. ( )

**05. Attaching, Affixing, Leaning, or Propping Materials.** Materials, including posters, placards, banners, signs, displays, including any printed materials, ropes, and chains shall not be affixed on any exterior surface of the Chinden Office Complex not designed for that purpose or on any permanent commemorative installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the Chinden Office Complex or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. ( )

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the Chinden Office Complex or any systems or utilities of the Chinden Office Complex including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. ( )

**07. Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the Chinden Office Complex that such material is not discarded outside of designated trash receptacles. Literature and printed materials shall not be placed on parked vehicles at the Chinden Office Complex. ( )

**08. Surface Markings.** Users shall not use any material to mark on any surface of the Chinden Office Complex including chalk, paint, pens, ink, or dye. ( )

**09. Removal of Items.** All items brought to the Chinden Office Complex by the public shall be removed prior to the expiration of each day's hours of use by the public. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the Chinden Office Complex. ( )

**311. ITEMS SUBJECT TO SEARCH.**  
To enhance security and public safety, security personnel or law enforcement may inspect: ( )

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. ( )

**02. Items.** Items brought to the Chinden Office Complex, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Chinden Office Complex. ( )

**312. PROHIBITED ITEMS.**  
The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the Chinden Office Complex: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security personnel or law enforcement may direct that any person at the Chinden Office Complex immediately remove from the Chinden Office Complex any club, bat, or other item that can be used to injure, damage, or harm persons or property. ( )

**313. (RESERVED)**

**314. UTILITY SERVICE.**

The public may not use the utility services of the Chinden Office Complex other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, and heating services. The Director may terminate the use of utilities if such use interferes with the utility services of the Chinden Office Complex or the equipment or apparatus using utility service fails to comply with applicable rules or codes. ( )

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the Chinden Office Complex and delay or postpone any activity until the emergency or threat is abated. ( )

**316. COMPLIANCE WITH LAW.**

All use of the Chinden Office Complex shall comply with applicable law including, but not limited to, fire and safety codes. ( )

**317. HEALTH, SAFETY, AND MAINTENANCE OF CHINDEN OFFICE COMPLEX.**

**01. Clean Condition After Use.** Users shall leave the Chinden Office Complex in reasonably clean condition after use, including depositing all trash in designated receptacles. ( )

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the use. ( )

**03. Public Health.** No person shall excrete human waste at the Chinden Office Complex except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. ( )

**04. Fireworks.** No person shall possess or use fireworks at the Chinden Office Complex. ( )

**05. Use of Waterways.** No person shall swim, fish, or wade in waterways at the Chinden Office Complex. ( )

**318. -- 399. (RESERVED)**

**400. LIABILITY.**

**01. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. ( )

**02. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the Chinden Office Complex. ( )

**401. – 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.02.46 – RULES GOVERNING TEMPORARY MOTOR VEHICLE REGISTRATION PERMIT

DOCKET NO. 39-0246-1801

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 16, 2018.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code, and Section 49-523(2-4), 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 19, 2018.

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:

IDAPA 39.02.46 conflicts with current business needs and practices of allowing the issuance of 30-day temporary registration permits by dealers for sales of commercial, farm and non-commercial vehicles over 8,000 lbs. This change clarifies current practice and removes outdated business rules. It aligns the rule with the needs for dealers to provide retail purchasers, needing to move vehicles 8,000 pounds and over back to their home states for titling and registration, with a noticeable permit to display on their vehicle or trailer.

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

This rule change ensures that current Division of Motor Vehicle business practices, regarding the issuance of temporary registrations, will not change as that could potentially have a negative impact on the motor vehicle dealer industry.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Volume 18-7, pages 194-195](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, please contact Brendan Floyd, DMV Policy Program Specialist, at (208) 334-8474.

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 26, 2018.

Dated this 3rd day of August, 2018.

Ramon S. Hobdey-Sanchez, Govt. Affairs Program Spec.  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)  
Phone: (208) 334-8810

Idaho Transportation Department  
3311 W. State Street - P.O. Box 7129  
Boise, ID 83707-1129

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 39-0246-1801  
(Only Those Sections With Amendments Are Shown.)

101. ISSUANCE BY ~~MOTOR~~ IDAHO VEHICLE DEALERS.

01. Dealer Issuance to Out-of-State Retail Purchasers. ~~Motor Idaho~~ vehicle dealers may issue a thirty day (30-day) temporary registration permits, e.g., out-of-state purchasers who need to transport the motor vehicle back to their home state to an out-of-state retail purchaser who is transferring their newly-purchased vehicle to their state of residence. ~~(12-26-90)~~(8-16-18)T

02. Dealer Issuance to Commercial, Farm and Non-Commercial Vehicles and Trailers. Commercial, farm or non-commercial vehicles, trailers, or semi-trailers purchased from an Idaho dealership are eligible for a dealer-issued thirty day (30-day) temporary registration permit for unladen movements; one hundred twenty hour (120-hour) temporary permits in lieu of registration are required for laden movements. (8-16-18)T

102. -- 199. (RESERVED)

200. INELIGIBLE VEHICLES - COUNTY ASSESSOR OR DEPARTMENT ISSUANCE.

01. Commercial, Farm and Non-Commercial Vehicles. Unregistered, commercial, farm or non-commercial motor vehicles exceeding eight thousand (8,000) pounds gross weight are required to purchase trip operate under a one hundred twenty hour (120-hour) temporary permits for laden ~~movements~~ or single trip permits ~~for~~ unladen movements. ~~(12-26-90)~~(8-16-18)T

02. Commercial, Farm and Non-Commercial Trailers. Unregistered commercial, farm, or non-commercial trailers or semi-trailers are required to purchase trip operate under a one hundred twenty hour (120-hour) temporary permits for laden ~~movements~~ or single trip permits ~~for~~ unladen movements. ~~(12-26-90)~~(8-16-18)T

~~03. Special Make Equipment. Drilling rigs, construction, drilling and wrecker cranes, loaders, log jammers, and similar vehicles operated in an overweight and/or oversize condition. ~~(12-26-90)~~~~

201. -- 299. (RESERVED)

300. EXEMPT VEHICLES.

01. Recreational Vehicles. Snowmobiles, off-road motorcycles and all-terrain vehicles, dune buggies or any other vehicle that is not equipped for operation on the public roadways. (12-26-90)

02. Trailers. Utility trailers and recreation trailers, where a title is not required for registration. (12-26-90)

03. Special Make Equipment. Drilling rigs; construction, drilling and wrecker cranes; loaders; log jammers; and similar vehicles operated in an overweight and/or oversize condition. (8-16-18)T

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.61 – RULES GOVERNING LICENSE PLATES FOR GOVERNMENTAL**  
**AGENCIES AND TAXING DISTRICTS**

**DOCKET NO. 39-0261-1801**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code, and Section 49-443B, 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:

With the passage of [Senate Bill 1282 \(2018\)](#), the sections of this rule being deleted have now been codified. This legislation did change the exempt license plate designator for Sheriff's Office license plates from "SD" to "SO". The law change lists the designators for all "Exempt Agency" plates making paragraph 100 of this rule unnecessary and duplicative.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 196-197](#).

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Chris Fisher, DMV Policy Program Specialist, at (208) 334-8167.

Dated this 3rd day of August, 2018.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)



## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.41 – RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

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

The Idaho Transportation Department (ITD), on behalf of the State of Idaho, had received permission from the Federal Highway Administration (FHWA) to experiment with a traffic control device, called IdaShield, at passive highway-railroad grade crossings. The experiment has ended and in accordance with the conditions of the permission to experiment, no new or replacement IdaShields are permitted to be installed after December 31, 2017. When Idaho received permission to experiment with the IdaShield, the device was included in IDAPA 39.03.41, “Rules Governing Traffic Control Devices.” The rule now needs to be revised to remove references to the IdaShield.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 198-206](#).

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, please contact Ryan Lancaster, Traffic Engineer, at (208) 334-8528.

Dated this 3rd day of August, 2018.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.48 – RULES GOVERNING ROUTES EXEMPT FROM LOCAL PLANS AND ORDINANCES

DOCKET NO. 39-0348-1801

#### NOTICE OF RULEMAKING – PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 strikes the proper noun referencing an old computer system that is no longer in use by the Idaho Transportation Department. The corresponding records referenced in this rule are now maintained and housed in the Idaho Transportation Department's other systems and are still available to the public upon request.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with this rulemaking.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is simple in nature and the rule change only removes the reference to the formal name of an outdated computer system. This change has no substantive impact on current business practices.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, please contact Jezmyne Arway, ETS Program Manager, at (208) 334-8013.

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 26, 2018.

Dated this 3rd day of August, 2018.

Ramon S. Hobdey-Sanchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0348-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**300. EXISTING STATE HIGHWAY SYSTEM.**

The state highway system is not a permanent configuration or mileage because of additions or deletions over time. The official system description is kept current in the Department's records (~~Milepost and Coded Segment System~~) and is available to the public upon request. (~~11-30-89~~)(    )

**IDAPA 40 – COMMISSION ON THE ARTS**  
**40.01.01 – RULES OF THE IDAHO COMMISSION ON THE ARTS**  
**DOCKET NO. 40-0101-1801**  
**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 67-5605, 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 19, 2018.

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

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

Proposed rule changes are necessary to add folk and traditional arts to the list of artistic disciplines for which Fellowships are awarded, thereby acknowledging the artistic excellence of individuals who maintain Idaho's artistic traditions, with equal stature alongside Idaho artists who create work in more recognized arts disciplines. Further changes revise a matching requirement that currently restricts college and university grant recipients to the use of non-public funds when matching grants from the Commission—a restriction not placed on any other public or not-for-profit grant recipient. The remaining rule changes are needed to update terminology and process explanations. The changes are housekeeping items that do not affect the availability of grants—they update, clarify, and simplify grant application terminology and procedures.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because interested parties have been included in informal negotiations. Although the rule changes concerning fellowships were not formally negotiated, the proposed rules arose from the Commission's strategic planning process that included 18 regional planning meetings across Idaho, during which interested parties were consulted and support this proposed rulemaking. The rule changes concerning grants arose from the feedback of affected Idaho colleges and universities, which were consulted and gave unanimous support for the proposed rules. The remaining rule changes are simply housekeeping in nature.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael Faison, Executive Director, at (208) 334-2119.

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 26, 2018.

DATED this 24th day of July, 2018.

Michael Faison, Executive Director  
Idaho Commission on the Arts  
Phone: (208) 334-2119  
Fax: (208) 334-2488

The Warden's Residence  
2410 Old Penitentiary Rd. N.  
P. O. Box 83720  
Boise, ID 83720-0008

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 40-0101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**100. DEFINITIONS.**

**01. Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (4-6-05)

**02. Apprentice.** A student with knowledge of a traditional art who is studying or seeking to study the traditional art under a master and who affirms a commitment to continue practicing the traditional art after the apprenticeship has ended. (4-6-05)

**03. Artist.** ~~An individual who practices the arts as the individual's profession.~~ An individual who practices the arts as a profession and derives a significant portion of the individual's livelihood from performing the arts or engages in frequent or regular exhibitions, performances, publications, or similar public art displays. (4-6-05)( )

**04. Art.** The product of an artist's work. Art includes, but is not limited to, live performances, manuscripts and writings, folk and traditional arts, ~~videotapes, audiotapes and compact disks~~ recordings of audio or moving images, photographs, prints, paintings, sculptures, ceramics, drawings, and installations. (4-6-05)( )

**05. Arts.** The conscious production or arrangement of sounds, colors, forms, or other elements in a manner that affects the senses. The arts shall include, but are not limited to, the disciplines of literature, performing arts, and visual arts. (4-6-05)

**06. Capital Expenditures.** Costs or expenses for the acquisition of or the modification or improvements to real property or fixtures to real property. (4-6-05)

**07. Commission.** The Idaho Commission on the Arts. (4-6-05)

**08. Matching Contributions.** (4-6-05)

**a.** In-kind Contributions. Services and real or personal property, or the use thereof, donated by organizations or individuals to the applicant specifically to offset expenses associated with the application. (4-6-05)( )

**b.** Cash Contributions. Funds raised by the applicant specifically for the subject of the application. (4-6-05)

**09. Discipline.** A grouping of types of arts. The Commission uses the following discipline categories: (4-6-05)

**a.** Literature. Arts disciplines resulting in written art. Literature artists include, but are not limited to, fiction, creative nonfiction, and poetry. (4-6-05)

**b.** Performing Arts. Arts disciplines resulting in live or recorded performances. ~~Artists engaged in the p~~Performing arts include, but are not limited to, dancers, musicians, theatre, and filmmaking, and their constituent disciplines such as choreographers, ~~actors, playwrights, set and costume designers,~~ composers, and ~~performers~~ screenwriting. (4-6-05)( )

**c.** Visual Arts. Arts disciplines resulting in works that are viewed by the public. Visual artists include, but are not limited to, painters, ing, ~~crafters,~~ photographers, ing, printmakers, ing, sculptors, ure, video artists, architects, ure,

ceramist~~es~~, ~~metal smiths, paper~~, glass ~~and art~~, fiber artists, ~~mixed media artists, glass artists~~, designers, book artists, installation artists, ~~artists working in~~ and art using new ~~technologies, outsider or visionary artists, and folk and traditional arts involving craft~~ media. (4-6-05)(    )

d. Folk and Traditional Arts. Arts disciplines practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Folk and traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games, and foodways such as food preparation, preservation, and presentation. (    )

10. **Fiscal Year.** The period between July 1 of one (1) calendar year and June 30 of the following calendar year. (4-6-05)

11. **Master.** An individual who has learned traditional art skills informally and has received peer recognition for achieving the highest level of artistry according to community standards. (4-6-05)

12. **Program.** The categories for the award or grant of funds or recognition by the Commission described in Sections 300 through 503 of these rules. (5-8-09)

13. **Program Guidelines.** The application and review criteria for a program published by the Commission for each grant or award period. (5-8-09)

14. **Recipient.** An applicant receiving an award or grant under a Commission program. (4-6-05)

~~15. **Traditional Art.** The arts practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games and foodways such as food preparation, preservation and presentation.~~ (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. APPLICANTS.**

01. **Categories of Applicants.** Applicants must fall within one (1) of the following categories: (4-6-05)

a. An individual artist or arts administrator meeting the criteria set forth in Subsection 202.02, of this rule, who is submitting an application based solely on the applicant's work. (4-6-05)

b. An organization meeting the criteria set forth in Subsection 202.03 of this rule. (4-6-05)

c. A collaboration of individual artists ~~where the majority of the artistic effort is that of the primary~~ represented by an individual. The application must identify the primary individual as the applicant and the applicant must sign the application, meet the criteria set forth in Subsection 202.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. (4-6-05)(    )

02. **Requirements for Individuals.** If the applicant is an individual, the applicant must: (4-6-05)

a. Be a citizen of the United States or a permanent legal resident or a refugee. (4-6-05)

b. Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

c. Be over the age of eighteen (18) before the date of the application, unless the applicant is an apprentice. (5-8-09)

**03. Requirements for Organizations.** If the applicant is an organization, the applicant must: (4-6-05)

a. Have been operating in the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

b. Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. (4-6-05)

i. Unincorporated organizations may submit an application through another tax-exempt organization as its designated fiscal agent. Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. (3-29-10)

ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. (4-6-05)

c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. (4-6-05)

**04. Application and Funding Limits.** An applicant shall submit no more than one (1) application per program each fiscal year. Applicants under the Quick Fund~~s~~ programs may submit one (1) Quick Fund~~s~~ application per application deadline and shall receive funds under no more than one (1) Quick Fund~~s~~ grant each fiscal year. (4-6-05)(      )

**203. APPLICATIONS.**

**01. Application Forms.** Applications shall include a completed application form in the format provided by the Commission for the applicable program, ~~produced on eight and one half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ Application forms may include questions requiring narrative answers and a proposed budget. Application forms shall not exceed the page limit for the program specified on the application form. The Commission may decline to consider pages in excess of the page limit. (4-6-05)(      )

**02. Submission.** Applications shall be ~~hand~~ delivered to the Commission or sent to the Commission by the United States mail or other courier or delivery service, or submitted via the Commission's online grant application system. ~~The Commission will not accept applications or supporting materials submitted by facsimile transmission or electronically.~~ The Commission will accept applications for a program for a period beginning one (1) month prior to the next application deadline for the program and concluding on the application deadline. (4-6-05)(      )

**03. Ownership and Return of Applications.** Upon submission, applications shall become the property of the Commission. The return of work samples shall be at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. (5-8-09)

**04. Work Samples and Supporting Materials.** Each application shall include the work samples and supporting materials specified in these rules for the applicable program. (4-6-05)

a. Work samples shall be of work that is no more than five (5) years old (Traditional Arts apprenticeship and Folk and Traditional Arts fellowship applicants are exempt). (5-8-09)(      )

b. Applicants shall not send original work samples or master copies of work samples. (4-6-05)

c. Requirements for work samples are defined in the program guidelines. (5-8-09)

**05. Resumes.** Resumes shall ~~be no longer than two (2) pages and~~ describe the applicant's professional development as an artist or arts administrator. ~~Resumes must be produced on eight and one half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ Resumes may contain academic training, publications, honors and awards, locations of exhibitions or performances, or a short personal biography concerning training in a traditional art. (4-6-05)( )

**06. Artist Statements.** ~~Artist statements shall be no longer than one (1) page and must be produced on eight and one half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ An artist statement should discuss the purpose of the work and provide the reader with a personal perspective of the artist concerning the work. (4-6-05)( )

**07. ~~Publication, Performance, and Production Information.~~** ~~Publication, performance, or production information shall be restricted to the applicant's resume.~~ (4-6-05)

**08. Matching Contributions.** At the request of the Commission, the applicant shall provide documentation of matching contributions for Commission review. Contributions of services must be uncompensated and, if the applicant is an organization, shall not include the services of the applicant's board members. In-kind contributions must be valued at the reasonable rate for the services or property provided to the applicant in the applicant's community. If cash contributions are raised through fund-raising activities or donations from individuals, private foundations, or private companies, the applicant must identify the source of the cash contribution and maintain documentation substantiating the source of the cash contribution. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. FINAL REPORTS.**

Recipients must submit a final report to the Commission no later than thirty (30) days following completion of the project or the last day of the final fiscal year of the grant term, unless the recipient requests an extension in writing and the extension is approved by the Commission. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. QUICK FUNDS.**

Quick Fund§ provides grants to support new or exemplary arts projects, activities, or professional development for individuals working in all disciplines and for the professional growth of arts administrators. Quick Fund§ grants are available to individuals for professional development and Quick Projects. (4-6-05)( )

**01. Quick Fund§ -- Professional Development.** Quick Fund§ for professional development provides reimbursement to artists for gatherings where they will teach or learn from their peers and to arts administrators for attending a conference, seminar, workshop, or other form of career advancement training. The Commission will not accept Quick Fund§ for professional development applications: (4-6-05)( )

**a.** For the same event or opportunity from more than one (1) member or staff of a single organization with a budget over fifty thousand dollars (\$50,000). (4-6-05)

**b.** For the same event or opportunity from more than two (2) members or staff of a single organization with a budget under fifty thousand dollars (\$50,000). (4-6-05)

**c.** For attendance at the same event or opportunity that was the subject of award to the applicant in the prior fiscal year. (5-8-09)

**d.** From an applicant who has received a Quick Fund§ grant in the same fiscal year. (4-6-05)( )

**02. Quick Fund§ -- Quick Projects.** Quick Projects provides support for activities that allow an



applicant to develop significant and specific projects or new works that will be shared with the public.

(4-6-05)( )

**03. Quick Fund\$§ -- Evaluation Criteria.** Quick Fund\$§ grant applications for individuals are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project or activity, and the opportunity for artistic growth from the activity or project. The Commission may give preference to applicants who have not previously received funds through a Commission program.

(5-8-09)( )

**04. Quick Fund\$§ -- Matching Contributions.** Applicants for a Quick Projects grants must provide cash contributions equaling one-third (1/3) of the requested funds. Applicants for professional development must provide cash contributions equaling the requested funds.

(4-6-05)( )

**05. Quick Fund\$§ -- Application Requirements.** Applicants for Quick Fund\$§ for individuals shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. Artist statements are not required for writers or arts administrators.

(4-6-05)( )

**06. Quick Fund\$§ -- Application Deadlines.** Quick Fund\$§ applications must be postmarked or *hand* delivered to the Commission on or before the second Monday of March, June, September, or December.

(3-29-10)( )

### 302. FELLOWSHIPS.

Fellowships recognize the outstanding work and artistic excellence of Idaho artists. Fellowships are intended to reward dedication to a discipline, promote public awareness, and to advance an artist's career. (4-6-05)

**01. Fellowships -- Evaluation Criteria.** Fellowship applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the applicant's artistic excellence, and the professional history of the applicant. (5-8-09)

**02. Fellowships -- Limitations on Award.** ~~The Commission will not accept applications from recipients receiving a fellowship in the prior fiscal year.~~ Fellowship recipients must skip one (1) round in their discipline before reapplying. The Commission will not award more than three (3) fellowships to an artist. The Commission will not award a literature fellowship to applicants who have previously received a Writer in Residence award from the Commission. (4-6-05)( )

**03. Fellowships -- Coordination ~~with~~ the Writer in Residence Program.** Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. (4-6-05)( )

**04. Fellowships -- Discipline Rotation.** Fellowship awards are awarded to artists based upon discipline in a ~~three (3)~~ two (2) year rotation. Beginning with fiscal year 20~~05~~21, the rotation cycle is as follows: (4-6-05)( )

a. Year one (1) -- ~~literature;~~ craft, design and visual arts; folk and traditional arts. (4-6-05)( )

b. Year two (2) -- ~~craft, design and visual arts; and~~ literature; media and performing arts. (5-8-09)( )

~~c. Year three (3) -- media and performing arts.~~ (5-8-09)

**05. Fellowships -- Application Requirements.** The Commission reviews applications for fellowships anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for fellowships shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. (4-6-05)

**06. Fellowships -- Application Deadline.** Fellowship applications must be postmarked or *hand*

delivered to the Commission on or before the last business day of January.

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

**303. WRITER IN RESIDENCE.**

The Writer in Residence appointment is the highest recognition of achievements in literature and the largest financial award accorded an Idaho writer by the state of Idaho. (4-6-05)

**01. Writer in Residence -- Recipient Obligations.** Recipients of a Writer in Residence appointment shall give ~~twelve (12)~~ eight (8) public readings, craft talks, or workshops throughout the state of Idaho during the appointment term. ~~Eight (8)~~ six (6) public readings, craft talks, or workshops shall be in communities with populations of no more than fifty thousand (50,000) residents. The public readings, craft talks, or workshops shall be conducted at regular intervals, approved by the Commission, during the term of the appointment. In its discretion, the Commission may require the recipient to give up to ~~three (3)~~ two (2) additional readings at special public events.

~~(5-8-09)~~( )

**02. Writer in Residence -- Limitations on Award.** The Commission will not recommend applicants with two (2) prior Writer in Residence appointments for subsequent appointment to Writer in Residence. The Commission will not award a Literature Fellowship to applicants who have previously received a Writer in Residence appointment. (4-6-05)

**03. Writer in Residence -- Evaluation Criteria.** Writer in Residence applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the literary excellence of the applicant, the applicant's past work and contributions to literature and an oral reading by the applicant. (5-8-09)

**04. Writer in Residence -- Coordination with Fellowships.** Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. (4-6-05)

**05. Writer in Residence -- Award and Term.** The Commission submits recommended appointments under the Writer in Residence program to the Governor. Appointments to Writer in Residence are made in the sole discretion of the Governor. The term of a Writer in Residence appointment is ~~three (3)~~ two (2) years beginning with the date of appointment specified in the announcement of award by the Commission. ~~(4-6-05)~~( )

**06. Writer in Residence -- Application Requirements.** The Commission reviews applications for the Writer in Residence program anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for the Writer in Residence program shall submit an application form, a resume, manuscripts, and an audio ~~tape or compact disk~~ recording of the applicant's oral reading. ~~(4-6-05)~~( )

**07. Writer in Residence -- Application Deadline.** Writer in Residence applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. ~~(4-6-05)~~( )

**304. TRADITIONAL ARTS APPRENTICESHIPS.**

The Traditional Arts Apprenticeships program supports a learning partnership between a master and an apprentice. (4-6-05)

**01. Traditional Arts Apprenticeships - Funding Limitations and Requirements. (4-6-05)**

**a.** The traditional art practiced by the master ~~must~~ should represent a shared cultural tradition of the apprentice. ~~(4-6-05)~~( )

**b.** Applicants younger than eighteen (18) years of age are allowed to apply as apprentices when their artistic traditions are typically passed down to persons under eighteen (18). (5-8-09)

**c.** A master may train more than one (1) apprentice where the traditional art is traditionally practiced by a group or taught or passed down in a group. (4-6-05)

d. A master may reside outside of Idaho if the ethnic or cultural group represented by the traditional art extends beyond Idaho. (4-6-05)

**02. Traditional Arts Apprenticeships -- Evaluation Criteria.** Traditional arts apprenticeship applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the community recognition accorded to the master, the benefit to the applicant and the public from the apprenticeship, and the feasibility of the applicant's proposal. The Commission may give preference to traditional art forms with few practicing artists. (5-8-09)

**03. Traditional Arts Apprenticeships -- Length of Apprenticeships.** The length of an apprenticeship under the traditional arts apprenticeships program shall not exceed ten (10) months. The Commission, in its sole discretion, may grant an extension of the length of an apprenticeship upon receipt of a written request submitted prior to the expiration of the length of the originally awarded apprenticeship. (4-6-05)

**04. Traditional Arts Apprenticeships -- Work Plan.** The master and the applicant shall cooperatively develop a work plan for the apprenticeship. The work plan shall include the meeting schedule, meeting locations, and the materials needed for the apprenticeship. The work plan should consider the availability of seasonal materials and the preparation of materials prior to use. (4-6-05)

**05. Traditional Arts Apprenticeships -- Instructional Fees.** Traditional arts apprenticeships awards shall include payment of an hourly instructional fee at a rate determined by the Commission to the master for the number of instructional hours approved by the Commission. (4-6-05)

**06. Traditional Arts Apprenticeships -- Application Requirements.** Applications for traditional arts apprenticeships award shall submit: an application form; a work plan; two (2) to three (3) letters of support from community members ~~that~~, which describe the applicant's artistic contributions to the community and how the applicant's traditional art relates to the master's and the applicant's shared artistic heritage; and work samples appropriate to the applicant and the master. Applicants are also encouraged to submit the master's resume. (5-8-09)( )

**07. Traditional Arts Apprenticeships -- Application Deadlines.** Traditional arts apprenticeship applications must be postmarked or hand delivered to the Commission on or before the last business day of January. (3-29-10)( )

**305. -- 399. (RESERVED)**

**400. PROGRAMS SUPPORTING ORGANIZATIONS.**

The Commission administers the programs for organizations set forth in Sections 401 through 405 of these rules. (4-6-05)

**01. Organizations -- Significant Changes.** Applicants that experience significant changes in the applicant's staff, programming, or finances following submission of an application and prior to a program award must notify the Commission of the changes in writing. (4-6-05)

**02. Organizations -- General Evaluation Criteria.** The Commission reviews application materials for support of public programs in the arts provided by organizations using the following general criteria. These general criteria are encompassed within the point totals and specific evaluation criteria of each program. Applicants should include substantiation for each of the criteria in the application. (5-8-09)

a. Community support through fund-raising or other community financial support. (4-6-05)

b. Accuracy of the budget submitted with the application materials. (5-8-09)

c. Involvement of Idaho artists and arts organizations. Use of out-of-state resources is permitted if the applicant demonstrates that the resources are not available with Idaho or if their use supplements the resources available locally. (4-6-05)

d. The applicant's commitment to make the arts accessible to all members of the public. Accessibility includes the ability of persons with special needs, ethnic groups, occupational groups, senior citizens, and young audiences to access the arts. Accessibility also includes consideration of the location and ease of use of facilities, content of the activities, and the planning process. Applicants must include documentation showing that the applicant invited pertinent cultural and community groups to participate in the applicant's planning process. (4-6-05)

e. The applicant's commitment to fairly compensating artists. (4-6-05)

f. The applicant's use of admission fees, where applicable, to provide financial support for the subject of the application. The Commission encourages the use of admission fees. (4-6-05)

**03. Acquisition or Commission of Works.** Applicants seeking funding for the acquisition of works of art or the commission of new works of art must meet the following criteria. The applicant must: (4-6-05)

a. Maintain a permanent exhibition facility that is open to the public. (4-6-05)

b. Demonstrate excellent management and security practices. (4-6-05)

c. Maintain an ongoing exhibition program or a permanent collection. (4-6-05)

**04. College and University Applicants.** The Commission will accept applications from college and university applicants if the applicant presents and markets its arts activities to the general public and the subject of the application is supplementary to the applicant's regular curriculum. College and university applicants are not eligible for Public Programs in the Arts grants or for Cultural Facilities and Public Art grants. ~~College and university applicants must provide matching contributions from non-public funds.~~ The Commission will not classify organizations affiliated with a college or university, operating as a separate tax-exempt organization and applying as the separate tax-exempt organization, as a college or university applicant. ~~(5-8-09)~~( )

**401. QUICK FUND\$S FOR ORGANIZATIONS.**

Quick Fund\$S grants provide timely assistance to arts organizations for professional advice or training, arts projects, and arts programs. ~~(3-29-10)~~( )

**01. Quick Fund\$S -- Quick Projects.** Quick Projects provides funds for arts projects and programs of organizations that do not receive support through the Public Programs in the Arts or Entry Track Grant program. ~~(3-29-10)~~( )

**02. Quick Fund\$S -- ~~Training and Advice~~ Technical Assistance.** ~~Training and advice~~ Quick Funds for technical assistance awards provide funds for management consultancies and artistic consultancies. Management consultancies address aspects of the organization's operations such as fund-raising, technology, marketing, public relations, organizational development, audience development, long-range planning, program development, accessibility planning, and board or financial management. Artistic consultancies address aspects of the organization's arts projects such as voice instruction, lighting design, exhibition design, or conservation studies. ~~(4-6-05)~~( )

**03. Quick Fund\$S -- Evaluation Criteria.** Quick Fund\$S grant applications from organizations are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project or activity. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. The Commission may give preference to applicants whose annual operating budget is less than fifty thousand dollars (\$50,000) and to applicants who have not previously received funds from a Commission program. ~~(5-8-09)~~( )

**04. Quick Fund\$S -- Matching Contributions.** The applicant must provide matching contributions equaling the requested funds. ~~(4-6-05)~~( )

**05. Quick Fund\$S -- Application Requirements.** Applicants for Quick Fund\$S for organizations shall submit an application form; the resumes of key consultants, artists, or personnel; for applicants other than schools, a

list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue Service tax determination letter, if applicable; and work samples reflecting prior projects or as applicable to the project or activity that is the subject of the application. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. (4-6-05)( )

**06. Quick Funds -- Application Deadlines.** Quick Funds applications must be postmarked or ~~hand~~ delivered to the Commission on or before the second Monday of March, June, September, or December. (5-8-09)( )

**402. CULTURAL FACILITIES AND PUBLIC ART GRANTS.**

Cultural Facilities and Public Art Grants encourage local, public, and private support for feasibility studies, renovation or construction of performance, exhibition or artist spaces, purchases of equipment and fixtures for such spaces, and public arts projects. Cultural Facilities and Public Art Grants are awarded for single-phase projects that can be completed in one (1) year and multi-phase projects where all of the individual phases of the project can be completed over a period that does not exceed five (5) years. The award of funding by the Commission does not guarantee funding for more than one (1) phase of a multi-phase project. (5-8-09)

**01. Cultural Facilities and Public Art Grants -- Funding Limitations and Requirements.** (5-8-09)

**a.** Applicants who have received Cultural Facilities and Public Art Grants for five (5) consecutive fiscal years are ineligible for Cultural Facilities and Public Art Grants for one (1) fiscal year. (5-8-09)

**b.** College and university applicants are ineligible for Cultural Facilities and Public Art Grants. (5-8-09)

**c.** The Commission will not award a Cultural Facilities and Public Art Grant for the purchase or maintenance of motorized or non-motorized vehicles. (5-8-09)

**d.** Construction and renovation using a Cultural Facilities and Public Art Grant must comply with all federal, state, and local laws including laws governing the access of persons with disabilities, facilities on the National Register of Historic Places, and building, zoning, and other codes. (5-8-09)

**e.** The Commission will not fund construction and renovation using a Cultural Facilities and Public Art Grant unless the primary purpose of the construction or renovation is for the presentation of the arts to the public. (5-8-09)

**02. Cultural Facilities and Public Art Grants -- Feasibility Studies.** Applicants for renovation or construction of facilities must submit a feasibility study. The extent of the feasibility study must match the significance of the project. The feasibility study must contain an analysis of the vision and planning for the project. (5-8-09)

**03. Cultural Facilities and Public Art Grants -- Evaluation Criteria.** Cultural Facilities and Public Art Grant applications from organizations are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the planning for the project and the applicant's management capacity. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (5-8-09)

**04. Cultural Facilities and Public Art Grants -- Matching Contributions.** The applicant must provide cash contributions equaling the requested funds. (5-8-09)

**05. Cultural Facilities and Public Art Grants -- Application Requirements.** (5-8-09)

**a.** Single-phase Projects. Applicants for single-phase Cultural Facilities and Public Art Grants shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue Service tax determination letter, if applicable; three (3) current competitive bids for the project; a feasibility study, if applicable; a timeline for

the project; blueprints and design drawings, if applicable; an historic significance report, if applicable; evidence of property or facility ownership or lease of the property or facility if the project involves construction or the installation of equipment or fixtures; and proof of adequate liability and fire insurance for the project. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants are also encouraged to submit a list of in-kind contributions to the project. (5-8-09)(      )

b. Multi-phase Projects. Applicants for multi-phase Cultural Facilities and Public Art Grants shall submit the items required of applicants for single-phase Cultural Facilities and Public Art Grants. The feasibility study shall have been completed in the prior three (3) years. In addition, applicants for multi-phase Cultural Facilities and Public Art Grants shall submit a progress report based upon the original project plan containing an explanation of any delays or changes to the plan, and the original specifications for bids with a comparative summary sheet. Applicants for public art projects are not required to submit the original specifications for bids for the project. (5-8-09)

**06. Cultural Facilities and Public Art Grants -- Application Deadline.** Cultural Facilities and Public Art Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)(      )

**403. PUBLIC PROGRAMS IN THE ARTS GRANTS.**

Public Programs in the Arts Grants are designed to support public arts programs of Idaho's established arts organizations by assisting the organizations in program planning and business stabilization. Public Programs in the Arts Grants are awarded as multi-year grants. (5-8-09)

**01. Public Programs in the Arts -- Funding Limitations and Requirements.** (5-8-09)

- a. The primary mission of the applicant must be the production, presentation, or support of the arts. (4-6-05)
- b. College and university applicants are ineligible for Public Programs in the Arts Grants. (5-8-09)
- c. Applicants must have been operating as a tax-exempt organization for thirty-six (36) months prior to the application deadline. (5-8-09)
- d. The responsibility for the applicant's operation must rest with a paid staff person. (5-8-09)
- e. Applicants must compensate artists according to the prevailing community standard for the artist's discipline. (5-8-09)
- f. ~~Applicants who have failed to reduce or have increased a budget deficit for three (3) consecutive years must demonstrate that the applicant has ended the applicant's most recent fiscal year with a balanced budget and that the applicant has made a significant effort to reduce the deficit during the applicant's current fiscal year.~~ Applicants with a budget deficit ~~must also~~ **should** provide a deficit-elimination ~~schedule plan~~ **schedule plan** approved by the applicant's governing body and acceptable to the Commission. (4-6-05)(      )

**02. Public Programs in the Arts Grants -- Evaluation Criteria.** Public Programs in the Arts Grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the community involvement and access to the proposed use of grant funds. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. ~~Applicants of similar size and resources are reviewed based upon their gross annual operating budget, staff, longevity, location in a rural or urban county, and the criteria in the program guidelines.~~ (5-8-09)(      )

**03. Public Programs in the Arts Grants -- Matching Contributions.** Applicants must provide matching contributions equal to the grant funds. (5-8-09)

**04. Public Programs in the Arts Grants -- ~~Discipline~~ **Three (3) Year** Rotation.** Multi-year Public



Programs in the Arts Grants are awarded to applicants ~~based upon the discipline primarily supported by the applicant~~ in a three (3) year rotation. ~~Beginning with 2005, the rotation cycle is as follows:~~ (5-8-09)( )

- ~~a. Year one (1) literature. (4-6-05)~~
- ~~b. Year two (2) craft, design, and visual arts; and (5-8-09)~~
- ~~c. Year three (3) media and performing arts. (5-8-09)~~

**05. Public Programs in the Arts Grants -- Application Requirements. (5-8-09)**

a. Initial Application. Applicants for Public Programs in the Arts Grants shall submit an application form. Upon receipt of the award notification and agreement, applicants shall submit an executed award agreement to accept the grant. (5-8-09)

b. Interim Applications. Recipients of multi-year Public Programs in the Arts Grants shall submit an interim application form on or before the last business day in January of the first and second years of the grant. (5-8-09)

**06. Public Programs in the Arts Grants -- Application Deadlines.** Public Programs in the Arts Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)( )

**404. ENTRY TRACK GRANTS.**

Entry Track Grants are the entry point for Idaho arts organizations that are eligible for Public Programs in the Arts funding and are new to the Idaho Commission on the Arts programs. Entry Track Grants also support the public programs in the arts delivered by university-based arts organizations. (5-8-09)

**01. Entry Track Grants -- Funding Limitations and Requirements.** Current applicants for or recipients of a Public Programs in the Arts Grant are ineligible for an Entry Track Grant. Current recipients of a Quick Fund ~~s~~ Quick Projects Grant for Organizations are ineligible for an Entry Track Grant. (5-8-09)( )

**02. Entry Track Grants -- Evaluation Criteria.** Entry Track Grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (5-8-09)

**03. Entry Track Grants -- Grant Amounts and Matching Contributions.** Recipients of Entry Track Grants must provide cash contributions equaling the grant. (5-8-09)

**04. Entry Track Grants -- Application Requirements.** Applicants for Entry Track Grants shall submit an application form; the resumes of key consultants and personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue Service tax determination letter, if applicable; work samples reflecting prior and on-going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures or letters from community partners. Applicants are encouraged to submit a list of in-kind contributions. (5-8-09)( )

**05. Entry Track Grants -- Application Deadline.** Entry Track Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)( )

**405. TUMBLEWORDS.**

TumbleWords is a cooperative effort among twelve (12) western states to bring writers into communities where residents may be underexposed to creative writing because of geographical or economic circumstances. Under the TumbleWords program, writers of fiction, nonfiction, and poetry give readings and hold writing workshops. (4-6-05)

**01. TumbleWords -- Eligibility and Funding Requirements.** Applicants for the TumbleWords program must satisfy the following: (4-6-05)

**a.** A unit of local, county, or tribal government, or an organization determined to be tax-exempt by the Internal Revenue Service must serve as the applicant by controlling the use of funding from the TumbleWords program, signing the application and accepting all legal and contractual obligations of the program. (4-6-05)

**b.** The application must demonstrate an interest within the community in increasing access to literature. Community interest shall include sufficient volunteers or staff to meet the requirements of the TumbleWords program in the community. (4-6-05)

**c.** The applicant must provide or secure a facility for readings, workshops, and other public activities that complies with all federal, state, and local laws and regulations. (4-6-05)

**02. TumbleWords -- Funding and Community Match.** TumbleWords program awards are subject to funds availability including the availability of funding from the Western States Arts Federation. The applicant must provide matching contributions equaling requested funds. (4-6-05)

**03. TumbleWords -- Application Requirements.** Applicants for the TumbleWords program shall submit an application form; the resumes of key writers or personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; and an Internal Revenue Service tax determination letter, if applicable. ~~(4-6-05)~~( )

**04. TumbleWords -- Application Deadlines.** The Commission accepts TumbleWords program applications during its regular business hours. (4-6-05)

**406. -- 499. (RESERVED)**

**500. SUPPORT FOR ARTS EDUCATION.**

The Commission administers the programs supporting arts education set forth in Sections 501 through 503 of these rules. The following programs are available to individuals: Arts in Education Directory of Teaching Artists, Quick Fund§§ for professional development for educators, and Quick Fund§§ Teacher Incentive Grants. The following programs are available to organizations: Quick Projects for education, Arts Education Project Grants. The Commission will not issue a grant to organizations under a program for individuals or issue a grant to an individual under a program for organizations. ~~(5-8-09)~~( )

**501. ARTS IN EDUCATION DIRECTORY OF TEACHING ARTISTS.**

The Arts in Education Directory of Teaching Artists is an online listing of artists who share their unique art forms in schools and communities. The Arts in Education Directory of Teaching Artists does not provide funding to recipients. Recipients may set fees, schedules, and activities in collaboration with schools. (5-8-09)

**01. Arts in Education Directory of Teaching Artists -- Evaluation Criteria.** Applicants for the Arts in Education Directory of Teaching Artists are evaluated based upon the applicant's artistic skills, communication skills, and the applicant's proposals for arts in education. (5-8-09)

**02. Arts in Education Directory of Teaching Artists -- Application Requirements.** Applicants for the Arts in Education Directory of Teaching Artists shall submit an application form, a resume, an artist statement, work samples appropriate to the applicant's discipline, three (3) letters of recommendation from persons familiar with the applicant's artistic ability and communication skills, and support materials such as letters of acceptance, brochures, articles, workshop information, and resumes of master artists under which the applicant has studied. (5-8-09)

**03. Arts in Education Directory of Teaching Artists -- Application Deadlines.** Arts Education Directory of Teaching Artists applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of June in even numbered years. ~~(5-8-09)~~( )

**502. QUICK FUNDS§§ FOR ARTS EDUCATION.**



Quick Fund§§ grants support professional development or short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. Quick Fund§§ grants are available for professional development for educators, teacher incentive grants, and Quick Projects for education. (4-6-05)( )

**01. Quick Fund§§ -- Professional Development for Educators.** Quick Fund§§ for professional development for educators provides support to teachers, educators, and artists in the Arts in Education Directory of Teaching Artists to attend conferences, seminars, workshops, or summer educational events that provide training in arts curricula, arts teaching, arts assessment, arts integration, or related topics. (5-8-09)( )

**02. Quick Fund§§ -- Teacher Incentive Grants.** Teacher incentive grants provide support to teachers for activities that enliven or improve arts learning in the classroom. (4-6-05)( )

**03. Quick Fund§§ -- Quick Projects for Education.** Quick Projects for education provides support for short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. (4-6-05)( )

**04. Quick Fund§§ -- Evaluation Criteria.** (4-6-05)( )

**a.** Professional Development for Educators and Teacher Incentive Grants. Quick Fund§§ applications for professional development for education and teacher incentive grants are available to individuals who are educators or an artist in the Arts in Education Directory of Teaching Artists. Applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project and the opportunity for artistic growth from the project. (5-8-09)( )

**b.** Quick Projects for Education. Quick Fund§§ applications for Quick Projects for education are available to: arts organizations that do not receive Public Programs in the Arts Grants or Entry Track Grants in the same fiscal year; schools; units of local, county, or tribal government, and organizations determined to be tax-exempt by the Internal Revenue Service *that, which* provide arts services for the general public. Applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the management capacity of the applicant, and community involvement and access to the project. The Commission may give preference to applicants who have not previously received funds through a Commission program. (5-8-09)( )

**05. Quick Fund§§ -- Matching Contributions.** Applicants for a professional development for educators Quick Fund§§ grant must provide matching contributions equaling the requested funds. Applicants for a teacher incentive Quick Fund§§ grant must provide matching contributions equaling one-third (1/3) of the requested funds. Applicants for a Quick Projects for education grant must provide matching contributions equaling the requested funds. College and university applicants shall not use in-kind contributions as matching funds. (4-6-05)( )

**06. Quick Fund§§ -- Application Requirements.** (4-6-05)( )

**a.** Professional Development for Educators and Teacher Incentive Grants. Applicants for professional development for educators or a teacher incentive Quick Fund§§ grant shall submit an application form, a resume, work samples appropriate to the applicant, and supporting materials such as letters of acceptance, brochures, articles, or workshop information. (4-6-05)( )

**b.** Quick Projects for Education. Applicants for a Quick Projects for education grant shall submit an application form; resumes of key consultants, artists, or personnel; work samples reflecting prior projects or activities as applicable to the project or activity that is the subject of the application; and, no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants eligible to use in-kind contributions must also submit a list of in-kind contributions used as matching contributions. All applicants are encouraged to submit a list of in-kind contributions to the project. (4-6-05)

**07. Quick Fund§§ -- Application Deadlines.** Quick Fund§§ applications for arts education must be postmarked or *hand* delivered to the Commission on or before the second Monday of March, June, September, or December. (5-8-09)( )

**503. ARTS EDUCATION PROJECT GRANTS.**

Arts Education Project Grants support teaching and learning opportunities for children and youth, Pre-K through grade twelve (12). Applicants may apply for support for a specific project or program designed to: increase access to arts education for students; foster professional development for artists and educators; increase participation of community members in education; or address specific needs of youth through the arts. In-school projects must support ~~the Idaho Humanities Achievement Standards~~ academic standards published by in the State Board of Education arts. ~~In-school projects should~~ to enhance teacher practice and student learning in and through the arts, and strengthen long-term community partnerships and collaborations to affect systemic change in schools. Arts Education Project Grants also support out-of-school arts education activities for young people. This support is characterized by collaborations between arts organizations and other community organizations, especially social service agencies that nurture the development and creativity of youth. (5-8-09)( )

**01. Arts Education Project Grants -- Evaluation Criteria.** Arts Education Project grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic and educational merit of the program or activity, project planning, the management capacity of the applicant, and community involvement and access to the project. (5-8-09)

**02. Arts Education Project Grants -- Matching Contributions.** Applicants must provide cash or in-kind matching contributions equaling the grant. (5-8-09)

**03. Arts Education Project Grants -- Application Requirements.** Applicants for Arts Education Project grants shall submit an application; resumes of key personnel; audio, visual, or published materials from the applicant or key partners; curriculum guides, or examples of past student work from the applicant or key partners that will help the Commission understand the artistic and professional quality of the program or activity; and work samples of artists, teaching artists, and the arts education programs of the central partners or contractors providing the services in the project. Work samples are not required for artists participating in the program who are in the Arts in Education Directory of Teaching Artists. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project. (5-8-09)

**04. Arts Education Project Grants -- Application Deadlines.** Arts Education Project grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day in January. (5-8-09)( )

**504. -- 999. (RESERVED)**

# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1802

### 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. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2018. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the meeting of the Idaho Board of Environmental Quality (Board) scheduled for November 14 and 15, 2018.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to make certain revisions identified as high priority in the 2017 Triennial Review of Idaho Water Quality Standards and to comply with federal requirements for consideration of EPA recommended (aka §304(a)) criteria (40 CFR 131.20): (1) Adopt aquatic life criteria for acrolein, carbaryl, and diazinon in accordance with EPA's current §304(a) recommended criteria, and (2) adopt EPA's current §304(a) recommended criteria for bacteria and clarify the definition of recreational use.

#### **EPA's Recommended §304(a) Aquatic life Criteria for Acrolein, Carbaryl, and Diazinon**

This rulemaking adds criteria for acrolein, carbaryl, and diazinon in Subsection 210.01. Currently, Idaho does not have aquatic life criteria for acrolein, carbaryl, and diazinon, although EPA has issued new recommended aquatic life criteria for these toxics. Acrolein is an aquatic herbicide and is known to be toxic to aquatic life, particularly amphibians and fish. In 2009, EPA added acrolein to the §304(a) list of aquatic life criteria. Carbaryl and diazinon are pesticides that are toxic to aquatic life, particularly invertebrates. EPA added diazinon to the §304(a) list of aquatic life criteria in 2005 and added carbaryl in 2012.

In order to avoid EPA promulgating federal standards for acrolein, carbaryl, and diazinon for Idaho, DEQ initiated negotiated rulemaking to revise these aquatic life criteria in Idaho's water quality standards. By adopting these criteria, DEQ will comply with federal requirements for consideration of EPA recommended criteria (40 CFR 131.20) and ensure that its criteria provide sufficient protection of aquatic life uses.

#### **EPA's §304(a) Recommended Criteria for Bacteria**

This rulemaking adopts EPA's 2012 §304(a) recommended criteria for bacteria. EPA's 2012 §304(a) criteria includes both *E. coli* criteria as well as enterococci criteria; either of which would be considered protective of contact recreation. States (and dischargers) can use either criterion to demonstrate compliance with water quality standards. This rulemaking also clarifies the definition of recreational use, recognizing that waters designated for primary contact recreation (PCR) also include recreational activities associated with secondary contact recreation (SCR).

Consideration of enterococci criteria as included in EPA's 2012 §304(a) recommendation is necessary to comply with federal requirements for consideration of EPA recommended criteria (40 CFR 131.20). Enterococci criteria are more directly related to incidences of gastrointestinal illnesses than *E. coli* criteria. In addition, rapid analytical techniques for enterococci are currently being developed. By adopting enterococci criteria, Idaho will be in a position to easily integrate any advances to improve sampling logistics (for example, extended holding times and field preservation to allow for monitoring and assessment of more remote waters, and rapid notification of affected swimming beaches and recreational facilities).

DEQ will also consider the adoption of statistical threshold values (STV) as criteria. The STV is a concentration that is not to be exceeded more frequently than 10% of valid samples collected in a 30-day period.

By adopting EPA's 2012 §304(a) criteria recommendation, DEQ can meet a recommendation of the 2017 Triennial Review and meet federal requirements to consider EPA's 2012 §304(a) recommendations while providing the same level of protection for Idaho water bodies. In addition, this allows dischargers the option to request an alternative fecal indicator bacteria for monitoring compliance with water quality standards.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2018 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2019 legislative session if adopted by the Board and approved by the Legislature.

**EFFECTIVE FOR CLEAN WATER ACT PURPOSES:** Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the May 2018 issue of the Idaho Administrative Bulletin, a preliminary draft rule was made available for public review on May 8, 2018, and meetings were held on May 31 and June 28, 2018. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at [www.deq.idaho.gov/58-0102-1802](http://www.deq.idaho.gov/58-0102-1802).

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Jason Pappani at [Jason.pappani@deq.idaho.gov](mailto:Jason.pappani@deq.idaho.gov), (208) 373-0515.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 5, 2018.

Dated this 5th day of September, 2018.

Paula J. Wilson, Hearing Coordinator  
Phone: (208) 373-0418  
Fax No.: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706-1255

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1802  
(Only Those Sections With Amendments Are Shown.)

**100. SURFACE WATER USE DESIGNATIONS.**

Waterbodies are designated in Idaho to protect water quality for existing or designated uses. The designated use of a waterbody does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, a designation of primary or secondary contact recreation may occur in areas where it is unsafe to enter the water due to water flows, depth or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing or access is not allowed by property owners. Wherever attainable, the designated beneficial uses for which the surface waters of the state are to be protected include: (3-15-02)

**01. Aquatic Life.** (7-1-93)

**a.** Cold water (COLD): water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species. (4-5-00)

**b.** Salmonid spawning (SS): waters which provide or could provide a habitat for active self-propagating populations of salmonid fishes. (3-30-07)

**c.** Seasonal cold water (SC): water quality appropriate for the protection and maintenance of a viable aquatic life community of cool and cold water species, where cold water aquatic life may be absent during, or tolerant of, seasonally warm temperatures. (4-5-00)

**d.** Warm water (WARM): water quality appropriate for the protection and maintenance of a viable aquatic life community for warm water species. (4-5-00)

**e.** Modified (MOD): water quality appropriate for an aquatic life community that is limited due to one (1) or more conditions set forth in 40 CFR 131.10(g) which preclude attainment of reference streams or conditions. (4-5-00)

**02. Recreation.** (7-1-93)

**a.** Primary contact recreation (PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. (4-5-00)

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.

**a.** Primary contact recreation (PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. PCR includes all activities associated with secondary contact recreation (SCR). (4-5-00)(\_\_\_\_)

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.

**b.** Secondary contact recreation (SCR): water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category. These activities may include fishing, boating, wading, infrequent swimming, and other activities where ingestion of raw water is not likely to occur. (4-5-00)

- 03. Water Supply.** (7-1-93)
  - a.** Domestic (DWS): water quality appropriate for drinking water supplies. (4-5-00)
  - b.** Agricultural: water quality appropriate for the irrigation of crops or as drinking water for livestock. This use applies to all surface waters of the state. (4-5-00)
  - c.** Industrial: water quality appropriate for industrial water supplies. This use applies to all surface waters of the state. (4-5-00)
- 04. Wildlife Habitats.** Water quality appropriate for wildlife habitats. This use applies to all surface waters of the state. (4-5-00)
- 05. Aesthetics.** This use applies to all surface waters of the state. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

**Note:** In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

- 01. Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2. (3-28-18)
  - a.** Table 1 contains criteria set for protection of aquatic life. Criteria for metals (arsenic through zinc) are expressed as dissolved fraction unless otherwise noted. For purposes of these criteria, dissolved fraction means that which passes through a forty-five hundredths (0.45) micron filter. (3-28-18)

| Table 1. Criteria for Protection of Aquatic Life |                         |                         |   |                         |   |
|--|-------------------------|-------------------------|---|-------------------------|---|
| Compound   | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L) |   | <sup>b</sup> CCC (µg/L) |   |
| <b>Inorganic Compounds/Metals</b>                |                         |                         |   |                         |   |
| Arsenic  | 7440382                 | 340                     | c | 150                     | c |
| Cadmium  | 7440439                 | 1.3                     | f | 0.6                     | f |
| Chromium III                                     | 16065831                | 570                     | f | 74                      | f |

| Table 1. Criteria for Protection of Aquatic Life  |                         |                                      |   |                                      |   |
|---|-------------------------|--------------------------------------|---|--------------------------------------|---|
| Compound  | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L)              |   | <sup>b</sup> CCC (µg/L)              |   |
| Chromium VI   | 18540299                | 16                                   | c | 11                                   | c |
| Copper <sup>1</sup>   | 7440508                 | 17                                   | f | 11                                   | f |
| <sup>1</sup> Effective for CWA purposes. The CMC, CCC, and footnote are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.   |                         |                                      |   |                                      |   |
| Copper <sup>2</sup>   | 7440508                 | 12.3                                 | k | 7.6                                  | k |
| <sup>2</sup> Not yet effective for CWA purposes. The CMC, CCC, and footnote are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.   |                         |                                      |   |                                      |   |
| Lead  | 7439921                 | 65                                   | f | 2.5                                  | f |
| Mercury   | 7439976                 |                                      | e |                                      | e |
| <b>Note:</b> In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in <a href="#">2004 Idaho Administrative Code</a> continue to apply and are effective for CWA purposes. For more information go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a> . |                         |                                      |   |                                      |   |
| Nickel  | 7440020                 | 470                                  | f | 52                                   | f |
| Selenium <sup>1</sup>   | 7782492                 | 20                                   | d | 5                                    | d |
| <sup>1</sup> Effective for CWA purposes. The CMC value and footnote and the CCC value are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.   |                         |                                      |   |                                      |   |
| Selenium <sup>2</sup>   | 7782492                 | m                                    |   | l                                    | d |
| <sup>2</sup> Not yet effective for CWA purposes. The CMC footnote <b>m</b> . and CCC footnote <b>l</b> . are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.  |                         |                                      |   |                                      |   |
| Silver  | 7440224                 | 3.4                                  | f |                                      |   |
| Zinc  | 7440666                 | 120                                  | f | 120                                  | f |
| <b>Inorganic Compounds/Non-Metals</b>   |                         |                                      |   |                                      |   |
| Chlorine  |                         | 19                                   | h | 11                                   | h |
| Cyanide   | 57125                   | 22                                   | g | 5.2                                  | g |
| <b>Organic Compounds</b>  |                         |                                      |   |                                      |   |
| <u>Acrolein</u>   | <u>107028</u>           | <del>1</del><br><u>3<sup>2</sup></u> |   | <del>1</del><br><u>3<sup>2</sup></u> |   |



| Table 1. Criteria for Protection of Aquatic Life   |                         |                         |   |                         |   |
|--|-------------------------|-------------------------|---|-------------------------|---|
| Compound   | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L) |   | <sup>b</sup> CCC (µg/L) |   |
| <sup>1</sup> Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.<br><sup>2</sup> Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. |                         |                         |   |                         |   |
| Aldrin   | 39002                   | 3                       |   |                         |   |
| gamma-BHC (Lindane)  | 58899                   | 2                       |   | 0.08                    |   |
| <u>Carbaryl</u>  | <u>63252</u>            | $\frac{.1}{2.1^2}$      |   | $\frac{.1}{2.1^2}$      |   |
| <sup>1</sup> Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.<br><sup>2</sup> Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. |                         |                         |   |                         |   |
| Chlordane  | 57749                   | 2.4                     |   | 0.0043                  |   |
| 4,4'-DDT   | 50293                   | 1.1                     |   | 0.001                   |   |
| <u>Diazinon</u>  | <u>333415</u>           | $\frac{.1}{0.17^2}$     |   | $\frac{.1}{0.17^2}$     |   |
| <sup>1</sup> Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.<br><sup>2</sup> Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. |                         |                         |   |                         |   |
| Dieldrin   | 60571                   | 2.5                     |   | 0.0019                  |   |
| alpha-Endosulfan   | 959988                  | 0.22                    |   | 0.056                   |   |
| beta-Endosulfan  | 33213659                | 0.22                    |   | 0.056                   |   |
| Endrin   | 72208                   | 0.18                    |   | 0.0023                  |   |
| Heptachlor   | 76448                   | 0.52                    |   | 0.0038                  |   |
| Heptachlor Epoxide   | 1024573                 | 0.52                    |   | 0.0038                  |   |
| Pentachlorophenol  | 87865                   | 20                      | i | 13                      | i |
| Polychlorinated Biphenyls PCBs   | j                       |                         |   | 0.014                   | j |
| Toxaphene  | 8001352                 | 0.73                    |   | 0.0002                  |   |
| <b>Footnotes for Table 1. Criteria for Protection of Aquatic Life</b>  |                         |                         |   |                         |   |
| <b>a.</b> Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.   |                         |                         |   |                         |   |
| <b>b.</b> See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.  |                         |                         |   |                         |   |



| Table 1. Criteria for Protection of Aquatic Life  |                         |                               |                                   |                                   |   |
|---|-------------------------|-------------------------------|-----------------------------------|-----------------------------------|---|
| Compound  | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L)       |                                   | <sup>b</sup> CCC (µg/L)           |   |
| <p><b>c.</b> Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = CMC column value X WER. CCC = CCC column value X WER.</p>   |                         |                               |                                   |                                   |   |
| <p><b>d.</b> Criterion expressed as total recoverable (unfiltered) concentrations.</p>  |                         |                               |                                   |                                   |   |
| <p><b>e.</b> No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.</p>   |                         |                               |                                   |                                   |   |
| <p><b>f.</b> Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</p>  |                         |                               |                                   |                                   |   |
| <p><b>g.</b> Criteria are expressed as weak acid dissociable (WAD) cyanide.</p>   |                         |                               |                                   |                                   |   |
| <p><b>h.</b> Total chlorine residual concentrations.</p>  |                         |                               |                                   |                                   |   |
| <p><b>i.</b> Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8).<br/>           CMC = <math>\exp(1.005(\text{pH})-4.830)</math><br/>           CCC = <math>\exp(1.005(\text{pH})-5.290)</math></p>  |                         |                               |                                   |                                   |   |
| <p><b>j.</b> PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>   |                         |                               |                                   |                                   |   |
| <p><b>k.</b> Aquatic life criteria for copper shall be derived in accordance with Subsection 210.03.c.v. For comparative purposes only, the example values displayed in this table correspond to the Biotic Ligand Model output based on the following inputs: temperature = 14.9°C, pH = 8.16, dissolved organic carbon = 1.4 mg/L, humic acid fraction = 10%, calcium = 44.6 mg/L, magnesium = 11.0 mg/L, sodium = 11.7 mg/L, potassium = 2.12 mg/L, sulfate = 46.2 mg/L, chloride = 12.7 mg/L, alkalinity = 123 mg/L CaCO<sub>3</sub>, and sulfide = <math>1.00 \times 10^{-8}</math> mg/L.<br/> <i>(Footnote k. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.)</i></p> |                         |                               |                                   |                                   |   |
| <b>l. Chronic</b>   |                         |                               |                                   |                                   | <b>Short-term</b>                             |
| <b>Egg-Ovary (mg/kg dw)</b>   |                         | <b>Fish Tissue (mg/kg dw)</b> |                                   | <b>Water Column (µg/L)</b>        |   |
| Egg-Ovary   | Whole-Body              | Muscle                        | Water Lentic                      | Water Lotic                       | Water   |
| 15.1 <sup>1</sup>   | 8.5 <sup>2</sup>        | 11.3 <sup>2</sup>             | 1.5 (30 day average) <sup>3</sup> | 3.1 (30 day average) <sup>3</sup> | Intermittent Exposure Equation <sup>3,4</sup> |
| mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter  |                         |                               |                                   |                                   |   |
| <p>1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.</p>   |                         |                               |                                   |                                   |   |

| Table 1. Criteria for Protection of Aquatic Life  |                         |                         |                         |
|---|-------------------------|-------------------------|-------------------------|
| Compound  | <sup>a</sup> CAS Number | <sup>b</sup> CMC (µg/L) | <sup>b</sup> CCC (µg/L) |
| <p>2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole body or muscle data to determine compliance with this criterion element.</p> <p>3. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in <a href="#">Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016)</a>.</p> <p>4. Intermittent Exposure Equation=</p> $\frac{WQC - C_{bkgnd}(1 - f_{int})}{f_{int}}$ <p>where WQC is the applicable water column element, for either lentic or lotic waters; <math>C_{bkgnd}</math> is the average background selenium concentration, and <math>f_{int}</math> is the fraction of any 30-day period during which elevated selenium concentrations occur, with <math>f_{int}</math> assigned a value <math>\geq 0.033</math> (corresponding to one day).</p> <p><i>(Footnote I. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.)</i></p> <p><b>m.</b> There is no specific acute criterion for aquatic life; however, the aquatic life criterion is based on chronic effects of the selenium on aquatic life and is expected to adequately protect against acute effects.</p> <p><i>(Footnote m. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.)</i></p> |                         |                         |                         |

(3-28-18)

**b.** Table 2 contains criteria set for protection of human health. The Water & Fish criteria apply to waters designated for domestic water supply use. The Fish Only criteria apply to waters designated for primary or secondary contact recreation use.

(3-28-18)

| Table 2. Criteria for Protection of Human Health (based on consumption of:) |                         |             |                     |     |                  |     |
|---|-------------------------|-------------|---------------------|-----|------------------|-----|
| Compound  | <sup>a</sup> CAS Number | Carcinogen? | Water & Fish (µg/L) |     | Fish Only (µg/L) |     |
| <b>Inorganic Compounds/Metals</b>   |                         |             |                     |     |                  |     |
| Antimony  | 7440360                 |             | 5.2                 | b   | 190              | b   |
| Arsenic   | 7440382                 | Y           | 10                  | cdj | 10               | cdj |

Table 2. Criteria for Protection of Human Health (based on consumption of:)

| Compound  | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) | Fish Only<br>(µg/L) |          |    |
|---|----------------------------|-------------|------------------------|---------------------|----------|----|
| <b>Note:</b> In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to <a href="http://www.deq.idaho.gov/epa-actions-on-proposed-standards">http://www.deq.idaho.gov/epa-actions-on-proposed-standards</a> . |                            |             |                        |                     |          |    |
| Beryllium   | 7440417                    |             |                        | e                   |          | e  |
| Cadmium   | 7440439                    |             |                        | e                   |          | e  |
| Chromium III  | 16065831                   |             |                        | e                   |          | e  |
| Chromium VI   | 18540299                   |             |                        | e                   |          | e  |
| Copper  | 7440508                    |             | 1300                   | j                   |          |    |
| Lead  | 7439921                    |             |                        | e                   |          | e  |
| Methylmercury   | 22967926                   |             |                        |                     | 0.3mg/kg | i  |
| Nickel  | 7440020                    |             | 58                     | b                   | 100      | b  |
| Selenium  | 7782492                    |             | 29                     | b                   | 250      | b  |
| Thallium  | 7440280                    |             | 0.017                  | b                   | 0.023    | b  |
| Zinc  | 7440666                    |             | 870                    | b                   | 1,500    | b  |
| <b>Inorganic Compounds/Non-Metals</b>   |                            |             |                        |                     |          |    |
| Cyanide   | 57125                      |             | 3.9                    | b                   | 140      | b  |
| Asbestos  | 1332214                    |             | 7,000,000<br>Fibers/L  | j                   |          |    |
| <b>Organic Compounds</b>  |                            |             |                        |                     |          |    |
| Acenaphthene  | 83329                      |             | 26                     | b                   | 28       | b  |
| Acenaphthylene  | 208968                     |             |                        | e                   |          | e  |
| Acrolein  | 107028                     |             | 3.2                    | b                   | 120      | b  |
| Acrylonitrile   | 107131                     | Y           | 0.60                   | bf                  | 22       | bf |
| Aldrin  | 309002                     | Y           | 2.5E-06                | bf                  | 2.5E-06  | bf |
| Anthracene  | 120127                     |             | 110                    | b                   | 120      | b  |
| alpha-BHC   | 319846                     | Y           | 0.0012                 | bf                  | 0.0013   | bf |
| beta-BHC  | 319857                     | Y           | 0.036                  | bf                  | 0.045    | bf |
| gamma-BHC (Lindane)   | 58899                      |             | 1.4                    | b                   | 1.4      | b  |
| delta-BHC   | 319868                     |             |                        | e                   |          | e  |
| Benzene   | 71432                      |             | 3.0                    | bf                  | 28       | b  |

Table 2. Criteria for Protection of Human Health (based on consumption of:)

| Compound                                       | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) |    | Fish Only<br>(µg/L) |    |
|--|----------------------------|-------------|------------------------|----|---------------------|----|
| Benzidine                                      | 92875                      | Y           | 0.0014                 | bf | 0.033               | bf |
| Benzo(a)Anthracene                             | 56553                      | Y           | 0.0042                 | bf | 0.0042              | bf |
| Benzo(b)Fluoranthene                           | 205992                     | Y           | 0.0042                 | bf | 0.0042              | bf |
| Benzo(k)Fluoranthene                           | 207089                     | Y           | 0.042                  | bf | 0.042               | bf |
| Benzo(ghi)Perylene                             | 191242                     |             |                        | e  |                     | e  |
| Benzo(a)Pyrene                                 | 50328                      | Y           | 0.00042                | bf | 0.00042             | bf |
| Bis(2-Chloroethoxy)<br>Methane                 | 111911                     |             |                        | e  |                     | e  |
| Bis(2-Chloroethyl) Ether                       | 111444                     | Y           | 0.29                   | bf | 6.8                 | bf |
| Bis(2-Chloroisopropyl)<br>Ether                | 108601                     |             | 220                    | b  | 1,200               | b  |
| Bis(Chloromethyl) Ether                        | 542881                     | Y           | 0.0015                 | bf | 0.055               | bf |
| Bis(2-Ethylhexyl)<br>Phthalate                 | 117817                     | Y           | 1.2                    | bf | 1.2                 | bf |
| Bromoform                                      | 75252                      | Y           | 62                     | bf | 380                 | bf |
| 4-Bromophenyl Phenyl<br>Ether                  | 101553                     |             |                        | e  |                     | e  |
| Butylbenzyl Phthalate                          | 85687                      |             | 0.33                   | b  | 0.33                | b  |
| Carbon Tetrachloride                           | 56235                      | Y           | 3.6                    | bf | 15                  | bf |
| Chlorobenzene                                  | 108907                     |             | 89                     | b  | 270                 | b  |
| Chlordane                                      | 57749                      | Y           | 0.0010                 | bf | 0.0010              | bf |
| Chlorodibromomethane                           | 124481                     | Y           | 7.4                    | bf | 67                  | bf |
| Chloroethane                                   | 75003                      |             |                        | e  |                     | e  |
| 2-Chloroethylvinyl Ether                       | 110758                     |             |                        | e  |                     | e  |
| Chloroform                                     | 67663                      |             | 61                     | b  | 730                 | b  |
| 2-Chloronaphthalene                            | 91587                      |             | 330                    | b  | 380                 | b  |
| 2-Chlorophenol                                 | 95578                      |             | 30                     | b  | 260                 | b  |
| Chlorophenoxy Herbicide<br>(2,4-D)             | 94757                      |             | 1,000                  | b  | 3,900               | b  |
| Chlorophenoxy Herbicide<br>(2,4,5-TP) [Silvex] | 93721                      |             | 82                     | b  | 130                 | b  |
| 4-Chlorophenyl Phenyl<br>Ether                 | 7005723                    |             |                        | e  |                     | e  |
| Chrysene                                       | 218019                     | Y           | 0.42                   | bf | 0.42                | bf |

Table 2. Criteria for Protection of Human Health (based on consumption of:)

| Compound                 | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) |    | Fish Only<br>(µg/L) |    |
|--------------------------|----------------------------|-------------|------------------------|----|---------------------|----|
|                          |                            |             |                        |    |                     |    |
| 4,4'-DDD                 | 72548                      | Y           | 0.00042                | bf | 0.00042             | bf |
| 4,4'-DDE                 | 72559                      | Y           | 5.5E-05                | bf | 5.5E-05             | bf |
| 4,4'-DDT                 | 50293                      | Y           | 9.8E-05                | bf | 9.8E-05             | bf |
| Di-n-Butyl Phthalate     | 84742                      |             | 8.2                    | b  | 8.3                 | b  |
| Di-n-Octyl Phthalate     | 117840                     |             |                        | e  |                     | e  |
| Dibenzo (a,h) Anthracene | 53703                      | Y           | 0.00042                | bf | 0.00042             | bf |
| 1,2-Dichlorobenzene      | 95501                      |             | 700                    | b  | 1,100               | b  |
| 1,3-Dichlorobenzene      | 541731                     |             | 3.5                    | b  | 4.8                 | b  |
| 1,4-Dichlorobenzene      | 106467                     |             | 180                    | b  | 300                 | b  |
| 3,3'-Dichlorobenzidine   | 91941                      | Y           | 0.29                   | bf | 0.48                | bf |
| Dichlorobromomethane     | 75274                      | Y           | 8.8                    | bf | 86                  | bf |
| 1,1-Dichloroethane       | 75343                      |             |                        | e  |                     | e  |
| 1,2-Dichloroethane       | 107062                     | Y           | 96                     | bf | 2,000               | bf |
| 1,1-Dichloroethylene     | 75354                      |             | 310                    | b  | 5,200               | b  |
| 2,4-Dichlorophenol       | 120832                     |             | 9.6                    | b  | 19                  | b  |
| 1,2-Dichloropropane      | 78875                      | Y           | 8.5                    | bf | 98                  | bf |
| 1,3-Dichloropropene      | 542756                     | Y           | 2.5                    | bf | 38                  | bf |
| Dieldrin                 | 60571                      | Y           | 4.2E-06                | bf | 4.2E-06             | bf |
| Diethyl Phthalate        | 84662                      |             | 200                    | b  | 210                 | b  |
| 2,4-Dimethylphenol       | 105679                     |             | 110                    | b  | 820                 | b  |
| Dimethyl Phthalate       | 131113                     |             | 600                    | b  | 600                 | b  |
| Dinitrophenols           | 25550587                   |             | 13                     | b  | 320                 | b  |
| 2,4-Dinitrophenol        | 51285                      |             | 12                     | b  | 110                 | b  |
| 2,4-Dinitrotoluene       | 121142                     | Y           | 0.46                   | bf | 5.5                 | bf |
| 2,6-Dinitrotoluene       | 606202                     |             |                        | e  |                     | e  |
| 1,2-Diphenylhydrazine    | 122667                     | Y           | 0.25                   | bf | 0.65                | bf |
| 2, 3, 7, 8-TCDD Dioxin   | 1746016                    | Y           | 1.8E-08                | bf | 1.9E-08             | bf |
| alpha-Endosulfan         | 959988                     |             | 7.0                    | b  | 8.5                 | b  |
| beta-Endosulfan          | 33213659                   |             | 11                     | b  | 14                  | b  |
| Endosulfan Sulfate       | 1031078                    |             | 9.9                    | b  | 13                  | b  |
| Endrin                   | 72208                      |             | 0.011                  | b  | 0.011               | b  |
| Endrin Aldehyde          | 7421934                    |             | 0.38                   | b  | 0.40                | b  |

**Table 2. Criteria for Protection of Human Health (based on consumption of:)**

| <b>Compound</b>                          | <b><sup>a</sup><br/>CAS Number</b> | <b>Carcinogen?</b> | <b>Water &amp; Fish<br/>(µg/L)</b> |     | <b>Fish Only<br/>(µg/L)</b> |     |
|--|------------------------------------|--------------------|------------------------------------|-----|-----------------------------|-----|
| Ethylbenzene                             | 100414                             |                    | 32                                 | b   | 41                          | b   |
| Fluoranthene                             | 206440                             |                    | 6.3                                | b   | 6.4                         | b   |
| Fluorene                                 | 86737                              |                    | 21                                 | b   | 22                          | b   |
| Heptachlor                               | 76448                              | Y                  | 2.0E-05                            | bf  | 2.0E-05                     | bf  |
| Heptachlor Epoxide                       | 1024573                            | Y                  | 0.00010                            | bf  | 0.00010                     | bf  |
| Hexachlorobenzene                        | 118741                             | Y                  | 0.00026                            | bf  | 0.00026                     | bf  |
| Hexachlorobutadiene                      | 87683                              | Y                  | 0.031                              | bf  | 0.031                       | bf  |
| Hexachlorocyclohexane<br>(HCH)-Technical | 608731                             | Y                  | 0.027                              | bf  | 0.032                       | bf  |
| Hexachloro-<br>cyclopentadiene           | 77474                              |                    | 1.3                                | b   | 1.3                         | b   |
| Hexachloroethane                         | 67721                              |                    | 0.23                               | b   | 0.24                        | b   |
| Ideno (1,2,3-cd) Pyrene                  | 193395                             | Y                  | 0.0042                             | bf  | 0.0042                      | bf  |
| Isophorone                               | 78591                              | Y                  | 330                                | bf  | 6,000                       | bf  |
| Methoxychlor                             | 72435                              |                    | 0.0054                             | b   | 0.0055                      | b   |
| Methyl Bromide                           | 74839                              |                    | 130                                | b   | 3,700                       | b   |
| Methyl Chloride                          | 74873                              |                    |                                    | e   |                             | e   |
| 3-Methyl-4-Chlorophenol                  | 59507                              |                    | 350                                | b   | 750                         | b   |
| 2-Methyl-4,6-Dinitrophenol               | 534521                             |                    | 1.6                                | b   | 8.6                         | b   |
| Methylene Chloride                       | 75092                              |                    | 38                                 | b   | 960                         | b   |
| Naphthalene                              | 91203                              |                    |                                    | e   |                             | e   |
| Nitrobenzene                             | 98953                              |                    | 12                                 | b   | 180                         | b   |
| 2-Nitrophenol                            | 88755                              |                    |                                    | e   |                             | e   |
| 4-Nitrophenol                            | 100027                             |                    |                                    | e   |                             | e   |
| N-Nitrosodimethylamine                   | 62759                              | Y                  | 0.0065                             | bf  | 9.1                         | bf  |
| N-Nitrosodi-n-Propylamine                | 621647                             | Y                  | 0.046                              | bf  | 1.5                         | bf  |
| N-Nitrosodiphenylamine                   | 86306                              | Y                  | 3.14                               | bf  | 18                          | bf  |
| Pentachlorobenzene                       | 608935                             |                    | 0.035                              | b   | 0.036                       | b   |
| Pentachlorophenol                        | 87865                              | Y                  | 0.11                               | bf  | 0.12                        | bf  |
| Phenanthrene                             | 85018                              |                    |                                    | e   |                             | e   |
| Phenol                                   | 108952                             |                    | 3,800                              | b   | 85,000                      | b   |
| Polychlorinated Biphenyls<br>PCBs        | g                                  | Y                  | 0.00019                            | bfh | 0.00019                     | bfh |

Table 2. Criteria for Protection of Human Health (based on consumption of:)

| Compound                   | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) |    | Fish Only<br>(µg/L) |    |
|----------------------------|----------------------------|-------------|------------------------|----|---------------------|----|
| Pyrene                     | 129000                     |             | 8.1                    | b  | 8.4                 | b  |
| 1,2,4,5-Tetrachlorobenzene | 95943                      |             | 0.0093                 | b  | 0.0094              | b  |
| 1,1,2,2-Tetrachloroethane  | 79345                      | Y           | 1.4                    | bf | 8.6                 | bf |
| Tetrachloroethylene        | 127184                     |             | 15                     | b  | 23                  | b  |
| Toluene                    | 108883                     |             | 47                     | b  | 170                 | b  |
| Toxaphene                  | 8001352                    | Y           | 0.0023                 | bf | 0.0023              | bf |
| 1,2-Trans-Dichloroethylene | 156605                     |             | 120                    | b  | 1,200               | b  |
| 1,2,4-Trichlorobenzene     | 120821                     |             | 0.24                   | b  | 0.24                | b  |
| 1,1,1-Trichloroethane      | 71556                      |             | 11,000                 | b  | 56,000              | b  |
| 1,1,2-Trichloroethane      | 79005                      | Y           | 4.9                    | bf | 29                  | bf |
| Trichloroethylene          | 79016                      |             | 2.6                    | b  | 11                  | b  |
| 2,4,5-Trichlorophenol      | 95954                      |             | 140                    | b  | 190                 | b  |
| 2,4,6-Trichlorophenol      | 88062                      |             | 1.5                    | b  | 2.0                 | b  |
| Vinyl Chloride             | 75014                      | Y           | 0.21                   | bf | 5.0                 | bf |

**Footnotes for Table 2. Criteria for Protection of Human Health**

a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.

b. This criterion is based on input values to human health criteria calculation specified in [Idaho's Technical Support Document \(TSD\) for Human Health Criteria Calculations - 2015](#). Criteria for non-carcinogens are calculated using the formula:

| Table 2. Criteria for Protection of Human Health (based on consumption of:)  |                            |             |                        |                     |
|--|----------------------------|-------------|------------------------|---------------------|
| Compound   | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) | Fish Only<br>(µg/L) |
| $AWQC = RfD * RSC * \left( \frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left( \frac{BW}{DI + (FI * BAF)} \right)$ <p>Where:<br/>                     AWQC = Ambient water quality criterion (mg/L)<br/>                     BW = Human Body Weight (kg), 80 is used in these criteria<br/>                     DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria<br/>                     FI = Fish Intake, (kg/day), 0.0665 is used in these criteria<br/>                     BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD<br/>                     RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> $RSD = \frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}} \text{ (mg/kg-day), chemical specific value, see TSD}$ <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p> |                            |             |                        |                     |
| c. Inorganic forms only.   |                            |             |                        |                     |
| d. Criterion expressed as total recoverable (unfiltered) concentrations.   |                            |             |                        |                     |
| e. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.  |                            |             |                        |                     |
| f. EPA guidance allows states to choose from a range of 10 <sup>-4</sup> to 10 <sup>-6</sup> for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 <sup>-5</sup> risk.   |                            |             |                        |                     |
| g. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.  |                            |             |                        |                     |
| h. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).  |                            |             |                        |                     |



Table 2. Criteria for Protection of Human Health (based on consumption of:)

| Compound  | <sup>a</sup><br>CAS Number | Carcinogen? | Water & Fish<br>(µg/L) | Fish Only<br>(µg/L) |
|---|----------------------------|-------------|------------------------|---------------------|
| <p>i. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: <math>TRC = [BW \times \{RfD - (RSC \times RfD)\}] / TL</math>. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p> |                            |             |                        |                     |
| <p>j. This criterion is based on the drinking water Maximum Containment Level (MCL).</p>  |                            |             |                        |                     |

(3-28-18)

**02. Factors for Calculating Hardness Dependent Metals Criteria.** Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a.  $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\} \times \text{Acute Conversion Factor}$ . (5-3-03)

b.  $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\} \times \text{Chronic Conversion Factor}$ .

| Metal  | mA     | bA     | mc     | bc     | aAcute Conversion Factor | aChronic Conversion Factor |
|--|--------|--------|--------|--------|--------------------------|----------------------------|
| Arsenic  | b      | b      | b      | b      | 1.0                      | 1.0                        |
| Cadmium  | 0.8367 | -3.560 | 0.6247 | -3.344 | 0.944<br>see footnote a  | 0.909                      |
| Chromium (III)   | 0.819  | 3.7256 | 0.8190 | 0.6848 | 0.316                    | 0.860                      |
| Chromium (VI)  | b      | b      | b      | b      | 0.982                    | 0.962                      |
| Copper   | 0.9422 | -1.464 | 0.8545 | -1.465 | 0.960                    | 0.960                      |
| <p>The values for calculating hardness dependent metal criteria for copper, set out in the Copper row above, are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved. The Copper row will be deleted upon EPA approval.</p> |        |        |        |        |                          |                            |
| Lead   | 1.273  | -1.460 | 1.273  | -4.705 | 0.791                    | 0.791                      |
| Mercury  | b      | b      | b      | b      | 0.85                     | 0.85                       |
| Nickel   | 0.846  | 2.255  | 0.8460 | 0.0584 | 0.998                    | 0.997                      |
| Silver   | 1.72   | -6.52  | c      | c      | 0.85                     | c                          |
| Zinc   | 0.8473 | 0.884  | 0.8473 | 0.884  | 0.978                    | 0.986                      |

Note to table: The term “exp” represents the base e exponential function.  
 Footnotes to table:

**a.** Conversion factors (CF) are from “Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth.” The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium  
 Acute:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$  NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic):  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

**b.** Not applicable

**c.** No chronic criteria are available for silver.

(3-28-18)

**03. Applicability.** The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

**a.** For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

**b.** Low flow design conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical criteria may be exceeded in perennial streams outside any applicable mixing zone only when flows are less than these values:

| Aquatic Life             |             | Human Health    |                    |
|--------------------------|-------------|-----------------|--------------------|
| CMC (“acute” criteria)   | 1Q10 or 1B3 | Non-carcinogens | Harmonic mean flow |
| CCC (“chronic” criteria) | 7Q10 or 4B3 | Carcinogens     | Harmonic mean flow |

(3-25-16)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (arsenic through zinc in Table 1 in Subsection 210.01) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes c. and f. in Table 1 in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (3-28-18)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at [http://www.deq.idaho.gov/media/639808-idaho\\_mercury\\_wq\\_guidance.pdf](http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf). (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on

measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

- v. Copper Criteria for Aquatic Life. (3-28-18)
  - (1) Aquatic life criteria for copper shall be derived using: (3-28-18)
    - (a) Biotic Ligand Model (BLM) software that calculates criteria consistent with the “[Aquatic Life Ambient Freshwater Quality Criteria – Copper](#)”: EPA-822-R-07-001 (February 2007); or (3-28-18)
    - (b) An estimate derived from BLM outputs that is based on a scientifically sound method and protective of the designated aquatic life use. (3-28-18)
      - (2) To calculate copper criteria using the BLM, the following parameters from each site shall be used: temperature, pH, dissolved organic carbon (DOC), calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. The BLM inputs for humic acid (HA) as a proportion of DOC and sulfide shall be based on either measured values or the following default values: 10% HA as a proportion of DOC,  $1.00 \times 10^{-8}$  mg/L sulfide. Measured values shall supersede any estimate or default input. (3-28-18)
      - (3) BLM input measurements shall be planned to capture the most bioavailable conditions for copper. (3-28-18)
      - (4) A criterion derived under Subsection 210.03.c.v.(1)(a) shall supersede any criterion derived under Subsection 210.03.c.v.(1)(b). Acceptable BLM software includes the “[US EPA WQC Calculation](#)” for copper in [BLM Version 3.1.2.37](#) (October 2015). (3-28-18)
      - (5) Implementation Guidance for the Idaho Copper Criteria for Aquatic Life. The “Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model” describes in detail methods for implementing the aquatic life criteria for copper using the BLM. This guidance, or its updates, will provide assistance to the Department and the public for determining minimum data requirements for BLM inputs and how to estimate criteria when data are incomplete or unavailable. The “Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at [www.deq.idaho.gov/58-0102-1502](http://www.deq.idaho.gov/58-0102-1502). (3-28-18)

*Subsection 210.03.c.v is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.*

- d. Application of toxics criteria. (3-25-16)
  - i. Frequency and duration for aquatic life toxics criteria. CMC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a one-hour average more than once in three (3) years unless otherwise specified. CCC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a four-day average more than once in three (3) years unless otherwise specified. (3-28-18)
  - ii. Frequency and duration for human health toxics criteria. Criteria in Table 2 in Subsection 210.01 are not to be exceeded based on an annual harmonic mean. (3-28-18)

**04. National Pollutant Discharge Elimination System Permitting.** For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the

following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule.

(5-3-03)

a. “Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria,” EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. “Technical Support Document for Water Quality-Based Toxics Control.” EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

**05. Development of Toxic Substance Criteria.** (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

b. Human Health Criteria. (4-5-00)

**Note:** In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of  $10^{-5}$  for carcinogens shall be utilized. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.**

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.

**01. *E. Coli* Bacteria.** Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

**a.** Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. (4-11-06)

**b.** Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: (4-11-06)

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) *E. coli* organisms per one hundred (100) ml; or (4-11-06)

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) ml; or (4-11-06)

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) ml. Single sample counts above this value should be used in considering beach closures. (4-11-06)

**c.** Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers. (4-11-06)

**251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.**

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.

**01. *Toxics Criteria.*** Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b. ( )

**02. *Fecal Indicators.*** Waters designated for recreation must meet criteria for indicator organisms of fecal contamination. Either of the following indicator criterion would be considered sufficient for determining compliance with the fecal indicator criteria: ( )

~~01.a.~~ *E. Coli* Bacteria. Waters designated for recreation are not to contain *E. coli* bacteria, used as

indicators of human pathogens, in concentrations exceeding: (4-11-06)

~~i.~~ Geometric Mean Criterion. ~~Waters designated for primary or secondary contact recreation are~~ ~~Not to contain *E. coli* bacteria~~ in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms colony forming units (CFU) per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period; ~~or~~ (4-11-06)( )

~~ii.~~ Statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain *E. coli* bacteria in concentrations exceeding an STV of four hundred and ten (410) *E. coli* CFU per one hundred (100) ml; or ( )

~~b.~~ ~~Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.e. Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding:~~ (4-11-06)( )

~~i.~~ ~~For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) *E. coli* organisms per one hundred (100) ml~~ Geometric Mean Criterion. Not to contain enterococci bacteria in concentrations exceeding a geometric mean of thirty-five (35) enterococci CFU per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period; or (4-11-06)( )

~~ii.~~ ~~For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) ml; or~~ Statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain enterococci bacteria in concentrations exceeding an STV of one hundred and thirty (130) enterococci CFU per one hundred (100) ml. (4-11-06)( )

~~iii.~~ ~~For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) ml. Single sample counts above this value should be used in considering beach closures.~~ (4-11-06)

~~e.~~ ~~Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers.~~ (4-11-06)



**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 – WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-1802**

**NOTICE OF MEETING OF THE IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**NOTICE OF PUBLIC MEETING:** Notice is hereby given that during the meeting scheduled for November 14 and 15, 2018, the Idaho Department of Environmental Quality (DEQ) will present Rule Docket No. 58-0102-1802 to the Idaho Board of Environmental Quality (Board) for adoption as a pending rule.

**BOARD MEETING SCHEDULE:**

|  |
|--|
| <b>PUBLIC MEETING</b>  |
| <b>Wednesday, November 14<br/>&amp; Thursday, November 15, 2018<br/>Call to Order at 9:00 a.m. (MST)</b> |
| <b>DEQ State Office<br/>1410 N. Hilton Street<br/>Conference Rooms A &amp; B<br/>Boise, Idaho 83706</b>  |

The Board meeting agenda will be available on November 1, 2018, at <http://www.deq.idaho.gov/about-deq/board-of-environmental-quality/meetings/>.

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. For those who cannot attend the meeting in person, arrangements for telephone/web conferencing can be made. To request accommodations for language translation or telephone/web conferencing, contact the undersigned by November 6, 2018.

**DESCRIPTIVE SUMMARY:** Proposed Rule Docket No. 58-0102-1802 was published in the Idaho Administrative Bulletin on September 5, 2018, **Vol. 18-9**, and is available at [www.deq.idaho.gov/58-0102-1802](http://www.deq.idaho.gov/58-0102-1802). The written comment deadline for Docket No. 58-0102-1802 is October 5, 2018. After consideration of public comments, DEQ intends to present the final proposal to the Board for adoption of a pending rule. The public will have an opportunity to provide oral comments on the proposed rule during the Board meeting. The rule is expected to become final and effective upon the conclusion of the 2019 legislative session if adopted by the Board and approved by the Legislature.

Dated this 5th day of September, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, Idaho 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)



# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 – WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1803

#### 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. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2018. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the meeting of the Idaho Board of Environmental Quality (Board) scheduled for November 14 and 15, 2018.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to allow de minimus additions of heat when waters exceed applicable temperature criteria due to man-made causes. Currently, Idaho's point source treatment requirements allow point sources of heat to raise receiving water temperatures up to 0.3°C only when the receiving water is naturally warmer than numeric criteria. There is not an allowance for any increase, however small, when it cannot be shown receiving water temperatures are naturally warmer than criteria.

Idaho has many very small point sources. All add some heat to the waters to which they discharge. And, in most cases, the water bodies to which they discharge are warmer than Idaho's numeric temperature criteria set to protect aquatic life for a portion of each year. Heat is a non-conservative pollutant, and the sources of heat can be relatively small. This rulemaking proposes allowing NPDES/IPDES regulated human sources of heat loading to cause no more than a de minimus 0.3°C increase in receiving water temperatures. This would allow a 0.3°C increase to waters that are exceeding the numeric temperature criteria upstream for the designated aquatic life use even in cases where the exceedance of numeric criteria is not due to natural conditions.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2018 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2019 legislative session if adopted by the Board and approved by the Legislature.

**EFFECTIVE FOR CLEAN WATER ACT PURPOSES:** Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the July 2018 issue of the Idaho Administrative Bulletin, a preliminary draft rule was made available for public review on June 25, 2018, and a meeting was held on July 20, 2018. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at [www.deq.idaho.gov/58-0102-1803](http://www.deq.idaho.gov/58-0102-1803).

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Brian Reese at [brian.reese@deq.idaho.gov](mailto:brian.reese@deq.idaho.gov), (208) 373-0570.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 5, 2018.

Dated this 5th day of September, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

- 01. Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
  - a.** The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
  - b.** Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)
  - c.** If temperature criteria for the designated aquatic life use are exceeded in the receiving waters

upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (3-29-12)

**Note:** Submitted to EPA as a temporary rule on July 20, 2011, and as a final rule on August 7, 2012 (docket 58-0102-1101). This revision removed the numeric limits on point source induced changes in receiving water temperature. Until EPA approves this revision, the previous treatment requirements published in [2011 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

The previous treatment requirements published in 2011 Idaho Administrative Code are effective for CWA purposes until the date EPA issues written notification that the revisions in Docket Nos. 58-0102-1101 or 58-0102-1802 have been approved.

c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge ~~due to natural background conditions~~, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above numeric criteria or natural background conditions, whichever is greater. (3-29-12)( )

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1803 have been approved.

**02. Turbidity.** The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

a. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

b. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 – WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-1803**

**NOTICE OF MEETING OF THE IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**NOTICE OF PUBLIC MEETING:** Notice is hereby given that during the meeting scheduled for November 14 and 15, 2018, the Idaho Department of Environmental Quality (DEQ) will present Rule Docket No. 58-0102-1803 to the Idaho Board of Environmental Quality (Board) for adoption as a pending rule.

**BOARD MEETING SCHEDULE:**

|  |
|--|
| <b>PUBLIC MEETING</b>  |
| <b>Wednesday, November 14<br/>&amp; Thursday, November 15, 2018<br/>Call to Order at 9:00 a.m. (MST)</b> |
| <b>DEQ State Office<br/>1410 N. Hilton Street<br/>Conference Rooms A &amp; B<br/>Boise, Idaho 83706</b>  |

The Board meeting agenda will be available on November 1, 2018, at <http://www.deq.idaho.gov/about-deq/board-of-environmental-quality/meetings/>.

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. For those who cannot attend the meeting in person, arrangements for telephone/web conferencing can be made. To request accommodations for language translation or telephone/web conferencing, contact the undersigned by November 6, 2018.

**DESCRIPTIVE SUMMARY:** Proposed Rule Docket No. 58-0102-1803 was published in the Idaho Administrative Bulletin on September 5, 2018, **Vol. 18-9**, and is available at [www.deq.idaho.gov/58-0102-1803](http://www.deq.idaho.gov/58-0102-1803). The written comment deadline for Docket No. 58-0102-1803 is October 5, 2018. After consideration of public comments, DEQ intends to present the final proposal to the Board for adoption of a pending rule. The public will have an opportunity to provide oral comments on the proposed rule during the Board meeting. The rule is expected to become final and effective upon the conclusion of the 2019 legislative session if adopted by the Board and approved by the Legislature.

Dated this 5th day of September, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, Idaho 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.24 – STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED CORRECTIVE ACTION AT PETROLEUM RELEASE SITES**

**DOCKET NO. 58-0124-1801**

#### **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. This rulemaking action is authorized by Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 19, 2018. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** DEQ initiated this rulemaking to update the Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites, IDAPA 58.01.24, and the associated guidance manual, Idaho Risk Evaluation Manual for Petroleum Releases, to reflect the updated toxicity criteria as established by EPA. The rule was first adopted by the Idaho Board of Environmental Quality (Board) in 2008 and approved by the Idaho Legislature in 2009. In 2012, the rule was amended to update toxicity criteria and guidance was developed. Since the 2012 adoption of the rule and guidance, many of the petroleum chemicals of concern listed in the tables in the rule have had updated toxicity information which has resulted in the screening levels found in the tables to be out of date with current toxicity criteria.

The proposed rule includes the transfer of Table 2, screening level values, and Table 3, toxicity values, to the guidance manual. DEQ is proposing these revisions to avoid the rule becoming out of date and to promote current and consistent corrective action decision-making at petroleum release sites. The guidance manual has also been updated with the current industry practice for evaluation of the vapor intrusion pathway. The revised [Idaho Risk Evaluation Manual for Petroleum Releases](http://www.deq.idaho.gov) is available at [www.deq.idaho.gov](http://www.deq.idaho.gov).

Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, and citizens of the state of Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2018 for adoption of a temporary/pending rule. If adopted by the Board, the temporary rule would become effective on January 2, 2019, and the pending rule would become final and effective upon adjournment of the 2019 legislative session if approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the June 2018 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on June 29 and July 19, 2018. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at [www.deq.idaho.gov/58-0124-1801](http://www.deq.idaho.gov/58-0124-1801).

**IDAHO CODE SECTION 39-107D STATEMENT:** Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites. Therefore, this rule is not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government.” This rule does not propose to regulate an activity not regulated by the federal government. However, the proposed rule does make revisions to a process currently in the rule that is not specifically delineated or required by the federal government. DEQ previously addressed Sections 39-107D(3) and (4), Idaho Code, when this rule chapter was first promulgated in 2009 under Docket No. 58-0124-0801.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Eric Traynor at [eric.traynor@deq.idaho.gov](mailto:eric.traynor@deq.idaho.gov), (208) 373-0565.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 3, 2018.

Dated this 5th day of September, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706-1255  
Phone: (208) 373-0418  
Fax No.: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0124-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**008. ~~LIST OF TABLES.~~**

~~The following tables are found in Section 800.~~

~~(5-8-09)~~

**01. ~~Table 1.~~ Chemicals of Interest for Various Petroleum Products. The table of chemicals of interest for various petroleum products is available in Section 800 of these rules.**

~~(5-8-09)~~( )

**02. ~~Table 2. Residential Use Screening Levels~~ Screening Level Concentrations for Soil, Ground Water, and Soil Vapor. The table of screening level concentrations for soil, ground water, and soil vapor is available in the Idaho Risk Evaluation Manual for Petroleum Releases at [www.deq.idaho.gov](http://www.deq.idaho.gov).**

~~(5-8-09)~~( )

**03. ~~Table 3.~~ Default Toxicity Values for Risk Evaluation. The table of default toxicity values for risk evaluation is available in the Idaho Risk Evaluation Manual for Petroleum Releases at [www.deq.idaho.gov](http://www.deq.idaho.gov).**

~~(5-8-09)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

100. CHEMICALS EVALUATED AT PETROLEUM RELEASE SITES.

01. **General Applicability.** For petroleum sites governed by Sections 851 and 852 of IDAPA 58.01.02, “Water Quality Standards,” the chemicals listed in ~~Subsection 800.01 (Table 1)~~ Section 800, table of chemicals of interest for various petroleum products, will be evaluated based on the specific petroleum product or products known or suspected to have been released. (5-8-09)(    )

02. **Additional Chemicals.** Evaluation of non-petroleum chemicals in addition to those in ~~Subsection 800.01 (Table 1)~~ Section 800, table of chemicals of interest for various petroleum products, may be required by the Department when there is a reasonable basis based on site-specific information. A reasonable basis shall be demonstrated by the Department when it can show documentation of releases or suspected releases of other non-petroleum chemicals. (5-8-09)(    )

101. -- 199. (RESERVED)

200. RISK EVALUATION PROCESS.

The following risk evaluation process shall be used for petroleum releases in accordance with the Petroleum Release Response and Corrective Action Rules described in IDAPA 58.01.02, “Water Quality Standards,” Section 852. (5-8-09)

01. **Screening Evaluation.** The screening evaluation may be performed at any time during the release response and corrective action process described in IDAPA 58.01.02, “Water Quality Standards,” Section 852. The screening evaluation shall include, at a minimum: (5-8-09)

a. Collection of media-specific (soil, surface water, ground water) data; and (5-8-09)

b. Identification of maximum soil, ground water, and soil vapor petroleum chemical concentrations for the chemicals identified in ~~Subsection 800.01 (Table 1)~~ Section 800, table of chemicals of interest for various petroleum products, as appropriate for the petroleum product or products released. (3-29-12)(    )

c. Comparison of the maximum media-specific petroleum contaminant concentrations to the screening levels identified in Subsection ~~800.02 (Table 2)~~ the table of screening level concentrations for soil, ground water, and soil vapor in the Idaho Risk Evaluation Manual for Petroleum Releases. If the maximum media-specific petroleum contaminant concentrations at a site do not exceed the screening levels, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the maximum media-specific concentrations at a site exceed the screening levels, the owner and/or operator shall proceed to: (5-8-09)(    )

i. Adopt the screening levels as cleanup levels and develop a corrective action plan to achieve those levels pursuant to Subsection 200.03; or (5-8-09)

ii. Perform a site specific risk evaluation pursuant to Section 300. The Department may require the collection of additional site-specific data prior to the approval of the risk evaluation. (5-8-09)

02. **Results of Risk Evaluation.** If the results of the approved risk evaluation do not exceed the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the results of the approved risk evaluation indicates exceedance of the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the risk evaluation shall: (5-8-09)

a. Be modified by collection of additional site-specific data, or review of chemical toxicological information, and resubmitted to the Department for review and approval; or (5-8-09)



**b.** Provide the basis for the development of risk based concentrations, establishment of remediation standards as described in Section 400, and development of a corrective action plan. (5-8-09)

**03. Development and Implementation of Corrective Action Plan.** A Corrective Action plan required as a result of the risk evaluation process described in Section 200 shall include, but not be limited to, the following information, as applicable: (5-8-09)

**a.** Description of remediation standards, points of exposure, and points of compliance where remediation standards shall be achieved; (5-8-09)

**b.** Description of remedial strategy and actions that will be taken to achieve the remediation standards; (5-8-09)

**c.** Current and reasonably anticipated future land use and use of on-site and immediately adjacent off-site ground water, and surface water; (5-8-09)

**d.** Activity and use limitations, if any, that will be required as part of the remedial strategy; (5-8-09)

**e.** Proposed environmental covenants, developed to implement activity and use limitations, in accordance with Section 600; (5-8-09)

**f.** Estimated timeline for completion; and (5-8-09)

**g.** Monitoring Plan to monitor effectiveness of remedial actions. (5-8-09)

**h.** Description of practical quantitation limits as they apply. (5-8-09)

**i.** Description of background concentrations as they apply. (5-8-09)

**04. Department Review and Approval of Risk Evaluation or Corrective Action Plan.** Within thirty (30) days of receipt of the risk evaluation or corrective action plan, the Department shall provide in writing either approval, approval with modifications, or rejection of the risk evaluation or corrective action plan. If the Department rejects the risk evaluation or corrective action plan, it shall notify the owner and/or operator in writing specifying the reasons for the rejection. If the Department needs additional time to review the documents, it will provide written notice to the owner and/or operator that additional time to review is necessary and will include an estimated time for review. Extension for review time shall not exceed one hundred eighty (180) days without a reasonable basis and written notice to the owner and/or operator. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. SITE SPECIFIC RISK EVALUATION REQUIREMENTS.**

**01. General Requirements.** The general requirements for human health risk evaluations shall include, at a minimum: (5-8-09)

**a.** A conceptual site model which describes contaminant sources; release mechanisms; the magnitude, spatial extent, and temporal trends of petroleum contamination in all affected media; transport routes; current and reasonably likely future land use and human receptors; and relevant exposure scenarios. (5-8-09)

**b.** Toxicity Information derived from ~~Subsection 800.03 (Table 3)~~ the table of default toxicity values for risk evaluation in the Idaho Risk Evaluation Manual for Petroleum Releases. (5-8-09)( )

**c.** Data quality objectives and sampling approaches based on the conceptual site model that support the risk evaluation and risk management process. (5-8-09)



**d.** Estimated exposure point concentrations for a reasonable maximum exposure based on a conservative estimate of the mean of concentrations of chemicals that would be contacted by an exposed receptor. (5-8-09)

**e.** Exposure analysis including identification of contaminants of concern, potentially exposed populations, pathways and routes of exposure, exposure point concentrations and their derivation, and a quantitative estimate of reasonable maximum exposure for both current and reasonably likely future land and water use scenarios. Appropriate reference sources of reasonable maximum exposure factor information may include, but are not limited to: (5-8-09)

- i. U.S. EPA RAGS, Volume 1; (5-8-09)
- ii. U.S. EPA Exposure Factors Handbook; (5-8-09)
- iii. Idaho Risk Evaluation Manual for Petroleum Releases; and (3-29-12)
- iv. Other referenced technical publications. (5-8-09)

**f.** Risk characterization presenting the quantitative human health risks and a qualitative and quantitative assessment of uncertainty for each portion of the risk evaluation. (5-8-09)

**g.** Risk evaluations may include the use of transport and fate models, subject to Department approval of the model and the data to be used for the parameters specified in the model. (5-8-09)

**02. Specific Requirements.** Human health risk evaluations shall, at a minimum: (5-8-09)

- a.** Utilize an acceptable target risk level as defined in Section 010; (5-8-09)
- b.** Utilize an acceptable target hazard index as defined in Section 010; (5-8-09)
- c.** Utilize an acceptable target hazard quotient as defined in Section 010; (5-8-09)
- d.** Evaluate the potential for exposure from: (5-8-09)
  - i. Ground water ingestion; (5-8-09)
  - ii. Direct contact with contaminated soils resulting from soil ingestion, dermal contact, and inhalation of particulates and vapors; (5-8-09)
  - iii. Indoor inhalation of volatile chemicals via volatilization of chemicals from soil, ground water, or free phase product; (5-8-09)
  - iv. Ingestion, inhalation, or dermal exposure to ground water and/or surface water which has been impacted by contaminants that have leached from the soils; and (5-8-09)
  - v. Other complete or potentially complete routes of exposure; (5-8-09)
- e.** Evaluate the potential for exposure to: (5-8-09)
  - i. Adult and child residential receptors; (5-8-09)
  - ii. Adult construction and utility workers; (5-8-09)
  - iii. Aquatic life; (5-8-09)
  - iv. Recreational receptors; and (5-8-09)

- v. Other relevant potentially exposed receptors; (5-8-09)
- f. Evaluate the potential for use of impacted ground water for ingestion based on: (5-8-09)
  - i. The current and historical use of the ground water for drinking water or irrigation; (5-8-09)
  - ii. The location and approved use of existing ground water wells in a one half (½) mile radius from the contaminated site at the release point; (5-8-09)
  - iii. The degree of hydraulic connectivity between the impacted ground water and other ground water bearing zones or surface water; and (5-8-09)
  - iv. The location of delineated source water protection areas for public drinking water systems. (5-8-09)

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

**400. ESTABLISHMENT OF REMEDIATION STANDARDS.**

If, as a result of the assessment and risk evaluation completed as described in Section 300, it is determined that corrective action is required, remediation standards shall be established. The remediation standards established in these rules shall be no more stringent than applicable or relevant and appropriate federal and state standards and are consistent with Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9621) and Section 39-107D(2), Idaho Code, taking into consideration site specific conditions. These standards, and any activity use limitations proposed for the site, shall be established as part of a corrective action plan approved in writing by the Department. The standards may consist of the following. (5-8-09)

**01. Screening Levels.** The petroleum contaminant concentrations in soil, ground water, and soil vapor in ~~Subsection 800.02 (Table 2)~~ the table of screening level concentrations for soil, ground water, and soil vapor in the Idaho Risk Evaluation Manual for Petroleum Releases. ~~(3-29-12)( )~~

**02. Risk Based Levels.** Site-specific, media-specific petroleum contaminant concentrations established in accordance with the risk evaluation procedures and requirements described in Section 300. (5-8-09)

**03. Generic Health Standards.** An established state or federal generic numerical health standard which achieves an appropriate health-based level so that any substantial present or probable future risk to human health or the environment is eliminated or reduced to protective levels based upon present and reasonably anticipated future uses of the site. (5-8-09)

**04. Other.** Remediation standards may be a combination of standards found in Subsections 400.01 through 400.03. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. TABLES.**

~~01. Table 1.~~ Chemicals of Interest for Various Petroleum Products.

| CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS |                             |                                     |                  |                                  |
|--|-----------------------------|-------------------------------------|------------------|----------------------------------|
| Chemical   | Gasoline/<br>JP-4/<br>AVGas | Diesel/ Fuel Oil<br>No. 2/ Kerosene | Fuel Oil<br>No.4 | Jet Fuels (Jet A,<br>JP-5, JP-8) |
| Benzene  | X                           | X                                   |                  | X                                |

| CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS |                             |                                     |                  |                                  |
|--|-----------------------------|-------------------------------------|------------------|----------------------------------|
| Chemical   | Gasoline/<br>JP-4/<br>AVGas | Diesel/ Fuel Oil<br>No. 2/ Kerosene | Fuel Oil<br>No.4 | Jet Fuels (Jet A,<br>JP-5, JP-8) |
| Toluene  | X                           | X                                   |                  | X                                |
| Ethyl benzene  | X                           | X                                   |                  | X                                |
| Xylenes (mixed)                                      | X                           | X                                   |                  | X                                |
| Ethylene Dibromide (EDB)                             | X <sup>1</sup>              |                                     |                  |                                  |
| 1,2 Dichloroethane (EDC)                             | X <sup>1</sup>              |                                     |                  |                                  |
| Methyl Tert-Butyl Ether (MTBE)                       | X                           |                                     |                  |                                  |
| Acenaphthene   |                             | X                                   | X                | X                                |
| Anthracene   |                             | X                                   | X                | X                                |
| Benzo(a)pyrene                                       |                             | X                                   | X                | X                                |
| Benzo(b)fluoranthene                                 |                             | X                                   | X                | X                                |
| Benzo(k)fluoranthene                                 |                             | X                                   | X                | X                                |
| Benz(a)anthracene                                    |                             | X                                   | X                | X                                |
| Chrysene   |                             | X                                   | X                | X                                |
| Fluorene   |                             | X                                   | X                | X                                |
| Fluoranthene   |                             | X                                   | X                | X                                |
| Naphthalene  | X                           | X                                   | X                | X                                |
| Pyrene   |                             | X                                   | X                | X                                |
| X <sup>1</sup> Leaded Regular Only                   |                             |                                     |                  |                                  |

(5-8-09) ( )

02. ~~Table 2. Residential Use Screening Levels.~~

| RESIDENTIAL USE SCREENING LEVELS |                         |                  |                        |                  |  |                         |
|----------------------------------|-------------------------|------------------|------------------------|------------------|--|-------------------------|
| CHEMICALS                        | SOIL                    |                  | GROUNDWATER            |                  |  | SOIL VAPOR <sub>e</sub> |
|                                  | Screening Level [mg/kg] | Critical Pathway | Screening Level [mg/L] | Critical Pathway | Basis for Ingestion Screening Level <sup>d</sup> |                         |
| Benzene                          | 0.025                   | GWPa             | 0.005                  | Ingestion        | MCLb   | 31                      |
| Toluene                          | 6.6                     | GWP              | 1.0                    | Ingestion        | MCL  | 520,000                 |
| Ethylbenzene                     | 0.25                    | Vapor Intrusion  | 0.05                   | Vapor Intrusion  | N/A  | 97                      |

| <b>RESIDENTIAL USE SCREENING LEVELS</b>   |                                |                         |                               |                         |  |   |
|---|--------------------------------|-------------------------|-------------------------------|-------------------------|--|---|
| <b>CHEMICALS</b>  | <b>SOIL</b>                    |                         | <b>GROUNDWATER</b>            |                         |  | <b>SOIL VAPOR<sup>e</sup></b>             |
|   | <b>Screening Level [mg/kg]</b> | <b>Critical Pathway</b> | <b>Screening Level [mg/L]</b> | <b>Critical Pathway</b> | <b>Basis for Ingestion Screening Level</b> | <b>Screening Level [ug/m<sup>3</sup>]</b> |
| Total Xylenes   | 27                             | Vapor Intrusion         | 8.7                           | Vapor Intrusion         | N/A  | 10,000                                    |
| Naphthalene   | 0.12                           | Vapor Intrusion         | 0.07                          | Vapor Intrusion         | N/A  | 7.2                                       |
| MTBE <sup>c</sup>   | 0.08                           | GWP                     | 0.04                          | Ingestion               | Risk-Based                                 | 940                                       |
| Ethylene dibromide(EDB)   | 0.0001                         | GWP                     | 0.00005                       | Ingestion               | MCL  | 0.4                                       |
| 1,2-Dichloroethane  | 0.013                          | GWP                     | 0.005                         | Ingestion               | MCL  | 9.4                                       |
| Acenaphthene  | 200                            | GWP                     | 2.2                           | Ingestion               | Risk-Based                                 | N/A                                       |
| Anthracene  | 3200                           | GWP                     | 41                            | Ingestion               | Risk-Based                                 | N/A                                       |
| Benz(a)anthracene   | 0.09                           | GWP                     | 0.00003                       | Ingestion               | Risk-Based                                 | N/A                                       |
| Benzo(a)pyrene  | 0.02                           | Direct Contact          | 0.0002                        | Ingestion               | MCL  | N/A                                       |
| Benzo(b)fluoranthene  | 0.2                            | Direct Contact          | 0.00003                       | Ingestion               | Risk-Based                                 | N/A                                       |
| Benzo(k)fluoranthene  | 4.9                            | Direct Contact          | 0.0003                        | Ingestion               | Risk-Based                                 | N/A                                       |
| Chrysene  | 9.5                            | GWP                     | 0.003                         | Ingestion               | Risk-Based                                 | N/A                                       |
| Fluoranthene  | 1,400                          | GWP                     | 1.5                           | Ingestion               | Risk-Based                                 | N/A                                       |
| Fluorene  | 240                            | GWP                     | 1.5                           | Ingestion               | Risk-Based                                 | N/A                                       |
| Pyrene  | 1,000                          | GWP                     | 1.1                           | Ingestion               | Risk-Based                                 | N/A                                       |
| <del>a. Ground Water Protection Via Petroleum Contaminants in Soil Leaching to Ground Water</del>                       |                                |                         |                               |                         |  |   |
| <del>b. Maximum contaminant level</del>   |                                |                         |                               |                         |  |   |
| <del>c. Methyl tert-butyl ether</del>   |                                |                         |                               |                         |  |   |
| <del>d. For the ingestion pathway, the source of the target level is indicated (MCL or a risk-based calculation).</del> |                                |                         |                               |                         |  |   |
| <del>e. Soil vapor measurements obtained at greater than 3-5 feet below ground surface.</del>                           |                                |                         |                               |                         |  |   |

(3-29-12)

03. ~~Table 3. Default Toxicity Values for Risk Evaluation.~~

| <b>DEFAULT TOXICITY VALUES FOR RISK EVALUATION</b> |                    |  |  |   |  |                              |                                |
|--|--------------------|--|--|---|--|------------------------------|--------------------------------|
| <b>CHEMICALS</b>                                   | <b>CAS-Numbers</b> | <b>Oral Slope-Factor (SFo) (kg-day/mg)</b> | <b>Inhalation-Unit Risk (IUR) (ug/m<sup>3</sup>)</b> | <b>Oral Reference-Dose (RfDo) (mg/kg-day)</b> | <b>Inhalation-Reference-Concentration (RfC) (mg/m<sup>3</sup>)</b> | <b>Oral RA-Factor (RAFo)</b> | <b>Dermal RA-Factor (RAFd)</b> |
| Benzene  | 71-43-2            | 0.055                                      | 7.8E-06  | 0.004   | 0.03   | 1                            | 0                              |
| Toluene  | 108-88-3           | NA   | NA   | 0.08  | 5.0  | 1                            | 0                              |
| Ethylbenzene                                       | 100-41-4           | 0.011                                      | 2.5E-06  | 0.1   | 1.0  | 1                            | 0                              |
| Total Xylenes                                      | 1330-20-7          | NA   | NA   | 0.2   | 0.1  | 1                            | 0                              |
| Naphthalene  | 91-20-3            | NA   | 3.4E-05  | 0.02  | 0.003  | 1                            | 0.13                           |
| MTBEc  | 1634-04-4          | 0.0018                                     | 2.6E-07  | NA  | 3.0  | 1                            | 0                              |
| 1,2-Dichloroethane                                 | 107-06-2           | 0.091                                      | 2.6E-05  | 0.006   | 0.007  | 1                            | 0                              |
| Ethylene Dibromide                                 | 106-93-4           | 2  | 6.0E-04  | 0.009   | 0.009  | 1                            | 0                              |
| Acenaphthene                                       | 83-32-9            | NA   | NA   | 0.06  | NA   | 1                            | 0.13                           |
| Anthracene   | 120-12-7           | NA   | NA   | 0.3   | NA   | 1                            | 0.13                           |
| Benz(a)anthracene                                  | 56-55-3            | 0.73                                       | 1.1E-04  | NA  | NA   | 1                            | 0.13                           |
| Benzo(a)pyrene                                     | 50-32-8            | 7.3  | 1.1E-03  | NA  | NA   | 1                            | 0.13                           |
| Benzo(b)fluoranthene                               | 205-99-2           | 0.73                                       | 1.1E-04  | NA  | NA   | 1                            | 0.13                           |
| Benzo(k)fluoranthene                               | 207-08-9           | 0.073                                      | 1.1E-04  | NA  | NA   | 1                            | 0.13                           |
| Chrysene   | 218-01-9           | 0.0073                                     | 1.1E-05  | NA  | NA   | 1                            | 0.13                           |
| Fluoranthene                                       | 206-44-0           | NA   | NA   | 0.04  | NA   | 1                            | 0.13                           |
| Fluorene   | 86-73-7            | NA   | NA   | 0.04  | NA   | 1                            | 0.13                           |
| Pyrene   | 129-00-0           | NA   | NA   | 0.03  | NA   | 1                            | 0.13                           |
| <b>Notes:</b>                                      |                    |  |  |   |  |                              |                                |
| <b>a</b> -Chemical Abstract Service                |                    |  |  |   |  |                              |                                |
| <b>b</b> -Relative Absorption                      |                    |  |  |   |  |                              |                                |
| <b>c</b> -Methyl tert-butyl ether                  |                    |  |  |   |  |                              |                                |
| <b>NA</b> -No data available                       |                    |  |  |   |  |                              |                                |

| <b>DEFAULT TOXICITY VALUES FOR RISK EVALUATION</b>   |                    |   |  |  |  |   |   |
|--|--------------------|---|--|--|--|---|---|
| <b>CHEMICALS</b>   | <b>CAS-Numbers</b> | <b>Oral Slope Factor (Sf<sub>o</sub>) (kg-day/mg)</b> | <b>Inhalation Unit Risk (IUR) (ug/m<sup>3</sup>)</b> | <b>Oral Reference Dose (RfD<sub>o</sub>) (mg/kg-day)</b> | <b>Inhalation Reference Concentration (RfC) (mg/m<sup>3</sup>)</b> | <b>Oral RA<sub>o</sub> Factor (RAF<sub>o</sub>)</b> | <b>Dermal RA Factor (RAF<sub>d</sub>)</b> |
| <p>Source of toxicity values is the Regional Screening Level Summary Table (May 2011) found at the U.S. EPA Regional Screening Table website. The website is located at <a href="http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm">http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm</a>.</p> |                    |   |  |  |  |   |   |

(3-29-12)

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.05 – PERSI SEPARATION FROM SERVICE RULES**

**DOCKET NO. 59-0105-1801**

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 59-1314(1).

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 136-137](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 17th day of July, 2018.

Don Drum  
Executive Director Public Employee Retirement System of Idaho  
607 N. 8th Street  
Boise, ID 83702  
P.O. Box 83720  
Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408

# IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO

## 59.01.06 – PERSI RETIREMENT RULES

DOCKET NO. 59-0106-1801

### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1).

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 138-139](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 17th day of July, 2018.

Don Drum  
Executive Director Public Employee Retirement System of Idaho  
607 N. 8th Street  
Boise, ID 83702  
P.O. Box 83720  
Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408



**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND FORMS FOR DEFENDING ATTORNEY ANNUAL REPORTS**

**DOCKET NO. 61-0102-1801 (NEW CHAPTER)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(ii), Idaho Code.

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

| <b>PUBLIC HEARINGS</b>   |   |
|--|---|
| <b>Monday, October 15, 2018<br/>5:00 p.m. (MDT)<br/>Twin Falls</b>   | <b>Tuesday, October 16, 2018<br/>5:00 p.m. (MDT)<br/>Idaho Falls</b>                            |
| Twin Falls County Administration Bldg.<br>Planning and Zoning Conference Room<br>630 Addison Avenue West<br>Twin Falls, ID 83301 | Residence Inn Idaho Falls<br>Taylor Crossing West<br>635 West Broadway<br>Idaho Falls, ID 83402 |
| <b>Wednesday, October 17, 2018<br/>5:00 p.m. (MDT)<br/>Pocatello</b>   | <b>Monday, October 22, 2018<br/>4:00 p.m. (PDT)<br/>Lewiston</b>                                |
| Idaho State University<br>Pond Building – Wood River Room<br>921 South 8th Avenue<br>Pocatello, ID 83209                         | Red Lion Hotel Lewiston<br>Port 3 Room<br>621 21st Street<br>Lewiston, ID 83501                 |
| <b>Tuesday, October 23, 2018<br/>4:00 p.m. (PDT)<br/>Coeur d’Alene</b>   | <b>Wednesday, October 24, 2018<br/>4:00 p.m. (MDT)<br/>Nampa</b>                                |
| Red Lion Templin Hotel<br>Redhead Room<br>414 East First Avenue<br>Post Falls, ID 83854  | Nampa Civic Center<br>Pacific Source Room<br>311 3rd Street, South<br>Nampa, ID 83651           |
| <b>Thursday, October 25, 2018 - 4:00 p.m. (MDT)<br/>Boise</b>  |   |
| Water Center Building – 6th Floor<br>Conference Room 602B-D<br>322 E. Front Street<br>Boise, ID 83702                            |   |

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:

Idaho Code 19-850(1)(a)(ii) requires the PDC to promulgate rules related to uniform data reporting requirements and model forms for the annual reports submitted pursuant to Idaho Code 19-864 which shall include, but not be

limited to, caseload, workload and expenditures. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

**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 with this rule.

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

There should be no direct impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, page 84](#).

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

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

DATED this 1st day of August, 2018.

Kimberly Simmons, Executive Director  
State Public Defense Commission  
816 W. Bannock St., Suite 201  
Boise, ID 83702  
(208) 332-1735

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0102-1801**  
**(New Chapter)**

**IDAPA 61**  
**TITLE 01**  
**CHAPTER 02**

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND FORMS FOR DEFENDING ATTORNEY ANNUAL REPORTS**

**000. LEGAL AUTHORITY.**

Section 19-850 (1)(a)(ii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing uniform data reporting requirements and model forms for the Annual Reports submitted pursuant to section 19-864, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA, Title 01, Chapter 02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports.” ( )

**02. Scope.** These rules contain the provisions of uniform data collection of Idaho’s defending attorneys and establish the procedures by which defending attorneys shall report data to the PDC. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. ( )

**005. OFFICE—OFFICE HOURS—MAILING AND STREET ADDRESS—TELEPHONE—INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007 – 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule. ( )

**011 – 019. (RESERVED)**

**020. APPLICATION OF REPORTING REQUIREMENTS.**

In accordance with section 19-864, Idaho Code, Indigent Defense Providers and any defending attorney whose information is not otherwise included in a report from an Indigent Service Provider shall submit an Annual Report to the PDC, the board of county commissioners, and the appropriate administrative district judge in conformance with the rules promulgated pursuant to section 19-850(1)(a)(ii), Idaho Code. ( )

**01. Entities Required to Report.** All Indigent Defense Providers and defending attorneys shall be included in an Annual Report, but not all defending attorneys must submit a report. The following entities or individuals must submit an Annual Report: ( )

- a. Each Chief Defender for an institutional public defense office. ( )
- b. Each Chief Defender for a joint institutional public defense office. ( )
- c. Each Indigent Defense Provider under contract to provide indigent defense services. ( )
- d. Each attorney appointed at public expense to represent an indigent person. ( )

**02. Exceptions to Reporting Requirements.** The following are exceptions to the entities required to report: ( )

- a. If an Indigent Defense Provider is a law firm, only one Annual Report is required for the firm. ( )
- b. An attorney, appointed at public expense by the court and not under contract to provide indigent defense services for the county in which she was appointed, who handles fewer than ten (10) indigent defense cases in a fiscal year, may receive an exception to the reporting requirement. The attorney must contact the PDC, who may waive the reporting requirement if an alternative method of fulfilling the reporting requirements can be established. ( )

**021. REPORTING REQUIREMENTS.**

Information to be included in the Annual Report. ( )

**01. Case Information.** Each Annual Report for the previous fiscal year shall include for each defending attorney the following: ( )

- a. The number of cases handled; ( )
- b. The types of cases handled; ( )
- c. The method of resolution of each case handled (i.e., plea, dismissal, found guilty at trial, etc.); and ( )
- d. Case outcomes. ( )

**02. Continuing Legal Education Information.** Each Annual Report shall contain each defending attorney's Continuing Legal Education hours as reported to the Idaho State Bar (ISB) for the previous fiscal year. The Annual Report shall be accompanied by one MCLE report from the ISB for each defending attorney. If the reporting period began during the previous fiscal year, an MCLE report for the entirety of the previous fiscal year must be sent. An attorney may have to request this information from the ISB. ( )

**03. Expenditure Information.** Each Annual Report shall contain expenditures related to indigent defense services. Expenditures related to indigent defense services include, but are not limited to: ( )

- a. Investigations; ( )

- b. Expert witnesses; ( )
- c. Interpreters; ( )
- d. Mental and physical health examinations; ( )
- e. Medical records; ( )
- f. Polygraph examinations; ( )
- g. Exhibits for trial demonstrations; ( )
- f. Scientific tests; ( )
- g. Extraordinary travel expenses; ( )
- h. Transcripts; ( )
- i. Discovery costs. ( )

**04. Support Staff.** Each Annual Report shall contain a comprehensive listing of support staff, including investigators, employed by an Indigent Service Provider or a defending attorney. ( )

**05. Method of Data Collection.** Each Annual Report shall contain the method of data collection utilized by the Reporter to obtain the requested information, such as the name of a Case Management System or software program. ( )

**06. Attorney Experience.** Each Annual Report shall contain a brief description of each defending attorney's experience, including years of experience. ( )

**022. REPORTING CYCLE.**

The PDC shall conduct the reporting cycle in accordance with Section 19-864, Idaho Code, and the following schedule so far as it does not conflict with Idaho Code: ( )

**01. Form Availability.** The PDC shall make the Annual Report form available by July 1 each year for the subsequent fiscal year (i.e., July 1, 2019 for the Annual Report due November 1, 2020). ( )

**02. Purpose.** The data collected will inform the PDC on how to improve client representation, justify budget and resources, and recommend changes to indigent defense system practices and policies. ( )

**03. Reporting Period.** The Annual Report shall reflect the fiscal year immediately prior to the due date. ( )

**04. Due Date.** The Annual Report shall be delivered to the PDC on or before November 1 of each year. ( )

**023. APPLICATION PROCEDURE.**

The Annual Report shall be completed and submitted according to these rules. ( )

**01. Forms.** A Reporter shall file the appropriate fiscal year form supplied by the PDC and any other requested documents, both of which shall have original or digital signatures. ( )

**02. Method of Delivery.** The Annual Report shall be submitted to the PDC via mail, email, or facsimile. ( )

**03. Review.** A Reporter may review the Annual Report with the PDC staff prior to submitting the

Annual Report to ensure it meets the PDC's criteria. ( )

**04. Incomplete Annual Report.** Incomplete Annual Reports will be rejected by the PDC unless the Reporter can provide a reasonable explanation as to why the Annual Report is incomplete. Incomplete reports will be considered not submitted to the satisfaction of the Commission, which could prohibit the disbursement of the county's Indigent Defense Grant Funds. ( )

**05. Due Date.** The Annual Report shall be delivered to the PDC on or before November 1 of each year. ( )

**024. EXPLANATION OF DATA NOT TRACKED.**

Any data which should be included in the Annual Report but was not tracked during the fiscal year must be reported to the PDC along with an explanation addressing why the data was not tracked. If the PDC determines a failure to track data is justifiable (i.e. non-willful), the disbursement of the county's Indigent Defense Grant Funds will not necessarily be prohibited. ( )

**025. FAILURE TO SUBMIT AN ANNUAL REPORT.**

Any defending attorney who fails to submit an Annual Report or fails to be included in an Annual Report may be removed from the public defense roster, as outlined in IDAPA 61.01.06.026. ( )

**026. FRAUDULENT INFORMATION.**

Any Reporter who includes fraudulent information in the Annual Report is subject to enforcement as outlined in IDAPA 61.01.06.026. ( )

**027 – 999. (RESERVED)**

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS  
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS  
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

**DOCKET NO. 61-0103-1801 (NEW CHAPTER)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(iii), Idaho Code.

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

| <b>PUBLIC HEARINGS</b>   |   |
|--|---|
| <b>Monday, October 15, 2018<br/>5:00 p.m. (MDT)<br/>Twin Falls</b>   | <b>Tuesday, October 16, 2018<br/>5:00 p.m. (MDT)<br/>Idaho Falls</b>                                      |
| <b>Twin Falls County Administration Bldg.<br/>Planning and Zoning Conference Room<br/>630 Addison Avenue West<br/>Twin Falls, ID 83301</b> | <b>Residence Inn Idaho Falls<br/>Taylor Crossing West<br/>635 West Broadway<br/>Idaho Falls, ID 83402</b> |
| <b>Wednesday, October 17, 2018<br/>5:00 p.m. (MDT)<br/>Pocatello</b>   | <b>Monday, October 22, 2018<br/>4:00 p.m. (PDT)<br/>Lewiston</b>  |
| <b>Idaho State University<br/>Pond Building – Wood River Room<br/>921 South 8th Avenue<br/>Pocatello, ID 83209</b>                         | <b>Red Lion Hotel Lewiston<br/>Port 3 Room<br/>621 21st Street<br/>Lewiston, ID 83501</b>                 |
| <b>Tuesday, October 23, 2018<br/>4:00 p.m. (PDT)<br/>Coeur d’Alene</b>   | <b>Wednesday, October 24, 2018<br/>4:00 p.m. (MDT)<br/>Nampa</b>  |
| <b>Red Lion Templin Hotel<br/>Redhead Room<br/>414 East First Avenue<br/>Post Falls, ID 83854</b>  | <b>Nampa Civic Center<br/>Pacific Source Room<br/>311 3rd Street, South<br/>Nampa, ID 83651</b>           |
| <b>Thursday, October 25, 2018 - 4:00 p.m. (MDT)<br/>Boise</b>  |   |
| <b>Water Center Building – 6th Floor<br/>Conference Room 602B-D<br/>322 E. Front Street<br/>Boise, ID 83702</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:

Section 19-850(1)(a)(iii), Idaho Code, requires the PDC to promulgate rules related to model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. These services include, but not be limited to, compliance with indigent defense standards. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

**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 with this rule.

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

This rule will not have any direct impact on the general fund, however, there is the possibility of a future indirect impact as follows: changes to county contracts as a result of this rulemaking may require additional monies in order to comply. Due to the PDC's duty to distribute funding to assist the counties with compliance, the PDC may seek additional appropriations to cover these increases.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, page 85](#).

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

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

DATED this 1st day of August, 2018.

Kimberly Simmons, Executive Director  
State Public Defense Commission  
816 W. Bannock St., Suite 201  
Boise, ID 83702  
(208) 332-1735

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0103-1801**  
**(New Chapter)**



**IDAPA 61**  
**TITLE 01**  
**CHAPTER 03**

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS  
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS  
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

**000. LEGAL AUTHORITY.**

Section 19-850(1)(a)(iii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.” ( )

**02. Scope.** These rules establish the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to create rules governing contracts and core requirements for contracts between counties and private attorneys for the provision of indigent services is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions,” is incorporated into this Chapter. ( )

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The PDC operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems — Rule Definitions” for definitions of the terms and abbreviations used in this Rule. ( )

**011. – 019. (RESERVED)**

**020. CORE TERMS.**

If a Contracting Authority elects to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense by contracting with a defending attorney, as provided under Section 19-859(4), Idaho Code, each contract between the parties shall include the following: ( )

- 01. Underlying Bases.** The contract shall include a term explaining: ( )
  - a.** The Contracting Authority’s statutorily mandated responsibility to provide public defender services. ( )
  - b.** The Contracting Authority’s desire to have legal services performed for individuals entitled to representation at public expense, provided by the Contractor. ( )
- 02. Parties.** The contract shall identify the Contracting Authority and the Contractor. ( )
- 03. Term of the Contract.** The contract shall specify the term of the contract, including a provision for renewal and for termination by either party. The contract should have a clear start date and end date. ( )
- 04. Compensation.** The contract shall have a term setting the monetary rate at which the Contractor will be compensated for legal services rendered. ( )
- 05. Independent Contractor.** The contract shall have a term explaining that the Contractor is an independent contractor for all services rendered pursuant to the contract. ( )
- 06. Scope of the Contract.** The contract shall establish the case types to be handled pursuant to the contract. ( )
- 07. Conflicts of Interest.** The contract shall include a provision ensuring the contractor does not provide representation to defendants when doing so would involve a conflict of interest. ( )
- 08. Training Requirements.** The contract shall require each defending attorney providing services pursuant to the contract to participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice, as required by the most recent edition of “Standards for Defending Attorneys.” ( )
- 09. Experience Requirements.** Each Defending Attorney providing services pursuant to the contract shall:
  - a.** Meet the qualification and training requirements set forth in the most recent edition of “Standards for Defending Attorneys” incorporated by reference in IDAPA 61.01.08; and ( )
  - b.** Satisfy the minimum requirements for practicing law in Idaho as determined by the Idaho Supreme Court; and ( )
  - c.** Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and ( )
  - d.** Be familiar with the Idaho Rules of Professional Conduct; and ( )
  - e.** Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and ( )
  - f.** Be familiar with mental health issues and be able to identify the need to obtain expert services. ( )

- 10. Performance Requirements.** The contract shall require the contractor to do the following: ( )
- a.** Make reasonable efforts to provide the services and comply with the requirements of the Contract. ( )
  - b.** Utilize adequate support staff to render the necessary competent assistance of counsel required under the contract. ( )
  - c.** Contact all clients within a specified amount of time from notification of case assignment. The amount of time should take into account the requirements of providing constitutional representation and the ability of the contractor to meet such requirement considering factors like travel time and the ability to engage in such communication. ( )
  - d.** Abide by PDC standards as set forth in the most recent edition of “Standards for Defending Attorneys.” ( )

**021. ESTABLISHMENT AND MAINTENANCE OF RECORDS.**

- 01. Costs of Services Records.** The contract shall require the Contractor to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the contract. ( )
- 02. Costs of Subcontract and Personal Service Contract Records.** Each contract shall require the Contractor to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. ( )
- 03. Duration of Record Keeping.** Each contract shall require the Contractor to maintain records for a specified period of time after termination of the contract, unless permission to destroy records before that time period is granted by the Contracting Authority. ( )
- 04. Copies.** A copy of every signed contract between a Contracting Authority and an Indigent Defense Provider shall be sent to the PDC by the Contracting Authority within thirty (30) days of ratification. ( )

**022. REPORTS AND INSPECTIONS.**

- Each contract shall require the Contractor to submit to the Contracting Authority the following: ( )
- 01. Name.** The name of each person who provides services under the contract. ( )
  - 02. Position.** The position of each person who provides services under the contract. ( )
  - 03. Salary.** The salary for each person who provides services under the contract, including support staff. ( )
  - 04. Annual Report.** An Annual Report, as set forth in Section 19-864, Idaho Code and IDAPA 61.01.02. ( )
  - 05. Expenditure Report.** An expenditure report for operational expenses for each month of the prior fiscal year. ( )
  - 06. Written Notification.** Immediate written notification in the case that a complaint is lodged with the Idaho State Bar, which has resulted in reprimand, suspension, or disbarment of the Indigent Defense Provider, or any attorney who is a member of the Indigent Defense Provider’s staff or working for the Indigent Defense Provider. ( )
  - 07. Materials.** Materials necessary to verify compliance with all terms of the contract. ( )

**023. – 999. (RESERVED)**

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO’S  
INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS**

**DOCKET NO. 61-0108-1801**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(vii), Idaho Code.

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

| <b>PUBLIC HEARINGS</b>   |   |
|--|---|
| <b>Monday, October 15, 2018<br/>5:00 p.m. (MDT)<br/>Twin Falls</b>   | <b>Tuesday, October 16, 2018<br/>5:00 p.m. (MDT)<br/>Idaho Falls</b>                                      |
| <b>Twin Falls County Administration Bldg.<br/>Planning and Zoning Conference Room<br/>630 Addison Avenue West<br/>Twin Falls, ID 83301</b> | <b>Residence Inn Idaho Falls<br/>Taylor Crossing West<br/>635 West Broadway<br/>Idaho Falls, ID 83402</b> |
| <b>Wednesday, October 17, 2018<br/>5:00 p.m. (MDT)<br/>Pocatello</b>   | <b>Monday, October 22, 2018<br/>4:00 p.m. (PDT)<br/>Lewiston</b>  |
| <b>Idaho State University<br/>Pond Building – Wood River Room<br/>921 South 8th Avenue<br/>Pocatello, ID 83209</b>                         | <b>Red Lion Hotel Lewiston<br/>Port 3 Room<br/>621 21st Street<br/>Lewiston, ID 83501</b>                 |
| <b>Tuesday, October 23, 2018<br/>4:00 p.m. (PDT)<br/>Coeur d’Alene</b>   | <b>Wednesday, October 24, 2018<br/>4:00 p.m. (MDT)<br/>Nampa</b>  |
| <b>Red Lion Templin Hotel<br/>Redhead Room<br/>414 East First Avenue<br/>Post Falls, ID 83854</b>  | <b>Nampa Civic Center<br/>Pacific Source Room<br/>311 3rd Street, South<br/>Nampa, ID 83651</b>           |
| <b>Thursday, October 25, 2018 - 4:00 p.m. (MDT)<br/>Boise</b>  |   |
| <b>Water Center Building – 6th Floor<br/>Conference Room 602B-D<br/>322 E. Front Street<br/>Boise, ID 83702</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:

This rule will amend standards for defending attorneys and provide a workload standard to ensure that defending attorneys are handling an appropriate workload. The standard will, in part, be based upon data collected in Idaho

during a workload study in 2017. This amendment will ensure that representation of Idaho's indigent defendants meets constitutional scrutiny.

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

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

There should be no direct impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, **Vol. 18-4, page 86** and the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, page 162**.

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

The incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

Dated this 1st day of August, 2018.

Kimberly Simmons, Executive Director  
State Public Defense Commission  
816 W. Bannock Street, Suite 201  
Boise, ID 83702  
(208) 332-1735

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0108-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” (5-1-18)

**02. Scope.** These rules contain the definitions used throughout the Indigent Defense Delivery System chapters of rules adopted by the PDC. Those chapters include: (5-1-18)

**a.** IDAPA 61.01.01, “Rules Governing Training Requirements for Defending Attorneys and the

Administration of Training Funds”; (5-1-18)

**b.** IDAPA 61.01.02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports”; ( )

**c.** IDAPA 61.01.03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services”; ( )

**d.** IDAPA 61.01.04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants”; (5-1-18)

**e.** IDAPA 61.01.06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards”; (5-1-18)

**f.** IDAPA 61.01.07, “Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to ~~promulgate rules~~ set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (5-1-18)( )

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (5-1-18)

**01. Idaho’s Principles of an Indigent Defense Delivery System.** “Idaho’s Principles of an Indigent Defense Delivery System, edition 2016,” revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. (5-1-18)

**02. Standards for Defending Attorneys.** “Standards for Defending Attorneys, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)( )

**03. Application for Capital Defense Roster.** “Application for Capital Defense Roster, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. (5-1-18)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: (5-1-18)

**01. Annual Report.** A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. (5-1-18)

**02. Applicant – Indigent Defense Grant.** A County that identifies a need for an Indigent Defense Grant by submission of a compliance proposal, and applies for a grant through the PDC. (5-1-18)

**03. Approval – IDG Application.** An IDG application shall be approved if the applicant meets the requirements for eligibility. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (5-1-18)

**04. Capital Counsel Roster.** A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. (5-1-18)

**05. Case.** (5-1-18)

**a.** A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one defending attorney. A probation violation or motion for contempt is counted as a separate case. (5-1-18)

**b.** A felony case is counted as follows: (5-1-18)

**i.** A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-18)

**ii.** A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-18)

**iii.** A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-18)

**c.** Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. (5-1-18)

**d.** If two or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. (5-1-18)

**06. Caseload.** The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-18)

**07. Compliance Checklist.** A document provided by the PDC each grant cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. (5-1-18)

**08. Compliance Period.** The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. (5-1-18)

**09. Compliance Proposal.** A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the grant for which it may be eligible, the plan may include a request for

funding for other improvements to its delivery of indigent defense services, pursuant to Section 19-862A(2), Idaho Code. (5-1-18)

**10. Compliance Verification.** A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Grant Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. (5-1-18)

**11. Contracting Authority.** The board of county commissioners or its designated agent who enters into a contract with a defending attorney for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ( )

**12. Corrective Action Plan.** A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any reported violation of established standards and how those violations will be corrected. (5-1-18)

**13. Defending Attorney.** Defined in Section 19-851, Idaho Code, as any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense in state courts. (5-1-18)

**14. Deficiency.** The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code. (5-1-18)

**15. Eligible Applicant – Indigent Defense Grant.** To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” (5-1-18)

**16. Established Standards.** Rules promulgated by the PDC pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

**17. Finding of Compliance with Recommendation.** A finding of compliance with recommendation refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. The PDC does not have the authority to enforce compliance with a recommendation. (5-1-18)

**18. Finding of Non-Compliance.** A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. (5-1-18)

**19. Fiscal Year.** As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following calendar year. (5-1-18)

**20. Formal Status Meeting.** A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. (5-1-18)

**21. Indigent Defense Budget.** The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county’s local share for that fiscal year. (5-1-18)

**22. Indigent Defense Contract.** A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at county expense. Such contracts shall not include a



pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. (5-1-18)

**223. Indigent Defense Delivery System.** The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. (5-1-18)

**234. Indigent Defense Expenditures.** Any monies expended for indigent defense services within a county that do not include amounts received from the public defense commission or amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors. (5-1-18)

**245. Indigent Defense Grant.** Pursuant to Section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense services if compliance can be achieved with county monies. (5-1-18)

**256. Indigent Defense Grant Application.** An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant's county. This application will be updated each year and be provided by February 28, initiating the grant cycle. Counties are required to use this application when requesting an IDG award. (5-1-18)

**267. Indigent Defense Provider.** Any agency, entity, organization or person selected by a board of county commissioners in accordance with Section 19-859, Idaho Code, or designee of the commission if the commission's actions to remedy specific deficiencies pursuant to Section 19-862A(11)(b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-18)

**278. Indigent Defense Services.** County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to Section 19-859, Idaho Code. (5-1-18)

**289. Indigent Defense Stakeholders ("Stakeholders").** A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. (5-1-18)

**2930. Indigent Defense Standard.** Defined in Section 19-851, Idaho Code, as any rule promulgated by the commission pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

**301. Joint Incentive Indigent Defense Grant.** Pursuant to Section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to Section 19-859(2), Idaho Code. (5-1-18)

**312. Local Share.** Defined in Section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense grants for which a county may be eligible pursuant to Section 19-862A, Idaho Code. For any given county fiscal year, a county's local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. (5-1-18)

**323. Oversight Review.** An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. (5-1-18)

**334. Public Defense Roster.** A roster of complaint defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney. (5-1-18)

**35. Reporter.** An Indigent Defense Provider or defending attorney who submits an Annual Report as required by Section 19-864, Idaho Code, and IDAPA 61.01.02. ( )

~~346~~. **Scholarship.** Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (5-1-18)

~~357~~. **Staff.** Any individual employed by the PDC. (5-1-18)

~~368~~. **Submission Date.** The date upon which one mails or digitally submits a document, form or application to the PDC. (5-1-18)

~~379~~. **Training Program.** Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

~~3840~~. **Training Funds.** An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

~~3941~~. **Vertical Representation.** Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible. (5-1-18)

~~402~~. **Workload.** The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. (5-1-18)

# Sections Affected Index

---

## **IDAPA 01 – BOARD OF ACCOUNTANCY**

### *01.01.01 – Idaho Accountancy Rules*

#### **Docket No. 01-0101-1801**

|   |    |
|---|----|
| 606. Reporting To The Board (Rule 606).....         | 30 |
| 617. Remedies For Failure To Comply (Rule 617)..... | 30 |

#### **Docket No. 01-0101-1802**

|   |    |
|---|----|
| 108. Retake And Granting Of Credit (Rule 108).....          | 33 |
| 304. Reciprocal Licensure (Rule 304).....                   | 34 |
| 502. Exceptions, Extensions, And Exemptions (Rule 502)..... | 35 |

## **IDAPA 02 – DEPARTMENT OF AGRICULTURE**

### *02.04.08 – Rules Governing Grade A Milk and Milk Products*

#### **Docket No. 02-0408-1801**

|                                      |    |
|--------------------------------------|----|
| 004. Incorporation By Reference..... | 38 |
|--------------------------------------|----|

### *02.04.09 – Rules Governing Milk and Cream Procurement and Testing*

#### **Docket No. 02-0409-1801**

|   |    |
|---|----|
| 008. Definitions.....   | 40 |
| 120. Sample Integrity.....  | 41 |
| 121. Daily Performance Checks.....                                      | 41 |
| 302. Regulatory Samples.....  | 42 |
| 303. License Suspension And Revocation Based On Regulatory Samples..... | 43 |

### *02.04.13 – Rules Governing Raw Milk*

#### **Docket No. 02-0413-1801**

|  |    |
|--|----|
| 004. Incorporation By Reference.....                   | 46 |
| 010. Standards For Raw Milk And Raw Milk Products..... | 46 |
| 020. Raw Milk Permits.....                             | 47 |
| 021. -- 029. (Reserved).....                           | 47 |
| 030. Small Herd Raw Milk Permits.....                  | 47 |

### *02.04.29 – Rules Governing Trichomoniasis*

#### **Docket No. 02-0429-1801**

|                                      |    |
|--------------------------------------|----|
| 004. Incorporation By Reference..... | 50 |
|--------------------------------------|----|

### *02.06.01 – Rules Governing the Pure Seed Law*

#### **Docket No. 02-0601-1801 (Fee Rule)**

|  |    |
|--|----|
| 501. Service Testing Fees -- Special Tests.....      | 53 |
| 502. Service Testing Fees -- Miscellaneous Fees..... | 54 |

### *02.06.02 – Rules Pertaining to the Idaho Commercial Feed Law*

#### **Docket No. 02-0602-1801**

|                                      |    |
|--------------------------------------|----|
| 004. Incorporation By Reference..... | 56 |
|--------------------------------------|----|

### *02.06.12 – Rules Pertaining to the Idaho Fertilizer Law*

#### **Docket No. 02-0612-1801**

|                                      |    |
|--------------------------------------|----|
| 004. Incorporation By Reference..... | 58 |
|--------------------------------------|----|

### *02.06.41 – Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001*

#### **Docket No. 02-0641-1801**

|                                      |    |
|--------------------------------------|----|
| 004. Incorporation By Reference..... | 60 |
|--------------------------------------|----|

**IDAPA 07 – DIVISION OF BUILDING SAFETY**

*07.01.01 – Rules Governing Electrical Inspection Tags*

**Docket No. 07-0101-1801**

|  |    |
|--|----|
| 000. Legal Authority.....  | 63 |
| 001. Title And Scope.....  | 63 |
| 004. Incorporation By Reference.....   | 63 |
| 005. Office – Office Hours – Mailing Address And Street Address.....                             | 63 |
| 006. Public Records Act Compliance.....  | 63 |
| 007. Definitions.....  | 63 |
| 008. -- 010. (Reserved).....   | 63 |
| 011. Electrical Permits.....   | 63 |
| 012. Electrical Permitting And Inspection Requirements For<br>Persons Exempt From Licensing..... | 64 |
| 013. Electrical Permit And Inspection Requirements For Facility Accounts.....                    | 65 |
| 014. Temporary Installations Connected Prior To Inspection.....                                  | 66 |
| 015. -- 999. (Reserved).....   | 66 |

*07.01.02 – Rules Governing Fees for Electrical Inspections*

**Docket No. 07-0102-1801 (Fee Rule)**

|  |    |
|--|----|
| 001. Title And Scope.....  | 68 |
| 004. Incorporation By Reference.....                                 | 68 |
| 005. Office – Office Hours – Mailing Address And Street Address..... | 68 |
| 006. Public Records Act Compliance.....                              | 68 |
| 007. Definitions.....  | 68 |
| 008. -- 010. (Reserved).....   | 68 |
| 011. Fees For Electrical Permits And Inspections.....                | 68 |

*07.01.03 – Rules of Electrical Licensing and Registration – General*

**Docket No. 07-0103-1801**

|                                  |    |
|----------------------------------|----|
| 012. Apprentice Electrician..... | 73 |
|----------------------------------|----|

**Docket No. 07-0103-1802**

|  |    |
|--|----|
| 004. Incorporation by Reference.....                                 | 76 |
| 005. Office – Office Hours – Mailing Address And Street Address..... | 76 |
| 006. Public Records Act Compliance.....                              | 76 |
| 007. -- 009. (Reserved).....   | 76 |
| 010. Licensure History.....  | 76 |
| 011. License Application Forms/Apprentice Registration Forms.....    | 76 |

*07.01.04 – Rules Governing Electrical Specialty Licensing*

**Docket No. 07-0104-1801**

|   |    |
|---|----|
| 001. Title And Scope.....   | 79 |
| 004. Incorporation By Reference.....  | 79 |
| 005. Office – Office Hours – Mailing Address And Street Address.....                | 79 |
| 006. Public Records Act Compliance.....   | 79 |
| 007. -- 010. (Reserved).....  | 79 |
| 012. Minimum Experience Requirements.....   | 79 |
| 013. Limited Experience Requirement.....  | 79 |
| 014. Electrical Installations Requiring A Limited Electrical Installer License..... | 80 |
| 015. Applications For Limited Electrical Installer License.....                     | 83 |
| 016. Licensure Period And Fees.....   | 83 |
| 017. Limited Electrical Contractor License.....                                     | 83 |

07.01.05 – Rules Governing Examinations

**Docket No. 07-0105-1801**

|  |    |
|--|----|
| 004. Incorporation by Reference.....                                 | 85 |
| 005. Office – Office Hours – Mailing Address And Street Address..... | 85 |
| 006. Public Records Act Compliance.....                              | 85 |
| 007. -- 010. (Reserved).....   | 85 |
| 011. Examinations.....   | 85 |

07.01.06 – Rules Governing the Use of National Electrical Code

**Docket No. 07-0106-1801**

|   |    |
|---|----|
| 004. Incorporation by Reference.....  | 88 |
| 005. Office – Office Hours – Mailing Address And Street Address.....              | 88 |
| 006. Public Records Act Compliance.....   | 88 |
| 007. -- 010. (Reserved).....  | 88 |
| 011. Adoption And Incorporation By Reference Of The National Electrical Code..... | 88 |

07.01.07 – Rules Governing Continuing Education Requirements

**Docket No. 07-0107-1801**

|  |    |
|--|----|
| 004. Incorporation by Reference.....                                 | 92 |
| 005. Office – Office Hours – Mailing Address And Street Address..... | 92 |
| 006. Public Records Act Compliance.....                              | 92 |
| 007. -- 010. (Reserved).....   | 92 |
| 011. Continuing Education Requirements.....                          | 92 |
| 012. Course Approval Requirements.....                               | 92 |

07.01.08 – Rules Governing Electrical Inspection Tag Appeals

**Docket No. 07-0108-1801**

|   |    |
|---|----|
| 000. Legal Authority.....   | 97 |
| 001. Title And Scope.....   | 97 |
| 002. Written Interpretations.....   | 97 |
| 003. Exemption From Attorney General’s Administrative Procedure Rules<br>For Contested Cases..... | 97 |
| 004. Reasons For Exemption From Attorney General’s Administrative<br>Procedure Rules.....         | 97 |
| 005. Incorporation by Reference.....  | 97 |
| 006. Office – Office Hours – Mailing Address And Street Address.....                              | 97 |
| 007. Public Records Act Compliance.....   | 97 |
| 008. -- 010. (Reserved).....  | 98 |
| 011. Appeals.....   | 98 |

07.01.11 – Rules Governing Civil Penalties

**Docket No. 07-0111-1801**

|   |     |
|---|-----|
| 006. Public Records Act Compliance..... | 100 |
| 007. -- 010. (Reserved).....            | 100 |
| 011. Civil Penalties.....               | 100 |

07.10.01 – Rules Governing the Damage Prevention Board  
Division of Building Safety

**Docket No. 07-1001-1801**

|                                       |     |
|---------------------------------------|-----|
| 003. Administrative Appeals.....      | 103 |
| 007. Definitions.....                 | 103 |
| 008. Funding Of Board Activities..... | 103 |
| 020. Civil Penalties.....             | 104 |

**IDAPA 12 – DEPARTMENT OF FINANCE***12.01.09 – Rules Pursuant to the Idaho Credit Code***Docket No. 12-0109-1801**

|  |     |
|--|-----|
| 005. Incorporation By Reference (Rule 5).....      | 107 |
| 006. Refinancing Of Balloon Payments (Rule 6)..... | 108 |
| 007. -- 999. (Reserved).....                       | 108 |

*12.01.10 – Rules Pursuant to the Idaho Residential Mortgage Practices Act***Docket No. 12-0110-1801**

|   |     |
|---|-----|
| 005. Incorporation By Reference (Rule 5)..... | 110 |
|---|-----|

*12.01.11 – Rules Pursuant to the Idaho Collection Agency Act***Docket No. 12-0111-1801 (New Chapter)**

|   |     |
|---|-----|
| 000. Legal Authority (Rule 0). ....                                   | 112 |
| 001. Title And Scope (Rule 1). ....                                   | 112 |
| 002. Written Interpretations – Agency Access – Filings (Rule 2). .... | 112 |
| 003. Administrative Appeals (Rule 3). ....                            | 112 |
| 004. Public Records Act Compliance (Rule 4). ....                     | 112 |
| 005. Incorporation By Reference (Rule 5). ....                        | 112 |
| 006. -- 999. (Reserved).....  | 112 |

**IDAPA 13 – IDAHO FISH AND GAME COMMISSION***13.01.10 – Rules Governing the Importation, Possession,  
Release, Sale, or Salvage of Wildlife***Docket No. 13-0110-1801**

|  |     |
|--|-----|
| 700. List Of Species Approved For Importation Into Idaho. .... | 115 |
|--|-----|

*13.01.17 – Rules Governing the Use of Bait and Trapping  
for Taking Big Game Animals***Docket No. 13-0117-1802**

|                                    |     |
|------------------------------------|-----|
| 100. Use Of Bait For Hunting. .... | 119 |
|------------------------------------|-----|

*13.01.18 – Rules Governing Emergency Feeding of Antelope, Elk,  
and Deer of the Idaho Fish and Game Commission***Docket No. 13-0118-1801**

|  |     |
|--|-----|
| 000. Legal Authority. ....   | 122 |
| 001. Title And Scope. ....   | 122 |
| 100. Intent. ....  | 122 |
| 102. Emergency Feeding Criteria. ....  | 122 |
| 104. -- 199. (Reserved).....   | 123 |
| 200. Prohibition On Private Feeding Of Deer And Elk Within<br>Designated CWD Management Zone. .... | 123 |
| 201. – 999. (Reserved).....  | 123 |

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE***16.02.08 – Vital Statistics Rules***Docket No. 16-0208-1802**

|  |     |
|--|-----|
| 251. Fees For Copies, Searches, And Other Services. .... | 125 |
|--|-----|

*16.02.15 – Immunization Requirements for Idaho School Children***Docket No. 16-0215-1802**

|                                      |     |
|--------------------------------------|-----|
| 100. Immunization Requirements. .... | 128 |
|--------------------------------------|-----|

|   |     |
|---|-----|
| 101. Compliance.....  | 130 |
| 102. Evidence Of Immunization Status.....   | 130 |
| 103. -- 104. (Reserved).....  | 131 |
| 105. Exceptions To Immunization Requirement.....  | 131 |
| 106. -- 109. (Reserved).....  | 131 |
| 110. Exemptions To Immunization Requirement.....  | 131 |
| 111. -- 149. (Reserved).....  | 132 |
| 150. Enforcement Of Immunization Requirement.....   | 132 |
| 151. -- 199. (Reserved).....  | 132 |
| 200. Reports By School Authorities.....   | 132 |
| <b>16.03.10 – Medicaid Enhanced Plan Benefits</b>   |     |
| <b>Docket No. 16-0310-1802</b>  |     |
| 326. Aged And Disabled Waiver Services: Coverage And Limitations.....                                       | 134 |
| 329. Aged And Disabled Waiver Services: Provider Qualifications And Duties.....                             | 140 |
| 331. -- 349. (Reserved).....  | 145 |
| 350. Transition Management.....   | 145 |
| 351. -- 449. (Reserved).....  | 146 |
| 703. Adult DD Waiver Services: Coverage And Limitations.....  | 146 |
| 705. Adult DD Waiver Services: Provider Qualifications And Duties.....                                      | 150 |
| <b>Docket No. 16-0310-1803</b>  |     |
| 270. Nursing Facility: Special Rates.....   | 157 |
| <b>Docket No. 16-0310-1804</b>  |     |
| 090. Organ Transplants.....   | 161 |
| 091. -- 092. (Reserved).....  | 161 |
| 093. Organ Transplants: Coverage And Limitations.....   | 161 |
| 094. -- 095. (Reserved).....  | 162 |
| 096. Organ Transplants: Provider Reimbursement.....   | 162 |
| <b>16.03.14 – Rules and Minimum Standards for Hospitals in Idaho</b>  |     |
| <b>Docket No. 16-0314-1801</b>  |     |
| 002. Written Interpretations.....   | 164 |
| 003. Administrative Appeals.....  | 164 |
| 004. Incorporation By Reference.....  | 164 |
| 005. Office – Office Hours – Mailing Address – Street Address –<br>Telephone Number – Internet Website..... | 164 |
| 006. Confidentiality Of Records And Public Records Act<br>Compliance And Requests.....                      | 165 |
| 007. -- 009. (Reserved).....  | 165 |
| 010. Definitions And Abbreviations -- A Through M.....  | 165 |
| 011. Definitions And Abbreviations -- N Through Z.....  | 168 |
| 012. -- 099. (Reserved).....  | 172 |
| 201. -- 219. (Reserved).....  | 173 |
| 220. Patient Rights.....  | 173 |
| 221. -- 224. (Reserved).....  | 175 |
| 225. Patient Grievances.....  | 175 |
| 226. -- 228. (Reserved).....  | 175 |
| 229. Law Enforcement Restraints.....  | 175 |
| 230. Restraint And Seclusion.....   | 175 |
| 231. Restraint And Seclusion Orders.....  | 176 |
| 232. Restraint And Seclusion Implementation And Monitoring.....   | 177 |
| 233. Restraint And Seclusion Documentation.....   | 178 |

|   |     |
|---|-----|
| 234. Restraint And Seclusion Training.....  | 178 |
| 235. -- 249. (Reserved).....  | 179 |
| 250. Medical Staff.....   | 179 |
| 470. Psychiatric Service.....   | 181 |
| 601. -- 999. (Reserved).....  | 184 |
| <b>16.06.12 – Rules Governing the Idaho Child Care Program (ICCP)</b>   |     |
| <b>Docket No. 16-0612-1801</b>  |     |
| 009. Criminal History And Background Check Requirements.....  | 186 |
| 503. Copayments.....  | 187 |
| 600. Change Reporting Requirements.....   | 187 |
| 602. Redetermination Of Eligibility For Child Care Benefits.....  | 188 |
| 603. -- 699. (Reserved).....  | 188 |
| 704. Denial Of Payment.....   | 188 |
| 810. Documentation Of Services And Access To Records.....   | 188 |
| <b>16.07.37 – Children’s Mental Health Services</b>   |     |
| <b>Docket No. 16-0737-1801</b>  |     |
| 107. Eligibility Determination.....   | 191 |
| 236. Parental Financial Support For Children In Alternate Care.....   | 191 |
| <b>16.07.50 – Minimum Standards for Nonhospital, Medically Monitored<br/>Detoxification/Mental Health Diversion Units</b> |     |
| <b>Docket No. 16-0750-1801</b>  |     |
| 000. Legal Authority.....   | 194 |
| 004. Incorporation By Reference.....  | 194 |
| 005. Office Hours – Mailing Address – Street Address –<br>Telephone – And Internet Website.....                           | 195 |
| 010. Definitions And Abbreviations A Through K.....   | 196 |
| 011. Definitions And Abbreviations L Through Z.....   | 197 |
| 012. -- 099. (Reserved).....  | 200 |
| 100. Certificate Of Approval.....   | 200 |
| 101. -- 104. (Reserved).....  | 201 |
| 105. Agreements Required For Certificate Of Approval<br>For A Detox/Mental Health Diversion Unit Facility.....            | 201 |
| 106. -- 109. (Reserved).....  | 202 |
| 110. Application For Certificate Of Approval.....   | 202 |
| 116. Expiration And Renewal Of Certificate Of Approval.....   | 203 |
| 117. Certificate Of Approval Duration.....  | 203 |
| 118. Detox/mental Health Diversion Unit - Deeming.....  | 203 |
| 119. (Reserved).....  | 204 |
| 120. Issuance Of Certificate Of Approval By Department.....   | 204 |
| 130. Changes Requiring Notification To The Department.....  | 204 |
| 131. Notification By The Department For Proposed Changes Submitted By The Facility.....                                   | 205 |
| 132. -- 149. (Reserved).....  | 205 |
| 150. Denial Of Certificate Of Approval.....   | 205 |
| 160. Enforcement Action For Suspension Or Revocation Of<br>A Certificate And Limit On Admissions With Notice.....         | 206 |
| 166. -- 174. (Reserved).....  | 208 |
| 185. Inspections, Investigations, And Consultations.....  | 209 |
| 210. Personnel Policies And Procedures.....   | 210 |
| 211. Employee Health.....   | 211 |
| 212. -- 214. (Reserved).....  | 212 |



|   |     |
|---|-----|
| 215. Orientation And Continuing Education.....  | 212 |
| 230. Policies And Procedures Applicable To All Detoxification Units<br>And Mental Health Diversion Units. ....          | 213 |
| 231. Physician Approved Admissions Policy, Intake Procedures,<br>And Discharge Planning. ....                           | 213 |
| 235. Medication Policies And Procedures.....  | 215 |
| 245. Infection Control.....   | 217 |
| 246. Control Of Tuberculosis. ....  | 217 |
| 247. -- 249. (Reserved).....  | 218 |
| 250. Food And Nutritional Care Policies And Procedures. ....  | 218 |
| 251. -- 259. (Reserved).....  | 218 |
| 260. Client Records Policies And Procedures. ....   | 218 |
| 270. Minimum Staffing Policies And Procedures. ....   | 220 |
| 271. Qualifications And Responsibilities For CEO Or Administrator.....  | 221 |
| 272. Qualifications And Responsibilities For Medical Director.....  | 222 |
| 273. Qualifications And Responsibilities For Director Of Nursing.....   | 223 |
| 274. (Reserved).....  | 224 |
| 295. Availability Of On-Site Alcohol And Drug Screening and Testing. ....   | 224 |
| 301. Required Minimum Staffing Standards Applicable To Detoxification Units.....  | 225 |
| 320. Required Minimum Admission Criteria To Detoxification Units.....   | 226 |
| 330. Required Minimum Treatment Needs Assessment For Clients<br>Of Detoxification Units. ....                           | 227 |
| 331. -- 334. (Reserved).....  | 227 |
| 335. Minimum Requirements For Individualized Detoxification<br>Treatment Plan For Clients Of Detoxification Units. .... | 227 |
| 336. -- 339. (Reserved).....  | 228 |
| 340. Required Minimum Discharge Planning For Clients Of Detoxification Unit.....  | 228 |
| 341. -- 499. (Reserved).....  | 229 |
| 500. Required Minimum Policy Standards Applicable To<br>Mental Health Diversion Units. ....                             | 231 |
| 520. Minimum Requirements For Admission Criteria Applicable To<br>Mental Health Diversion Units. ....                   | 231 |
| 601. Codes And Standards.....   | 232 |
| 620. Beds And Sleeping Areas For Medically Monitored<br>Residential Detoxification Unit. ....                           | 233 |
| 621. -- 629. (Reserved).....  | 233 |
| 630. Beds And Bedrooms For Mental Health Diversion Unit. ....   | 233 |
| 631. -- 649. (Reserved).....  | 235 |
| 655. Administrative Areas. ....   | 236 |
| 685. Ventilation. ....  | 237 |

**IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE**

*18.01.06 – Rule to Implement Uniform Coverage for Newborn  
and Newly Adopted Children*

**Docket No. 18-0106-1801**

|  |     |
|--|-----|
| 012. Notification And Payment Requirements. .... | 239 |
|--|-----|

*18.01.23 – Rules Pertaining to Idaho Acquisitions of Control  
and Insurance Holding Company Systems*

**Docket No. 18-0123-1801**

|   |     |
|---|-----|
| 027. Extraordinary Dividends And Other Distributions..... | 241 |
|---|-----|

18.01.24 – Advertisement of Disability (Accident and Sickness) Insurance

**Docket No. 18-0124-1801**

025. Filing For Prior Review..... 243

18.01.49 – Fire Protection Sprinkler Contractors

**Docket No. 18-0149-1801**

011. Powers And Duties Of The State Fire Marshal..... 245  
 020. Service Evidence..... 245  
 021. Design Requirements..... 246

18.01.54 – Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

**Docket No. 18-0154-1801**

001. Title And Scope..... 248  
 004. Incorporation By Reference..... 248  
 011. Policy Definitions And Terms..... 248  
 023. Standard Medicare Supplement Benefit Plans For 1990 Standardized Medicare Supplement Benefit Plan Policies Or Certificates Issued For Delivery On Or After July 1, 1992 And With An Effective Date For Coverage Prior To June 1, 2010..... 249  
 024. Standard Medicare Supplement Benefit Plans For 2010 Standardized Medicare Supplement Benefit Plan Policies Or Certificates With An Effective Date For Coverage On Or After June 1, 2010..... 251  
 025. Standard Medicare Supplement Benefit Plans For 2020 Standardized Medicare Supplement Benefit Plan Policies Or Certificates Issued For Delivery To Individuals Newly Eligible For Medicare On Or After January 1, 2020..... 254  
 026. -- 030. (Reserved)..... 255  
 031. Medicare Select Policies And Certificates..... 255  
 032. -- 035. (Reserved)..... 259  
 036. Open Enrollment..... 259  
 037. -- 040. (Reserved)..... 260  
 041. Guaranteed Issue For Eligible Persons..... 260  
 042. -- 045. (Reserved)..... 263  
 046. Standards For Claims Payment..... 263  
 047. -- 050. (Reserved)..... 264  
 051. Loss Ratio Standards And Refund Or Credit Of Premium..... 264  
 052. -- 055. (Reserved)..... 266  
 056. Filing And Approval Of Policies And Certificates And Premium Rates..... 266  
 057. -- 060. (Reserved)..... 268  
 061. Permitted Compensation Arrangements..... 268  
 062. -- 065. (Reserved)..... 269  
 066. Required Disclosure Provisions..... 269  
 067. -- 070. (Reserved)..... 271  
 071. Requirements For Application Forms And Replacement Coverage..... 271  
 072. Filing Requirements For Advertising..... 272  
 073. Standards For Marketing..... 272  
 074. -- 075. (Reserved)..... 273  
 076. Appropriateness Of Recommended Purchase And Excessive Insurance..... 273  
 077. Reporting Of Multiple Policies..... 273  
 078. -- 080. (Reserved)..... 273  
 081. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods And Probationary Periods In Replacement Policies Or Certificates..... 273

082. Prohibition Against Use Of Genetic Information And Requests  
For Genetic Testing. .... 274

083. -- 085. (Reserved)..... 276

087. -- 999. (Reserved)..... 276

**18.01.62 – Annual Financial Reporting**

Docket No. 18-0162-1801

026. Internal Audit Function Requirements. .... 278

027. -- 999. (Reserved)..... 278

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**

**19.01.01 – Rules of the Idaho State Board of Dentistry**

**Docket No. 19-0101-1803**

054. Definitions (Rule 54)..... 281

055. Minimal Sedation (Rule 55)..... 282

**Docket No. 19-0101-1804**

045. Licensure Of Dental Specialists (Rule 45). .... 284

046. Specialty Advertising (Rule 46)..... 284

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**

**20.03.01 – Dredge and Placer Mining Operations in Idaho**

**Docket No. 20-0301-1801**

001. Title and Scope. .... 287

002. Written Interpretations. .... 287

004. Incorporation By Reference. .... 287

006. Public Records Act Compliance..... 288

007. -- 009. (Reserved)..... 288

010. Definitions. .... 288

011. Abbreviations. .... 290

012. Purpose And General Provisions. .... 290

013. Applicability. .... 291

014. Administration. .... 291

015. -- 019. (Reserved)..... 291

020. Placer Or Dredge Exploration Operations..... 291

021. Application Procedure For Placer Or Dredge Mining Permit..... 292

022. Procedures For Review And Decision Upon An Application..... 295

**20.03.02 – Rules Governing Exploration, Surface Mining,  
and Closure of Cyanidation Facilities**

**Docket No. 20-0302-1801**

005. Office – Office Hours – Mailing Address – Street Address – Web Address. .... 298

006. Public Records Act Compliance..... 298

007. -- 009. (Reserved)..... 298

010. Definitions. .... 298

011. Abbreviations. .... 303

012. -- 049. (Reserved)..... 303

060. Exploration Operations And Required Reclamation..... 303

061. -- 068. (Reserved)..... 304

069. Application Procedure And Requirements For Quarries,  
Decorative Stone, Building Stone, And Aggregate Materials Including Sand,  
Gravel And Crushed Rock. .... 304

070. Application Procedure And Requirements  
For Other Surface Mining Operations Including Hardrock  
And Phosphate Mining. .... 306

071. Application Procedure And Requirements For Permanent Closure Of  
Cyanidation Facilities. .... 307

120. Performance Bond Requirements For Surface Mining..... 310

140. Best Management Practices And Reclamation For Surface Mining Operation  
And Permanent Closure Of Cyanidation Facilities. .... 312

*20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace  
Over Navigable Lakes in the State of Idaho*

**Docket No. 20-0304-1801**

004. Incorporation By Reference. .... 321

015. Encroachment Standards..... 321

016. -- 019. (Reserved)..... 328

020. Applications..... 328

080. Violations - Penalties..... 330

**IDAPA 23 – BOARD OF NURSING**

*23.01.01 – Rules of the Idaho Board of Nursing*

**Docket No. 23-0101-1801**

076. Persons Exempted By Board. .... 336

077. -- 089. (Reserved)..... 340

315. Prescriptive And Dispensing Authorization  
For Advanced Practice Registered Nurses. .... 340

**IDAPA 35 – STATE TAX COMMISSION**

*35.01.01 – Income Tax Administrative Rules*

**Docket No. 35-0101-1803**

830. Information Returns (Rule 830)..... 344

*35.01.03 – Property Tax Administrative Rules*

**Docket No. 35-0103-1801**

312. Partial Year Assessment Of Real And Personal Property (Rule 312)..... 347

408. Re-examination Of Value -- Complaint By Assessor (Rule 408)..... 347

610. Property Exempt From Taxation -- Residential Improvements --  
Special Situations (Rule 610). .... 348

613. Property Exempt From Taxation --  
Speculative Portion Of Value Of Agricultural Land (Rule 613). .... 350

614. Speculative Portion Of Value Of Agricultural Land - Examples (Rule 614)..... 354

630. Tax Exemption For New Capital Investments (Rule 630). .... 359

709. Property Tax Reduction Benefit Program -- Special Situations (Rule 709)..... 361

802. Budget Certification Relating To New Construction And Annexation (Rule 802)..... 363

803. Budget Certification -- Dollar Certification Form (L-2 Form) (Rule 803)..... 369

804. Tax Levy - Certification - Urban Renewal Districts (Rule 804)..... 375

962. Taxation Of Designated Forestlands (Rule 962)..... 382

**Docket No. 35-0103-1802**

702. Veteran’s Benefit – Continued Eligibility After Death Of Claimant (Rule 702)..... 386

703. -- 708. (Reserved)..... 386

**Docket No. 35-0103-1803**

600. Property Exempt From Taxation (Rule 600). .... 388

*35.01.06 – Hotel/Motel Room and Campground Sales Tax Administrative Rules*  
**Docket No. 35-0106-1801**  
 003. Administrative Appeals (Rule 003)..... 390

*35.01.10 – Idaho Cigarette and Tobacco Products Tax Administrative Rules*  
**Docket No. 35-0110-1801**  
 015. Stamps-Source, Amount, And Limitations (Rule 015)..... 392

*35.01.14 – Prepaid Wireless E911 Fee Administrative Rules*  
**Docket No. 35-0114-1801**  
 003. Administrative Appeals..... 394

**IDAPA 38 – DEPARTMENT OF ADMINISTRATION**

*38.04.09 – Rules Governing Use of the Chinden Office Complex*  
 Docket No. 38-0409-1801 (New Chapter)  
 010. Definitions. .... 396  
 201. Hours Of Use. .... 398  
 202. Use Of Recreational Facilities. .... 398  
 303. Motorized Vehicles. .... 398  
 304. Skates, Skateboards, Scooters, And Other Non-Motorized Transportation..... 399  
 305. Animals. .... 399  
 310. Posters, Placards, Banners, Signs, Equipment, Tables, Materials, And Displays. .... 399  
 314. Utility Service. .... 400  
 317. Health, Safety, And Maintenance Of Chinden Office Complex. .... 400

Docket No. 38-0409-1802 (New Chapter)  
 000. Legal Authority. .... 402  
 001. Title And Scope..... 402  
 002. Written Interpretations..... 402  
 003. Administrative Appeals..... 402  
 004. Incorporation by Reference..... 402  
 005. Office – Office Hours – Mailing and Street Address..... 403  
 006. Public Records Act Compliance..... 403  
 007. Severability In Chinden Office Complex..... 403  
 008. -- 009. (Reserved)..... 403  
 010. Definitions. .... 403  
 011. – 199. (Reserved) ..... 404  
 200. Use Of The Chinden Office Complex..... 404  
 201. Hours Of Use. .... 405  
 202. Use Of Recreational Facilities..... 405  
 203. Equipment And Supplies..... 405  
 204. Establishment Of Perimeters. .... 405  
 205. Area Closures. .... 406  
 206. – 299. (Reserved)..... 406  
 300. Restrictions And Limitations On Use..... 406  
 301. Uses Interfering With Access Or Use Of Facility..... 406  
 302. Maintenance And Improvements. .... 406  
 303. Motorized Vehicles. .... 406  
 304. Skates, Skateboards, Scooters, And Other Non-Motorized Transportation..... 406  
 305. Animals. .... 406  
 306. Landscaping. .... 407  
 307. Food And Beverages. .... 407

308. Smoking ..... 407  
309. Fires, Candles, And Flames ..... 407  
310. Posters, Placards, Banners, Signs, Equipment, Tables, Materials, And Displays ..... 407  
311. Items Subject To Search ..... 408  
312. Prohibited Items ..... 408  
313. (Reserved) ..... 409  
314. Utility Service ..... 409  
315. Law Enforcement And Facility Exigency ..... 409  
316. Compliance With Law ..... 409  
317. Health, Safety, And Maintenance Of Chinden Office Complex ..... 409  
318. -- 399. (Reserved) ..... 409  
400. Liability ..... 409  
401. -- 999. (Reserved) ..... 409

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

*39.02.46 – Rules Governing Temporary Motor Vehicle Registration Permit*

**Docket No. 39-0246-1801**

101. Issuance By Idaho Vehicle Dealers ..... 411  
102. -- 199. (Reserved) ..... 411  
200. Ineligible Vehicles - County Assessor Or Department Issuance ..... 411  
201. -- 299. (Reserved) ..... 411  
300. Exempt Vehicles ..... 411

*39.03.48 – Rules Governing Routes Exempt from Local Plans and Ordinances*

**Docket No. 39-0348-1801**

300. Existing State Highway System ..... 415

**IDAPA 40 – COMMISSION ON THE ARTS**

*40.01.01 – Rules of the Idaho Commission on the Arts*

**Docket No. 40-0101-1801**

100. Definitions ..... 417  
202. Applicants ..... 418  
203. Applications ..... 419  
206. Final Reports ..... 420  
301. Quick Funds ..... 420  
302. Fellowships ..... 421  
303. Writer In Residence ..... 422  
304. Traditional Arts Apprenticeships ..... 422  
305. -- 399. (Reserved) ..... 423  
400. Programs Supporting Organizations ..... 423  
401. Quick Funds For Organizations ..... 424  
402. Cultural Facilities And Public Art Grants ..... 425  
403. Public Programs In The Arts Grants ..... 426  
404. Entry Track Grants ..... 427  
405. Tumblewords ..... 427  
406. -- 499. (Reserved) ..... 428  
500. Support For Arts Education ..... 428  
501. Arts In Education Directory Of Teaching Artists ..... 428  
502. Quick Funds For Arts Education ..... 428  
503. Arts Education Project Grants ..... 430  
504. -- 999. (Reserved) ..... 430

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*58.01.02 – Water Quality Standards*

**Docket No. 58-0102-1802**

|   |     |
|---|-----|
| 100. Surface Water Use Designations.....  | 433 |
| 210. Numeric Criteria For Toxic Substances For Waters Designated<br>For Aquatic Life, Recreation, Or Domestic Water Supply Use..... | 434 |
| 251. Surface Water Quality Criteria For Recreation Use Designations.....  | 450 |
| 251. Surface Water Quality Criteria For Recreation Use Designations.....  | 450 |

**Docket No. 58-0102-1803**

|  |     |
|--|-----|
| 401. Point Source Wastewater Treatment Requirements..... | 454 |
|--|-----|

*58.01.24 – Standards and Procedures for Application of  
Risk Based Corrective Action at Petroleum Release Sites*

**Docket No. 58-0124-1801**

|  |     |
|--|-----|
| 008. Tables.....   | 458 |
| 100. Chemicals Evaluated At Petroleum Release Sites..... | 459 |
| 101. -- 199. (Reserved).....                             | 459 |
| 200. Risk Evaluation Process.....                        | 459 |
| 300. Site Specific Risk Evaluation Requirements.....     | 460 |
| 301. -- 399. (Reserved).....                             | 462 |
| 400. Establishment Of Remediation Standards.....         | 462 |
| 800. Table.....  | 462 |

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

*61.01.02 – Rules Governing Uniform Data Reporting Requirements  
and Forms for Defending Attorney Annual Reports*

**Docket No. 61-0102-1801 (New Chapter)**

|  |     |
|--|-----|
| 000. Legal Authority.....  | 471 |
| 001. Title And Scope.....  | 471 |
| 002. Written Interpretations.....  | 471 |
| 003. Administrative Appeals.....   | 471 |
| 004. Incorporation By Reference.....   | 471 |
| 005. Office – Office Hours – Mailing And Street Address –<br>Telephone – Internet Website..... | 471 |
| 006. Public Records Act Compliance.....  | 471 |
| 007 – 009. (Reserved).....   | 471 |
| 010. Definitions And Abbreviations.....  | 471 |
| 011 – 019. (Reserved).....   | 472 |
| 020. Application Of Reporting Requirements.....  | 472 |
| 021. Reporting Requirements.....   | 472 |
| 022. Reporting Cycle.....  | 473 |
| 023. Application Procedure.....  | 473 |
| 024. Explanation Of Data Not Tracked.....  | 474 |
| 025. Failure To Submit An Annual Report.....   | 474 |
| 026. Fraudulent Information.....   | 474 |
| 027 – 999. (Reserved).....   | 474 |

*61.01.03 – Rules Governing Contracts and Core Requirements  
for Contracts Between Counties and Private Attorneys  
for the Provision of Indigent Defense Services*

**Docket No. 61-0103-1801 (New Chapter)**

|                           |     |
|---------------------------|-----|
| 000. Legal Authority..... | 477 |
| 001. Title And Scope..... | 477 |

|  |     |
|--|-----|
| 002. Written Interpretations.....  | 477 |
| 003. Administrative Appeals.....   | 477 |
| 004. Incorporation By Reference.....   | 477 |
| 005. Office – Office Hours – Mailing And Street Addresses –<br>Telephone – Internet Website.....                             | 477 |
| 006. Public Records Act Compliance.....  | 477 |
| 007. – 009. (Reserved).....  | 477 |
| 010. Definitions And Abbreviations.....  | 477 |
| 011. – 019. (Reserved).....  | 478 |
| 020. Core Terms.....   | 478 |
| 021. Establishment And Maintenance Of Records.....   | 479 |
| 022. Reports And Inspections.....  | 479 |
| 023. – 999. (Reserved).....  | 479 |
| <br><i>61.01.08 – Rules Governing the Administration of Idaho’s<br/>Indigent Defense Delivery Systems – Rule Definitions</i> |     |
| <b>Docket No. 61-0108-1801</b>   |     |
| 001. Title And Scope.....  | 481 |
| 003. Administrative Appeals.....   | 482 |
| 004. Incorporation By Reference.....   | 482 |
| 005. Office – Office Hours – Mailing And Street Address – Telephone – Internet Website.....                                  | 482 |
| 010. Definitions.....  | 482 |



# 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 proposed rule public hearing request deadline is September 19, 2018, unless otherwise posted.  
The proposed rule written comment submission deadline is September 26, 2018, unless otherwise posted.  
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### IDAPA 01 – IDAHO STATE BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

##### *01.01.01 – Idaho Accountancy Rules*

*01-0101-1801*, Requires a firm to notify the Board within 30 days of the date the peer reviewer or a team captain advises the firm that a grade of fail will be recommended; allows Board to take appropriate action against a licensee not meeting professional standards.

*01-0101-1802*, Removes references to obsolete paper-based exam; streamlines reciprocal licensure for qualified CPAs; allows CPA-Retired or CPA-Inactive status licensees to provide volunteer accounting services for Boards of non-profit organizations and assist citizens in the Volunteer Income Tax Assistance, VITA, program.

#### IDAPA 02 – DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

*02-0408-1801, Rules Governing Grade A Milk and Milk Products*. Incorporates by reference the following: 2017 Grade A Pasteurized Milk Ordinance; 2017 Evaluation of Milk Laboratories reference document; 2017 Methods of Making Sanitation Ratings of Milk Shippers reference document; 2017 Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration reference document.

*02-0409-1801, Rules Governing Milk and Cream Procurement and Testing*. Clarifies and adds definitions; sets sample tolerance standards; establishes enforcement protocols and the recertification process for labs that fail to meet performance standards.

*02-0413-1801, Rules Governing Raw Milk*. Incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance, except those provisions establishing raw milk standards for raw milk for pasteurization.

*02-0429-1801, Rules Governing Trichomoniasis*. Incorporates by reference the 2018 Edition of Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle”.

*02-0601-1801, Rules Governing the Pure Seed Law*. Updates list of services and fees provided for seed testing.

*02-0602-1801, Rules Pertaining to the Idaho Commercial Feed Law*. Incorporates by reference the 2019 Official Publication of the Association of American Feed Control Officials (AAFCO) pertaining to regulatory commercial feed registration and label review methodology and practice.

*02-0612-1801, Rules Pertaining to the Idaho Fertilizer Law*. Incorporates by reference the 2019 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) pertaining to regulatory fertilizer registration and label review methodology and practice.

**02-0641-1801, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001.** Incorporates by reference the 2019 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) pertaining to regulatory soil and plant amendment registration and label review methodology and practice.

**IDAPA 07 – DIVISION OF BUILDING SAFETY  
PO Box 83720, Meridian, ID 83642**

**07-0101-1801, Rules Governing Electrical Inspection Tags.** Updates procedures and terminology for electrical facility accounts and issuing electrical permits to align rule to recent statutory changes.

**07-0102-1801, Rules Governing Fees for Electrical Inspections.** Updates procedures and terminology for issuing electrical permits to align with recent changes to statute; allows for and adds a fee for the transfer of an electrical permit.

**07.01.03 - Rules of Electrical Licensing and Registration – General.**

**07-0103-1801,** Clarifies that a contractor is in violation only when one journeyman employed by the contractor supervises more than two apprentices employed by the contractor.

**07-0103-1802,** Updates terminology for electrical licensing and registration to align rule to recent statutory changes.

**07-0104-1801, Rules Governing Electrical Specialty Licensing.** Updates procedures and terminology for limited electrical licensing and registration to align rule to recent statutory changes.

**07-0105-1801, Rules Governing Examinations.** Updates terminology for electrical licensing and registration to align rule to recent statutory changes.

**07-0106-1801, Rules Governing the Use of National Electrical Code.** Clarifies that cables located in the attics and underfloor areas of other structures that are not designed to be occupied are considered concealed; allows gray HDPE water pipe rated at 200 PSI to be used as a chase only under certain circumstances.

**07-0107-1801, Rules Governing Continuing Education Requirements.** Allows licensees to obtain continuing education credit for attending Board meetings and negotiated rulemaking meetings; defines code-related programs; readjusts CE required courses.

**07-0108-1801, Rules Governing Electrical Inspection Tag Appeals.** Updates procedures and terminology for and conducting electrical inspection appeals to align rule to recent statutory changes.

**07-0111-1801, Rules Governing Civil Penalties.** Updates terminology for electrical facility accounts and electrical licensing and registration to align rule to recent statutory changes.

**07-1001-1801, Rules Governing the Damage Prevention Board.** Changes terms “utility” to “facility” and “underground utility owner” to “underground facility owner” to align with statute; requires parties requesting an appeal to pay a \$200 bond; defines “locator” and subjects them to civil penalties.

**IDAPA 12 – DEPARTMENT OF FINANCE  
PO Box 83720, Boise, ID 83720-0031**

**12-0109-1801, Rules Pursuant to the Idaho Credit Code.** Incorporates by reference the federal Consumer Credit Protection Act and regulations issued pursuant to the Act.

**12-0110-1801, Rules Pursuant to the Idaho Residential Mortgage Practices Act.** Updates the federal laws and regulations and nationally adopted standards that are incorporated by reference.

**12-0111-1801, Rules Pursuant to the Idaho Collection Agency Act.** New chapter incorporates by reference the federal Fair Debt Collection Practices Act.

**IDAPA 13 – DEPARTMENT OF FISH AND GAME  
PO Box 25 Boise, ID 83707**

**13-0110-1801, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife.** Would not allow possession, importation, transport, sale, barter, or trade of wild elk, moose, mule deer, white-tailed deer, fallow deer or muntjac deer because of fear of transmission of Chronic Wasting Disease.

**13-0117-1802, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.** (Temp & Prop) Allows synthetic liquid scent only to attract deer and elk to reduce risk of Chronic Wasting Disease entering Idaho. (eff. 7-26-18)T

**13-0118-1801, Rules Governing Emergency Feeding of Antelope, Elk, and Deer of the Idaho Fish and Game Commission.** Would allow the risk of transmission of CWD to factor into decisions made on supplemental emergency winter feeding of deer and elk; prohibits private feeding within a CWD Management Zone.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16-0208-1802, Vital Statistics Rules.** Clarifies that any circumstance resulting in a replacement certificate will result in a fee being charged.

**\*16-0215-1802, Immunization Requirements for Idaho School Children.** (\*PH) Adds a new school entry immunization requirement to require a second dose of meningococcal (MenACWY) vaccination before a student enters the 12th grade in Idaho, starting with school year 2020-2021.

**16.03.10 – Medicaid Enhanced Plan Benefits**

**\*16-0310-1802, (\*PH)** To sustain the necessary grant benefits amendments are being made to continue to provide support services for moving participants from institutional-living settings to community settings.

**\*16-0310-1803, (\*PH)** Simplifies and streamlines the current ventilator and tracheostomy special rate process to allow for less administrative burden, and to allow rates to start on the day of admission and no semi-annual renewals.

**\*16-0310-1804, (\*PH)** Aligns rule with statute regarding covered organ transplants for children under 21.

**16-0314-1801, Rules and Minimum Standards for Hospitals in Idaho.** Clarifies which licensed medical professionals are permitted to order restraints or seclusion; additional changes strengthen patient rights.

**16-0612-1801, Rules Governing the Idaho Child Care Program (ICCP).** (Temp & Prop) Clarifies the processes for determining eligibility; updates terms to align with the Reauthorization of the Child Care and Development Block Grant federal regulations. (eff. 10-1-18)T

**16-0737-1801, Children's Mental Health Services.** Removes reference to obsolete alternate funding standard and clarifies the parental financial obligation for a child's Alternate Care via the sliding fee scale.

**16-0750-1801 Minimum Standards for Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units.** Updates certain documents incorporated by reference; removes obsolete and adds new definitions; removes obsolete provisions and terms; updates chapter to reflect best practices and to align rule to other division behavioral health rules.

**IDAPA 18 – DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0043**

**18-0106-1801, Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children.** Clarifies that the terms "contribution" and "premium" are interchangeable when applied to a self-funded health plan.

**18-0123-1801, Rules Pertaining to Idaho Acquisitions of Control and Insurance Holding Company Systems.** Amends rule regarding extraordinary dividends and other distributions to align rule to recent statutory changes.

**18-0124-1801, Advertisement of Disability (Accident and Sickness) Insurance.** Eliminates references to "direct response" advertising regarding disability accident and sickness policies.

**18-0149-1801, Fire Protection Sprinkler Contractors.** Removes references to an advisory board; removes one percent of bid amount language regarding fees for inspection; clarifies that fee applies to each fire protection system as defined in rule.

**18-0154-1801, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.** Updates incorporation by reference the 2018 NAIC Model Regulation 651; adds definitions for the 2020

Standardized Medicare Supplement Benefit Plans and add more detailed sections with respect to such plans.

**18-0162-1801, Annual Financial Reporting.** Requires an independent internal audit function for large insurance companies or insurance holding company groups with over \$500 million in annual premiums written or \$1 billion if a member of a group.

**IDAPA 19 – IDAHO BOARD OF DENTISTRY  
PO Box 83720, Boise, ID 83720-0021**

**19.01.01 – Rules of the Idaho State Board of Dentistry**

**19-0101-1803,** Eliminates the option of supplemental dosing when providing minimal sedation; reduces the maximum amount of sedation that can be given to no more than the MRD on the day of treatment.

**19-0101-1804,** Amends the eligibility requirements for specialty licensure and updates the provisions for specialty advertising.

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS  
PO Box 83720, Boise, ID 83720-0050**

**\*20-0301-1801, Dredge and Placer Mining Operations in Idaho.** (\*PH) Removes requirement that applications and other documentation be submitted in paper copies and allows for electronic filing; adds required informational sections; adds references to DEQ water quality standards for clarification.

**\*20-0302-1801, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities.** (\*PH) Removes requirement that applications and other documentation be submitted in paper copies and allows for electronic filing; adds required informational sections; adds an abbreviation; removes obsolete bonding requirement; increase maximum reclamation bond amount per acre to align with statute; adds requirement for operators to illustrate the floodplain and describe surface water mitigation plans.

**\*20-0304-1801, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.** (\*PH) Allows for electronic filing of documents and removes requirement that applications and other documentation be submitted in paper copies; removes unnecessary incorporated documents; allows existing permitted boat garages to be maintained or replaced at the existing height and at the existing footprint square footage; aligns rule to Idaho statute requiring an applicant to publish and pay for a notice of application for nonnavigational encroachments in local newspaper and that the publication deposit be submitted with an application to permit riprap; clarifies that the Department will provide a notice of noncompliance to anyone who may be in violation of the rules.

**IDAPA 23 – IDAHO BOARD OF NURSING  
PO Box 83720, Boise, ID 83720-0061**

**23-0101-1801, Rules of the Idaho Board of Nursing.** Would provide recent graduates a reasonable time frame for receipt of the necessary paperwork before they are no longer eligible for nursing assistant status; deletes obsolete multi-state licensing provision; standardizes prescription forms used by advanced practice nurses to those used by physicians and other authorized prescribers; expands definition of “nurse apprentice”.

**IDAPA 35 – IDAHO STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-01.03 – Property Tax Administrative Rules**

**35-0103-1801,** Changes when government-owned property transferred to a private owner becomes taxable; changes operating properties values to preliminary values for purposes of timely complaint filing by assessors; primary guidance for determining partial ownership for homeowners exemption program is the transfer deed language; defines “agricultural area” from which whole farm rents and expenses can be extracted; clarifies that only crops grown on a typical farm in an “agricultural area” should be included in the crop rotation when computing value; requires taxpayers to apply to ISTC for the exemption whenever operating property is involved in the exemption; provides for the deduction from the new construction listing for any exemption of property that was previously added to the new construction listing; creates a provisional property tax exemption and clarifies dates when solar farm gross earnings receipts are to be reported and deducted from property tax revenue; revises the levy process used when cemetery taxing districts consolidate; clarifies whether the “base assessment roll” includes the property that existed in the revenue allocation area (RAA) at the time of RAA formation and subsequently became taxable; changes taxation of designated forestlands.

**35-0103-1802,** Clarifies that property tax reduction benefit for veterans with a 100% service-connected disability

continues for a surviving spouse but may not be transferred to a different homestead.

**35-0103-1803**, Explains the new provisional exemption, which may be granted to property to be used for a tax exempt purpose.

**35-0106-1801, Hotel/Motel Room and Campground Sales Tax Administrative Rules.** Adds cross reference to rules used in the appeal process.

**35-0110-1801, Idaho Cigarette and Tobacco Products Tax Administrative Rules.** Limits all wholesalers that stamp cigarettes to an unused stamp inventory equal to 2 times their average tax liability.

**35-0114-1801, Prepaid Wireless E911 Fee Administrative Rules.** Adds cross reference to rules used in the appeal process.

#### IDAPA 38 – DEPARTMENT OF ADMINISTRATION

PO Box 83720, Boise, ID 83720-0013

**38-0409-1802, Rules Governing Use of the Chinden Office Complex.** Establishes rules for the management and use of the state-owned Chinden office complex.

#### IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

PO Box 7129, Boise, ID 83707-1129

**39-0246-1801, Rules Governing Temporary Motor Vehicle Registration Permit.** (Temp & Prop) Allows vehicle dealers to issue temporary registration permits to retail purchasers, which must be noticeably displayed, of vehicles 8,000 pounds and over that must be moved to their home states for titling and registration. (eff. 8-6-18)T

**39-0348-1801, Rules Governing Routes Exempt from Local Plans and Ordinances.** Removes reference to obsolete computer system.

#### IDAPA 40 – IDAHO COMMISSION ON THE ARTS

PO Box 83720, Boise, ID 83720-0008

**40-0101-1801, Rules of the Idaho Commission on the Arts.** Updates, clarifies, and simplifies grant application terminology and procedures; adds folk and traditional arts disciplines for which Fellowships are awarded; revises a matching requirement that currently restricts college and university grant recipients to the use of non-public funds when matching grants from the Commission.

#### IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

1410 N. Hilton, Boise, ID 83706-1255

##### **58.01.02 - Water Quality Standards**

**58-0102-1802**, Complies with federal water quality standards by adopting aquatic life criteria for acrolein, carbaryl, and diazinon in accordance with EPA's current recommended criteria; adopts EPA's current recommended criteria for bacteria; clarifies definition of recreational use. Comment by 10/5/2018

**58-0102-1803**, Allows human sources of heat loading to specific de minimus increases in receiving water temperatures when waters exceed applicable temperature criteria. Comment by 10/5/2018

**58-0124-1801, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.** Updates the toxicity criteria as established by EPA to promote current and consistent corrective action decision-making at petroleum release sites. Comment by 10/3/2018

#### IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

816 W. Bannock St., Suite 201, Boise, ID 83702

**61-0102-1801, Rules Governing Standards for Uniform Data Reporting Requirements and Forms For Defending Attorney Annual Reports.** New chapter establishes uniform data collection and reporting requirements and model forms for the annual reports by defending attorneys. Comment by 11/9/2018

**61-0103-1801, Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Services.** New chapter establishes the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. Comment by 11/9/2018

**61-0108-1801, Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions.** Adds definitions for “contracting authority” and “reporter”; adds references to other PDC rules; adopts the 2018 edition of “Standards for Defending Attorneys” that is incorporated by reference. Comment by 11/9/2018

**NOTICE OF ADOPTION OF TEMPORARY RULE**

**IDAPA 35 – IDAHO STATE TAX COMMISSION**

**35-0101-1803,** Income Tax Administrative Rules (eff. 1-1-18)T

**NOTICES OF PROCLAMATION**

**IDAPA 13 – IDAHO FISH AND GAME COMMISSION / DEPT OF FISH AND GAME**

**13.01.08 – Rules Governing the Taking of Big Game Animals in the State of Idaho**

**13-0108-1701AAP – Notice of Amended Amended Proposed Proclamation**

**13.01.11 – Rules Governing Fish**

**13-0111-1805P – Notice of Proposed Proclamation**

**NOTICES OF INTENT TO PROMULGATE – NEGOTIATED RULEMAKING**

**IDAPA 22 – IDAHO BOARD OF MEDICINE**

**22-0101-1801,** Rules of the Board of Medicine for the Licensure to Practice Medicine & Surgery & Osteopathic Medicine & Surgery in Idaho

**22-0103-1801,** Rules for the Licensure of Physician Assistants

**22-0105-1801,** General Provisions for the Board of Medicine (New Chapter)

Please refer to the Idaho Administrative Bulletin, [September 5, 2018, Volume 18-9](#), for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

***Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).***

Office of the Administrative Rules Coordinator, Dept. of Administration, P.O. Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

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

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*July 1, 1993 – Present*

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

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

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## **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**(Index of Current and Active Rulemakings)**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*March 28, 2018 – September 5, 2018*

*(PLR) – Final Effective Date Is Pending Legislative Review  
(eff. date)L – Denotes Adoption by Legislative Action  
(eff. date)T – Temporary Rule Effective Date*

*SCR # – denotes the number of a Senate Concurrent Resolution (Legislative Action)  
HCR # – denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes all active rulemakings.)*

***IDAPA 01 – IDAHO BOARD OF ACCOUNTANCY******01.01.01, Idaho Accountancy Rules***

- 01-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 01-0101-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 01-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-9
- 01-0101-1802** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE******02.01.04, Rules Governing the Idaho Preferred<sup>®</sup> Promotion Program***

- 02-0104-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

***02.02.14, Rules for Weights and Measures***

- 02-0214-1801** Proposed Rulemaking, Bulletin Vol. 18-6
- 02-0214-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***02.04.08, Rules Governing Grade A Milk and Milk Products***

- 02-0408-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0408-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.09, Rules Governing Milk and Cream Procurement and Testing***

- 02-0409-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0409-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.13, Rules Governing Raw Milk***

- 02-0413-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0413-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.14, Rules Governing Dairy Byproduct***

- 02-0414-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

***02.04.29, Rules Governing Trichomoniasis***

- 02-0429-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0429-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.05.01, Rules Governing Produce Safety***

- 02-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-5
- 02-0501-1801** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-7
- 02-0501-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***02.06.01, Rules Governing the Pure Seed Law***

- 02-0601-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-7
- 02-0601-1801** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-9

***02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***

- 02-0602-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0602-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.06.12, Rules Pertaining to the Idaho Fertilizer Law***

- 02-0612-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0612-1801** Proposed Rulemaking, Bulletin Vol. 18-9



**02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001****02-0641-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6**02-0641-1801** Proposed Rulemaking, Bulletin Vol. 18-9**02.08.01, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board****02-0801-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-9**IDAPA 07 – DIVISION OF BUILDING SAFETY****07.01.01, Rules Governing Electrical Inspection Tags****07-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.02, Rules Governing Fees for Electrical Inspections****07-0102-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0102-1801** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-9**07.01.03, Rules of Electrical Licensing and Registration - General****07-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-4**07-0103-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07-0103-1802** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.04, Rules Governing Electrical Specialty Licensing****07-0104-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0104-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.05, Rules Governing Examinations****07-0105-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0105-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.06, Rules Governing the Use of National Electrical Code****07-0106-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0106-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.07, Rules Governing Continuing Education Requirements****07-0107-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0107-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.08, Rules Governing Electrical Inspection Tag Appeals****07-0108-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0108-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.01.11, Rules Governing Civil Penalties****07-0111-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7**07-0111-1801** Proposed Rulemaking, Bulletin Vol. 18-9**07.02.06, Rules Concerning the Idaho State Plumbing Code****07-0206-1702** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10**07-0206-1702** 2nd (Second) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-2**07-0206-1702** 3rd (Third) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5**07-0206-1702** Proposed Rulemaking, Bulletin Vol. 18-8

***07.03.01, Rules of Building Safety***

**07-0301-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-4

***07.04.01, Rules Governing Safety Inspections – General***

**07-0401-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5

***07.05.01, Rules of the Public Works Contractors License Board***

**07-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**07-0501-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems***

**07-0701-1703** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10

**07-0701-1703** 2nd (Second) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-2

**07-0701-1703** Proposed Rulemaking, Bulletin Vol. 18-8

***07.09.01, Safety and Health Rules for Places of Public Employment***

**07-0901-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5

***07.10.01, Rules Governing the Damage Prevention Board***

**07-1001-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5

**07-1001-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 08 – IDAHO STATE BOARD OF EDUCATION  
AND STATE DEPARTMENT OF EDUCATION***

***08.01.04, Residency***

**08-0104-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***08.01.13, Rules Governing the Idaho Opportunity Scholarship Program***

**08-0113-1801** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 4-19-18)T

**08-0113-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***08.02.02, Rules Governing Uniformity***

**08-0202-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-2

**08-0202-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0202-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0202-1804** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0202-1805** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0202-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***08.02.03, Rules Governing Thoroughness***

**08-0203-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-2

**08-0203-1802** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 4-19-18)T

**08-0203-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0203-1804** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**08-0203-1801** Proposed Rulemaking, Bulletin Vol. 18-8

**08-0203-1805** Proposed Rulemaking, Bulletin Vol. 18-8

***08.05.01, Rules Governing Seed and Plant Certification – Regents of the University of Idaho***

**08-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***IDAPA 10 – IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS***

***AND PROFESSIONAL LAND SURVEYORS***

***10.01.01, Rules of Procedure***

- 10-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 10-0101-1802** Adoption of Temporary Rule, Bulletin Vol. 18-7 (eff. 7-1-18)T
- 10-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***10.01.02, Rules of Professional Responsibility***

- 10-0102-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 10-0102-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***IDAPA 11 – IDAHO STATE POLICE***

**Idaho State Brand Board**

***11.02.01, Rules of the Idaho State Brand Board***

- 11-0201-1701** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 17-11 (eff. 10-2-17)T
- 11-0201-1701** Notice of Public Hearing (Fee Rule), Bulletin Vol. 18-2
- 11-0201-1701** OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule by SCR 150, Bulletin Vol. 18-5 (eff. 10-2-17)T
- 11-0201-1701** Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 18-6
- 11-0201-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**Idaho State Forensic Laboratory**

***11.03.01, Rules Governing Alcohol Testing***

- 11-0301-1801** Adoption of Temporary Rule, Bulletin Vol. 18-1 (eff. 12-14-17)T
- 11-0301-1801** OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule by SCR150, Bulletin Vol. 18-5 (eff. 12-14-17)T

**Idaho State Racing Commission**

***11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses***

- 11-0411-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-3

***IDAPA 12 -- DEPARTMENT OF FINANCE***

***12.01.08, Rules Pursuant to the Uniform Securities Act (2004)***

- 12-0108-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***12.01.09, Idaho Credit Code Rules of the Idaho Department of Finance***

- 12-0109-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act***

- 12-0110-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***12.01.11, Rules Pursuant to the Idaho Collection Agency Act***

- 12-0111-1801** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-9

***IDAPA 13 – IDAHO FISH AND GAME COMMISSION***

***13.01.02, Rules Governing Mandatory Education and Mentored Hunting***

**13-0102-1801** Proposed Rulemaking, Bulletin Vol. 18-7

### ***13.01.07, Rules Governing the Taking of Upland Game Animals***

**13-0107-1801P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-3

### ***13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho***

**13-0108-1701P\*** Notice of Proposed Proclamation, Bulletin Vol. 17-5

**13-0108-1701AP\*** Notice of Amended Proposed Proclamation of Rulemaking, Bulletin Vol. 18-5

**13-0108-1801P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-5

**13-0108-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0108-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0108-1804** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0108-1701AAP\*** Notice of Amended Amended Proposed Proclamation of Rulemaking, Bulletin Vol. 18-9

### ***13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho***

**13-0109-1801P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-3

**13-0109-1802P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-5

**13-0109-1803** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 5-10-18)T

### ***13.01.10, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife***

**13-0110-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0110-1801** Proposed Rulemaking, Bulletin Vol. 18-9

### ***13.01.11, Rules Governing Fish***

**13-0111-1801P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-2

**13-0111-1802P\*** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-5

**13-0111-1802AP\*** Notice of Amended Proposed Proclamation of Rulemaking, Bulletin Vol. 18-7

**13-0111-1803P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-7

**13-0111-1802AAP\*** Notice of Amended Amended Proposed Proclamation of Rulemaking, Bulletin Vol. 18-8

**13-0111-1803AP\*** Notice of Amended Proposed Proclamation of Rulemaking, Bulletin Vol. 18-8

**13-0111-1804P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-8

**13-0111-1805P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-9

### ***13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals***

**13-0116-1801P** Notice of Proposed Proclamation of Rulemaking, Bulletin Vol. 18-3

**13-0116-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0116-1803** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 5-10-18)T

### ***13.01.17, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals***

**13-0117-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0117-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**13-0117-1802** Temporary and Proposed Rulemaking, Bulletin Vol. 18-9 (eff. 7-26-18)T

### ***13.01.18, Rules Governing Emergency Feeding of Antelope, Elk, and Deer***

**13-0118-1801** Proposed Rulemaking, Bulletin Vol. 18-9

## ***IDAPA 15 – OFFICE OF THE GOVERNOR***

### ***Executive Orders of the Governor***

Executive Order No. **2018-01** Creating the Autonomous and Connected Vehicle and Deployment Committee, Bulletin Vol. 18-2

Executive Order No. **2018-02** Restoring Choice In Health Insurance for Idahoans, Bulletin Vol. 18-2

Executive Order No. **2018-03** Continuing the Idaho Criminal Justice Commission, Bulletin Vol. 18-2

Executive Order No. **2018-04** The Pacific Northwest Economic Region Idaho Council, Bulletin Vol. 18-6

- Executive Order No. **2018-05** Continuing a System for Allocating Volume Cap in the State Consistent With Provisions of Title 50, Chapter 28, Idaho Code, and the U.S. Internal Revenue Code of 1986, Bulletin Vol. 18-9
- Executive Order No. **2018-06** Continuation of a State Housing Tax Credit Agency, Bulletin Vol. 18-9
- Executive Order No. **2018-07** Establishing a Policy for Nuclear Energy Production and Manufacturing in Idaho

***Office of Information Technology Services (Rule Transferred from IDAPA 38.06.01 – eff. 7-1-18))******15.07.01, Rules Governing Billing Procedures of the Office of Information Technology Services***

- 15-0701-1800** Notice of Legislative Action Creating the Office of Information Technology Services (ITS) and Transferring Rulemaking Authority from the Department of Administration's Office of the Chief Information Officer to ITS - House Bill 607, Bulletin Vol. 18-6 (eff. 7-1-18)

***IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE******16.01.02, Emergency Medical Services (EMS) – Rule Definitions***

- 16-0102-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

***16.01.03, Emergency Medical Services (EMS) – Agency Licensing Requirements***

- 16-0103-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

***16.01.07, Emergency Medical Services (EMS) – Personnel Licensing Requirements***

- 16-0107-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

***16.02.08, Vital Statistics Rules***

- 16-0208-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-5 (eff. 4-6-18)T
- 16-0208-1802** Proposed Rulemaking, Bulletin Vol. 18-9

***16.02.11, Immunizations Requirements for Children Attending Licensed Day Care Facilities in Idaho***

- 16-0211-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 5-18-18)T

***16.02.15, Immunization Requirements for Idaho School Children***

- 16-0215-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 5-18-18)T
- 16-0215-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0215-1802** Proposed Rulemaking, Bulletin Vol. 18-9

***16.03.09, Medicaid Basic Plan Benefits***

- 16-0309-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 16-0309-1802** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T
- 16-0309-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1804** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1805** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1806** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1807** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1808** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1809** Temporary and Proposed Rulemaking, Bulletin Vol. 18-8 (eff. 8-1-18)T

***16.03.10, Medicaid Enhanced Plan Benefits***

- 16-0310-1704** 1st Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-6
- 16-0310-1704** 2nd (Second) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-12
- 16-0310-1704** 3rd (Third) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5
- 16-0310-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5
- 16-0310-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 16-0310-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

- 16-0310-1804 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 16-0310-1805 Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T
- 16-0310-1806 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0310-1801 Temporary and Proposed Rulemaking, Bulletin Vol. 18-8 (eff. 10-1-18)T
- 16-0310-1802 Proposed Rulemaking, Bulletin Vol. 18-9
- 16-0310-1803 Proposed Rulemaking, Bulletin Vol. 18-9
- 16-0310-1804 Proposed Rulemaking, Bulletin Vol. 18-9

**16.03.14, Rules and Minimum Standards for Hospitals in Idaho**

- 16-0314-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5
- 16-0314-1801 Second (2nd) Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 16-0314-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**16.03.15, Rules Governing Secure Treatment Facility for People with Intellectual or Developmental Disabilities**

- 16-0315-1801 Notice of Intent to Promulgate a Rule (New Chapter) – Negotiated Rulemaking, Bulletin Vol. 18-1
- 16-0315-1801 Adoption of Temporary Rule and Notice of Public Hearing (New Chapter), Bulletin Vol. 18-4 (eff. 2-22-18)T
- 16-0315-1801 Proposed Rulemaking (New Chapter), Bulletin Vol. 18-5

**16.05.06, Criminal History and Background Checks**

- 16-0506-1801 Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

**16.06.12, Rules Governing the Idaho Child Care Program (ICCP)**

- 16-0612-1801 Temporary and Proposed Rulemaking, Bulletin Vol. 18-9 (eff. 10-1-18)T

**16.07.37, Children's Mental Health Services**

- 16-0737-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0737-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**16.07.50, Minimum Standards for Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Units**

- 16-0750-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0750-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**IDAPA 17 – INDUSTRIAL COMMISSION****17.02.04, Administrative Rules of the IC Under the Worker's Compensation Law – Benefits**

- 17-0204-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 17-0204-1802 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**17.02.06, Employers' Reports**

- 17-0206-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**17.02.07, Procedures to Obtain Compensation**

- 17-0207-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**17.02.08, Miscellaneous Provisions**

- 17-0208-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**17.02.09, Medical Fees**

- 17-0209-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**17.02.10, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law – Security for Compensation – Insurance Carriers**

- 17-0210-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 17-0210-1802 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6



**17.02.11, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law – Security for Compensation – Self-Insured Employers**

- 17-0211-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**17-0211-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

**IDAPA 18 -- DEPARTMENT OF INSURANCE****18.01.06, Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children**

- 18-0106-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0106-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.23, Rules Pertaining to Idaho Acquisitions of Control and Insurance Holding Company Systems**

- 18-0123-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0123-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.24, Advertisement of Disability (Accident and Sickness) Insurance**

- 18-0124-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0124-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.30, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule**

- 18-0130-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7

**18.01.44, Schedule of Fees, Licenses, and Miscellaneous Charges**

- 18-0144-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7

**18.01.49, Fire Protection Sprinkler Contractors**

- 18-0149-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0149-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.54, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act**

- 18-0154-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0154-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.62, Annual Financial Reporting**

- 18-0162-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7  
**18-0162-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**18.01.70, Rules Governing Small Employer Health Insurance Availability Act Plan Design**

- 18-0170-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-7

**IDAPA 19 – BOARD OF DENTISTRY****19.01.01, Rules of the Idaho State Board of Dentistry**

- 19-0101-1801** Adoption of Temporary Rule, Bulletin Vol. 18-3 (eff. 3-30-18)T  
**19-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-5  
**19-0101-1802\*** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6 (\*Rulemaking terminated by agency)  
**19-0101-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**19-0101-1804** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**19-0101-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)  
**19-0101-1803** Proposed Rulemaking, Bulletin Vol. 18-9  
**19-0101-1804** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 20 – DEPARTMENT OF LANDS******20.03.01, Dredge and Placer Mining Operations in Idaho***

- 20-0301-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**20-0301-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***20.03.02, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities***

- 20-0302-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**20-0302-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***20.03.04, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho***

- 20-0304-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**20-0304-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***20.04.01, Rules Pertaining to Forest Fire Protection***

- 20-0401-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10  
**20-0401-1701** Proposed Rulemaking, Bulletin Vol. 18-8

***IDAPA 22 -- BOARD OF MEDICINE******22.01.01, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho***

- 22-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-9

***22.01.03, Rules for the Licensure of Physician Assistants***

- 22-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-9

***22.01.05, General Provisions for the Board of Medicine***

- 22-0105-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-9

***IDAPA 23 -- BOARD OF NURSING******23.01.01, Rules of the Idaho Board of Nursing***

- 23-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES***

- 24-0000-1800** OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board – Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

***24.01.01, Rules of the Board of Architectural Examiners***

- 24-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***(Rule Repealed) 24.02.01, Rules of the Board of Barber Examiners***

- 24-0000-1800** OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board – Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

***(Rule Repealed) 24.04.01, Rules of the Idaho Board of Cosmetology***



- 24-0000-1800** OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board – Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

***24.09.01, Rules of the Board of Examiners of Nursing Home Administrators***

- 24-0901-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

***24.15.01, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists***

- 24-1501-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***24.18.01, Rules of the Real Estate Appraiser Board***

- 24-1801-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-6 (eff. 5-1-18)T

***24.23.01, Rules of the Speech, Hearing and Communication Services Licensure Board***

- 24-2301-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

***24.28.01, Rules of the Barber and Cosmetology Services Licensing Board***

- 24-2801-1801** Notice of Adoption of Temporary Rule (New Chapter), Bulletin Vol. 18-8 (eff. 7-2-18)T

### ***IDAPA 25 – OUTFITTERS AND GUIDES LICENSING BOARD***

***25.01.01, Rules of the Outfitters and Guides Licensing Board***

- 25-0101-1801** Notice of Intent to Promulgate a Rule, Bulletin Vol. 18-6  
**25-0101-1802** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 3-28-18)T

### ***IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION***

***26.01.10, Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation***

- 26-0110-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10  
**26-0110-1701** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-7

***26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities***

- 26-0120-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10  
**26-0120-1701** Proposed Rulemaking, Bulletin Vol. 18-7

***26.01.23, Rules Governing Filming Within Idaho State Parks***

- 26-0123-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10  
**26-0123-1701** Proposed Rulemaking, Bulletin Vol. 18-7

### ***IDAPA 27 – BOARD OF PHARMACY***

***27.01.01, General Provisions***

- 27-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***27.01.02, Rules Governing Licensure and Registration***

- 27-0102-1801** Adoption of Temporary Fee Rule, Bulletin Vol. 18-4 (eff. 7-1-18)T  
**27-0102-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***27.01.03, Rules Governing Pharmacy Practice***

- 27-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***27.01.04, Rules Governing Pharmacist Prescriptive Authority***

- 27-0104-1801** Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 7-1-18)T  
**27-0104-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***27.01.05, Rules Governing Drug Compounding***

- 27-0105-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***27.01.06, Rules Governing DME, Manufacturing, and Distribution***

- 27-0106-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***IDAPA 28 – DEPARTMENT OF COMMERCE******28.02.03, Rules of the Idaho Regional Travel and Convention Grant Program***

- 28-0203-1801** Adoption of Temporary Rule, Bulletin Vol. 18-5 (eff. 3-2-18)T

***IDAPA 29 -- IDAHO POTATO COMMISSION******29.01.03, Rules Governing Nominations and Elections for Candidates to Be Selected for Commissioner***

- 29-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-7

***IDAPA 30 -- IDAHO COMMISSION FOR LIBRARIES******30.01.01, Rules of the Idaho Commission for Libraries Governing the Use of Commission Services***

- 30-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-7  
**30-0101-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***IDAPA 34 – SECRETARY OF STATE******34.06.02, Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records***

- 34-0602-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-6  
**34-0602-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***IDAPA 35 – STATE TAX COMMISSION******35.01.01, Income Tax Administrative Rules***

- 35-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-8  
**35-0101-1802** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-8 (eff. 1-1-18)T  
**35-0101-1803** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-9 (eff. 1-1-18)T

***35.01.02, Idaho Sales and Use Tax Administrative Rules***

- 35-0102-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5  
**35-0102-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**35-0102-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7  
**35-0102-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***35.01.03, Property Tax Administrative Rules***

- 35-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5  
**35-0103-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**35-0103-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

- 35-0103-1804** Adoption of Temporary Rule, Bulletin Vol. 18-7 (eff. 5-23-18)T
- 35-0103-1805** Adoption of Temporary Rule, Bulletin Vol. 18-7 (eff. 1-1-18)T
- 35-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-9
- 35-0103-1802** Proposed Rulemaking, Bulletin Vol. 18-9
- 35-0103-1803** Proposed Rulemaking, Bulletin Vol. 18-9

***35.01.05, Motor Fuels Tax Administrative Rules***

- 35-0105-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0105-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***35.01.06, Hotel/Motel Room and Campground Sales Tax Administrative Rules***

- 35-0106-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0106-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***35.01.09, Idaho County Option Kitchen and Table Wine Tax Administrative Rules***

- 35-0109-1801** Proposed Rulemaking, Bulletin Vol. 18-6

***35.01.10, Idaho Cigarette and Tobacco Products Tax Administrative Rules***

- 35-0110-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0110-1802** Proposed Rulemaking, Bulletin Vol. 18-6
- 35-0110-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***35.01.14, Prepaid Wireless E911 Fee Administrative Rules***

- 35-0114-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 35-0114-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 37 – DEPARTMENT OF WATER RESOURCES******37.03.13, The Water Management Rules***

- 37-0313-9701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 97-12
- 37-0313-9701** Proposed Rulemaking, Bulletin Vol. 98-10
- 37-0313-9701** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (2nd Notice), Bulletin Vol. 00-11

***IDAPA 38 – IDAHO DEPARTMENT OF ADMINISTRATION******38.04.09, Rules Governing Use of the Chinden Office Complex***

- 38-0409-1801** Adoption of Temporary Rule (New Chapter), Bulletin Vol. 18-2 (eff. 12-21-17)T
- 38-0409-1801** OARC Omnibus Notice of Legislative Action – Extension of Temporary Rule by SCR 150, Bulletin Vol. 18-5 (eff. 12-21-17)T
- 38-0409-1801** Notice of Amendment to Temporary Rule (New Chapter), Bulletin Vol. 18-9 (eff. 9-5-18)AT
- 38-0409-1802** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-9

***38.05.01, Rules of the Division of Purchasing***

- 38-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

***38.06.01, Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer (Rule Transferred to IDAPA 15.07.01 – eff. 7-1-18)***

- 38-0601-1800** Notice of Legislative Action Creating the Office of Information Technology Service (ITS) and Transferring Rulemaking Authority from the Department of Administration’s Office of the Chief Information Officer to ITS – House Bill 607 (2018), Bulletin Vol. 18-6 (eff. 7-1-18)

***IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT***

***39.02.46, Rules Governing Temporary Motor Vehicle Registration Permit***

**39-0246-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**39-0246-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***39.02.61, Rules Governing License Plates for Governmental Agencies and Taxing Districts***

**39-0261-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 6-21-18)T

**39-0261-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***OMNIBUS RULEMAKING – 39.03.01 through 39.03.25:******Rules that Regulate Vehicles and/or Loads that are Required to Operate Under an Overlegal Permit***

**39-0300-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

***39.03.41, Rules Governing Traffic Control Devices***

**39-0341-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 6-21-18)T

**39-0341-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***39.03.48, Rules Governing Routes Exempt from Local Plans and Ordinances***

**39-0348-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 40 -- IDAHO COMMISSION ON THE ARTS******40.01.01, Rules of the Idaho Commission on the Arts***

**40-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION******47.01.02, Rules and Minimum Standards Governing Extended Employment Services***

**47-0102-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5

***IDAPA 52 – IDAHO STATE LOTTERY COMMISSION******52.01.03, Rules Governing Operations of the Idaho State Lottery***

**52-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-8

***IDAPA 55 – DIVISION OF CAREER TECHNICAL EDUCATION******55.01.03, Rules of Career Technical Schools***

**55-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

***IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY***

**58-0000-1801** Potlatch River Watershed Assessment and Total Maximum Daily Load (TMDL): 2017 Temperature TMDL (HUC ID 17060306), Bulletin Vol. 18-5

**58-0000-1802** Upper North Fork Clearwater River Subbasin Assessment and Total Maximum Daily Load (TMDL): 2017 Lake Creek Temperature TMDL (HUC 17060307), Bulletin Vol. 18-7

**58.01.01, Rules for the Control of Air Pollution in Idaho**

- 58-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-4  
**58-0101-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5 (Rulemaking terminated)  
**58-0101-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**58-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-8  
**58-0101-1802** Notice of Termination of Negotiated Rulemaking, Bulletin Vol. 18-8  
**58-0101-1803** Proposed Rulemaking, Bulletin Vol. 18-8  
**58-0101-1804** Proposed Rulemaking, Bulletin Vol. 18-8

**58.01.02, Water Quality Standards**

- 58-0102-1703** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-12  
**58-0102-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-4  
**58-0102-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5  
**58-0102-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7  
**58-0102-1703** Proposed Rulemaking, Bulletin Vol. 18-8  
**58-0102-1703** Notice of Public Meeting of the DEQ Board, Bulletin Vol. 18-8  
**58-0102-1802** Proposed Rulemaking, Bulletin Vol. 18-9  
**58-0102-1803** Proposed Rulemaking, Bulletin Vol. 18-9

**58.01.05, Rules and Standards for Hazardous Waste**

- 58-0105-1801** Proposed Rulemaking, Bulletin Vol. 18-8

**58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites**

- 58-0124-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6  
**58-0124-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**

- 58-0125-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-6 (eff. 5-18-18)T

**IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)****59.01.03, PERSI Contribution Rules**

- 59-0103-1801** Adoption of Temporary Rule, Bulletin Vol. 18-1 (eff. 12-5-17)T  
**59-0103-1801** OARC Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 150, Bulletin Vol. 18-5 (eff 12-5-17)T  
**59-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-6

**59.01.05, PERSI Separation from Service Rules**

- 59-0105-1801** Proposed Rulemaking, Bulletin Vol. 18-6  
**59-0105-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

**59.01.06, PERSI Retirement Rules**

- 59-0106-1801** Proposed Rulemaking, Bulletin Vol. 18-6  
**59-0106-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

**IDAPA 60 – IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION****60.05.01, Resource Conservation and Rangeland Development Program**

- 60-0501-1801** 1st Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5  
**60-0501-1801** 2nd Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION****61.01.02, Rules Governing Uniform Data Reporting Requirements and Forms for**

*Defending Attorney Annual Reports*

- 61-0102-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-4  
**61-0102-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**61.01.03, Rules Governing Contracts and Core Requirements for Contracts Between Counties  
and Private Attorneys for the Provision of Indigent Defense Services**

- 61-0103-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-4  
**61-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-9

**61.01.04, Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants**

- 61-0104-1701** Adoption of Temporary Rule (New Chapter), Bulletin Vol. 17-4 (eff. 3-3-17)T  
**61-0104-1701** OARC Omnibus Notice of Legislative Action – Extension of Temporary Rule by SCR 150, Bulletin Vol. 18-5 (eff 3-3-17)T

**61.01.08, Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions**

- 61-0108-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-4  
**61-0108-1801** 2nd Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-5  
**61-0108-1801** Proposed Rulemaking, Bulletin Vol. 18-9

# Subject Index

## A

- Abbreviations 290, 303
  - BMP 290, 303
  - DEQ 290, 303
  - U.S.C. 303
  - WAD 303
- Additional Requirements Applicable to Mental Health Diversion Units 231
- Additional Requirements Applicable to Sobering Stations 229
- Administration 291
- Administrative Appeals 103, 112, 164, 390, 394, 402, 471, 477, 482
- Administrative Areas 236
  - Clean Workroom or Clean Holding Room 236
  - Closets & Compartments 236
  - Drug Distribution Station 236
  - Equipment Storage Rooms 236
  - Janitor's Closet 236
  - Lockable Storage Area 237
  - Lounge & Toilets for Staff 236
  - Nourishment Station 236
  - Soiled Workroom & Soiled Holding Room 236
  - Staff Station 236
- Adoption & Incorporation By Reference Of The National Electrical Code 88
- Availability 90
- Documents 88
- Adult DD Waiver Services
  - Coverage & Limitations 146
    - Adult Day Health 149
    - Behavior Consultation/Crisis Management 149
    - Chore Services 147
    - Environmental Accessibility Adaptations 148
    - Home Delivered Meals 149
    - Non-Medical Transportation 148
    - Personal Emergency Response System (PERS) 149
    - Place of Service Delivery 149
    - Residential Habilitation 146
    - Respite Care 147
    - Self-Directed Community Supports 149
    - Skilled Nursing 149
    - Specialized Medical Equipment & Supplies 148
    - Supported Employment 148
    - Transition Services 150
  - Provider Qualifications & Duties 150
    - Adult Day Health 154
    - Behavior Consultation or Crisis Management 154
    - Chore Services 153
    - Environmental Accessibility Adaptations 153
    - Home Delivered Meals 154
    - Non-Medical Transportation 153
    - Personal Emergency Response System 154
    - Residential Habilitation -- Certified Family Home (CFH) 151
    - Residential Habilitation -- Supported Living 150
    - Respite Care 153
    - Service Supervision 155
    - Skilled Nursing 154
    - Specialized Medical Equipment & Supplies 153
    - Supported Employment 153
    - Transition Services 155
- Aged & Disabled Waiver Services
  - Coverage & Limitations 134
    - Adult Day Health 134
    - Adult Residential Care Services 134
    - Attendant Care 136
    - Chore Services 136
    - Companion Services 136
    - Consultation 136
    - Environmental Accessibility Adaptations 137
    - Habilitation 138
    - Home Delivered Meals 137
    - Homemaker Services 137
    - Non-Medical Transportation 135
    - Personal Emergency Response System (PERS) 137
    - Respite Care 137
    - Skilled Nursing 138
    - Specialized Medical Equipment & Supplies 135
    - Supported Employment 139
  - Provider Qualifications & Duties 140
    - Adult Day Health 142
    - Adult Residential Care 141
    - Attendant Care 142
    - Chore Services 145
    - Consultation Services 141
    - Day Habilitation 144
    - Employment Status 140
    - Environmental Accessibility Adaptations 143
    - Fiscal Intermediary Services 140
    - HCBS Compliance 141
    - Home Delivered Meals 141
    - Homemaker Services 142
    - Non-Medical Transportation Services 142
    - Personal Emergency Response Systems 142
    - Provider Qualifications 140
    - Quality Assurance 141
    - Residential Habilitation Supported Living 143
    - Respite Care 144
    - Skilled Nursing Service 141
    - Specialized Medical Equipment & Supplies 141
    - Supported Employment 144
    - Transition Services 145
  - Transition Services 139
- Agreements Required For Certificate Of Approval For A Detox/Mental Health Diversion Unit Facility 201
- Agreement with CEO or Administrator 201
- Agreement with Director of Nursing 201
- Agreement with Licensed Hospital Required 201
- Agreement with Medical Director 201
- Agreement with Mental Health Program Director 201
- Animals 399, 406
  - Domestic Animals 399, 407
  - Wildlife 399, 407
- Appeals 98
  - Appeals Board 98
  - Appeals Hearing Fee 98
  - Conditions Disqualifying Board Member 98
  - Filing Date 98
  - Function of Appeals Board 98
  - Limitations of Appeal 98
  - Motions for Reconsideration 98
  - Notice of Appeal 98
  - Preliminary Order 98
  - Rules of Evidence 98
- Applicability 291
  - All Lands in State 291
  - Navigational Improvements 291
  - Nonapplicability 291
  - Stream Channel Alterations 291
  - Suction Dredges 291
  - Types of Operations 291
- Applicants 418
  - Application & Funding Limits 419
  - Categories of Applicants 418
  - Requirements for Individuals 418
  - Requirements for Organizations 419
- Application Deadlines, Arts in Education Directory of Teaching Artists 428
- Application For Certificate Of Approval 202
  - Certificate of Occupancy, Fire Codes, & Building Codes 203
  - Completed & Signed Application 202
  - Criminal History & Background Clearance 202
  - Electrical Inspection 202
  - Floor Plan 203
  - Identification of CEO or Administrator, Medical Director, Director of Nursing, & Mental Health Program Director 203
  - Initial Application & Building Evaluation Fee 202
  - Operational Policies & Procedures 203
  - Other Information as Requested 203
  - Proof of Insurance 203
  - Public Health District 202

- Purchase Agreement, Lease, or Deed 203  
 Statement Disclosing Revocation or Disciplinary Actions 202  
 Statement to Comply 202  
 Application Of Reporting Requirements 472  
 Entities Required to Report 472  
 Exceptions to Reporting Requirements 472  
 Application Procedure 473  
 Due Date 474  
 Forms 473  
 Incomplete Annual Report 474  
 Method of Delivery 473  
 Review 473  
 Application Procedure & Requirements For Other Surface Mining Operations Including Hardrock & Phosphate Mining 306  
 Application Package 306  
 Maps Requirements 306  
 Operating Plan Requirements 307  
 Reclamation Plan Approval Required 306  
 Reclamation Plan Requirements 306  
 Application Procedure & Requirements For Permanent Closure Of Cyanidation Facilities 307  
 Application Fee 310  
 Application Package for Permanent Closure 309  
 Permanent Closure Cost Estimate Verification Fee 310  
 Permanent Closure Plan Approval Required 307  
 Permanent Closure Plan Requirements 307  
 Preapplication Conference 309  
 Processing & Review Fee 310  
 Application Procedure & Requirements For Quarries, Decorative Stone, Building Stone, & Aggregate Materials Including Sand, Gravel & Crushed Rock 304  
 Application Package 305  
 Approval Required 305  
 Map Requirements 305  
 No Operator Shall Conduct Surface Mining Operations 305  
 Reclamation Plan Requirements 305  
 Application Procedure For Placer Or Dredge Mining Permit 292  
 Application Package 292  
 Application Review & Inspection 295  
 Approved Reclamation Plan Required 292  
 Incomplete Applications 293  
 Requirements for Reclamation Plan 295  
 Requirements of Maps 293  
 Settling Ponds 294  
 State Approval Required 295
- Application Requirements, Arts in Education Directory of Teaching Artists 428  
 Applications 328, 419  
 Application Forms 419  
 Artist Statements 420  
 Encroachment Applications 328  
 Matching Contributions 420  
 Other Permits 328  
 Ownership & Return of Applications 419  
 Repairs, Reinstallation of Structures 328  
 Resumes 420  
 Signature Requirement 328  
 Submission 419  
 Work Samples & Supporting Materials 419  
 Applications For Limited Electrical Installer License 83  
 Apprentice Electrician 73  
 Direct Supervision 74  
 Requirements for Apprentice Electrician 73  
 Appropriateness Of Recommended Purchase & Excessive Insurance 273  
 Area Closures 406  
 Arts Education Project Grants 430  
 Application Deadlines 430  
 Application Requirements 430  
 Evaluation Criteria 430  
 Matching Contributions 430  
 Arts In Education Directory Of Teaching Artists 428  
 Availability Of On-Site Alcohol & Drug Screening & Testing 224  
 Drug Screening & Testing Policies & Procedures 225  
 Laboratory Used for Testing 225  
 On-Site Screening 224  
 On-Site Testing 225  
 Quality of Screening 225  
 Release of Results 225
- B**
- Beds & Bedrooms For Mental Health Diversion Unit 233  
 Bedroom Door Requirements 234  
 Beds for Mental Health Diversion Unit 234  
 Ceiling Height 234  
 Cubicle Curtains 234  
 Entrances to Client Bedrooms 234  
 Location of Client Beds 234  
 Maximum Room Capacity 234  
 Numbered Bedrooms & Beds 234  
 Occupants of Bedrooms 234  
 Prior Approval Needed for Reallocated or Relocated Beds 234  
 Safe & Secure Client Bedrooms 234  
 Separate & Distinct Client Areas 234
- Size of Client Sleeping Areas 234  
 Staff Calling System 234  
 Beds & Sleeping Areas For Medically Monitored Residential Detoxification Unit 233  
 Beds for Detoxification Unit 233  
 Cubicle Curtains, Detoxification Unit 233  
 Location of Beds, Detoxification Unit 233  
 Numbered Beds 233  
 Occupants of Sleeping Areas 233  
 Prior Approval Needed for Reallocated or Relocated Beds 233  
 Safe & Secure Sleeping Areas 233  
 Separate & Distinct Client Areas 233  
 Square Footage Requirements 233  
 Unacceptable Location of Beds 233  
 Visibility of Client Beds 233  
 Best Management Practices & Reclamation For Surface Mining Operation & Permanent Closure Of Cyanidation Facilities 312  
 Backfilling & Grading 314  
 Clearing & Grubbing 313  
 Disposal of Waste in Areas Other Than Mine Excavation 315  
 Nonpoint Source Control 313  
 Overburden/Topsoil 313  
 Permanent Cessation & Time Limits for Planting 316  
 Petroleum-Based Products & Chemicals 318  
 Revegetation Activities 317  
 Roads 314  
 Sediment Control 313  
 Settling Ponds 315  
 Tailings Impoundments 315  
 Budget Certification - Dollar Certification Form (L-2 Form) 369  
 Budget Certification 370  
 Budget Certification Requested Documents 370  
 Cross Reference for School Districts with Tuition Funds 375  
 Definitions 369  
 L-2 Form Contents 371  
 Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units With Multiple Funds 374  
 Special Provisions for Cities With Existing Library Operations or Services Consolidating With Any Library District 374  
 Special Provisions for Consolidating Cemetery Districts 375  
 Special Provisions for Fire Districts Levying Against Operating Property 373  
 Special Provisions for Interim Abatement Districts 375



- Special Provisions for Library
    - Districts Consolidating With Any City's Existing Library Operations or Services 374
  - Special Provisions for Property Tax
    - Replacement & Refunds Pursuant to Section 63-1305C(6), Idaho Code 373
  - Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy 374
  - Budget Certification Relating To New Construction & Annexation 363
  - Change in Status 367
  - Definitions 363
  - Limitation on Annexation & New Construction Roll Value 369
  - Manufactured Housing 366
  - New Construction Roll Listing 363
  - Notification of New Construction Roll & Annexation Values 369
  - Partial New Construction Values 366
  - Special Provisions for Value Increases & Decreases 364
- C**
- Certificate Of Approval 200
    - Apply for Certificate of Approval 201
    - Purpose 200
    - Valid Certificate of Approval 200
  - Certificate Of Approval Duration 203
  - Certificate of Approval Requirements 200
  - Change Reporting Requirements 187
    - Change in Child Care Provider 187
    - Change in Full-time or Part-time Activity Hours 187
    - Change in Household Composition 187
    - Change in Income 187
    - Change in Permanent Address 187
  - Change Reporting Requirements for Those Receiving Child Care Benefits 187
  - Changes Requiring Notification To The Department 204
    - Change in Maximum Allowable Number of Beds 205
    - Change in Services or Closure of Facility 205
    - Change of CEO or Administrator, Medical Director, or Director of Nursing 204
    - Change of Ownership, Operator, or Location 204
    - Change of Ownership, Operator, or Location Due to Facility in Litigation 204
  - Chemicals Evaluated At Petroleum Release Sites 459
    - Additional Chemicals 459
  - General Applicability 459
  - Civil Penalties 100, 104
    - Corrections 100
    - Electrical Contractor 100
    - Employees 100
    - Failure to Disclose 101
    - Fees & Permits 100
    - Gross Violation 101
    - Journeyman to Apprentice Ratio 100
    - Judicial Review 101, 105
    - License or Registration 100
    - Multiple Violations 105
    - Performance Outside Scope of License 100
    - Second Offense 105
    - Supervision 100
    - Violations of Title 55, Chapter 22, Idaho Code 104
  - Client Records Policies & Procedures 218
    - Client Record Required 219
    - Complete & Accurate Records 219
    - Content of Client Record 219
    - Individual Client Record 219
    - Maintenance of Client Records 220
    - Responsible Staff 219
    - Retention & Destruction of Client Records 220
  - Codes & Standards 232
    - Code Conflict 232
    - Compliance with Codes & Standards 232
    - Evidence of Compliance with Local Building Codes 233
  - Complaints & Grievances, Medicare Select Issuer 258
  - Compliance 130
  - Compliance With Law 409
  - Confidentiality Of Records And Public Records Act Compliance And Requests 165
  - Continuing Education Requirements, Electricians 92
  - Control Of Tuberculosis 217
    - Discharge Prior to Availability of Test Result 218
    - Protective Infection Control Techniques 218
    - Transfer of Client Suspected or Diagnosed 218
    - Tuberculin Risk Assessment 217
    - Tuberculin Skin Tests 217
  - Copayments 187
    - Calculating Family Payment 187
    - Changes to Copayments 187
    - Poverty Rates 187
  - Core Terms 478
    - Compensation 478
    - Conflicts of Interest 478
    - Experience Requirements 478
    - Independent Contractor 478
    - Parties 478
    - Performance Requirements 479
  - Scope of the Contract 478
  - Term of the Contract 478
  - Training Requirements 478
  - Underlying Bases 478
  - Course Approval Requirements 92
    - Appeals 94
    - Board and Negotiated Rulemaking Meetings 95
    - Code-Related Programs 93
    - Code-Update Programs 93
    - General Course Requirements 92
    - Industry-Related Programs 93
    - Instructor Approval Procedures 94
    - Program Approval Procedures 93
    - Requirements for Credit 95
    - Revocation of Approval 95
    - Schedule of Approved Classes 95
  - Criminal History & Background Check Requirements 186
    - Additional Criminal Convictions 186
    - Applicants, Providers, & Other Individuals Subject to Criminal History Check Requirements 186
    - Availability to Work or Provide Service 186
    - Compliance With Department Criminal History Check 186
    - Criminal History & Background Check at Any Time 186
    - ICCP Provider is Approved 186
    - Renewal of Criminal History & Background Check Requirement 186
  - Cultural Facilities & Public Art Grants 425
    - Application Deadline 426
    - Application Requirements 425
    - Evaluation Criteria 425
    - Feasibility Studies 425
    - Funding Limitations & Requirements 425
    - Matching Contributions 425
- D**
- Daily Performance Checks 41
    - Calibration Based On Daily Performance Check 42
    - Daily Performance Check Samples 41
    - Procedure 42
  - Definitions 68, 103, 281, 288, 298, 482
    - Act 288
    - Affected Land 298
    - Annual Report 483
    - Applicant – Indigent Defense Grant 483
    - Approval – IDG Application 483
    - Approximate Previous Contour 288, 298
    - Best Management Practices 288, 299
    - Board 288, 299
    - Capital Counsel Roster 483

- Case 483  
 Caseload 483  
 Chapter 299  
 Compliance Checklist 483  
 Compliance Period 483  
 Compliance Proposal 483  
 Compliance Verification 484  
 Contracting Authority 484  
 Corrective Action Plan 484  
 Cyanidation 299  
 Cyanidation Facility 299  
 Defending Attorney 484  
 Deficiency 484  
 Department 288, 299  
 DEQ, Department of Environmental Quality 288  
 DEQ, The Department of Environmental Quality 299  
 Director 288, 299  
 Discharge 299  
 Disturbed Land or Affected Land 288  
 Eligible Applicant – Indigent Defense Grant 484  
 Established Standards 484  
 Exploration Drill Holes 299  
 Exploration Operations 299  
 Exploration Roads 299  
 Exploration Trenches 299  
 Final Order of the Board 288, 299  
 Finding of Compliance with Recommendation 484  
 Finding of Non-Compliance 484  
 Fiscal Year 484  
 Formal Status Meeting 484  
 Groundwater 299  
 Hand Digging 103  
 Hearing Officer 288, 299  
 Indigent Defense Budget 484  
 Indigent Defense Contract 484  
 Indigent Defense Delivery System 485  
 Indigent Defense Expenditures 485  
 Indigent Defense Grant 485  
 Indigent Defense Grant Application 485  
 Indigent Defense Provider 485  
 Indigent Defense Services 485  
 Indigent Defense Stakeholders (“Stakeholders”) 485  
 Indigent Defense Standard 485  
 Joint Incentive Indigent Defense Grant 485  
 Land Application 299  
 Local Share 485  
 Locator 103  
 Material Change 300  
 Material Modification or Material Expansion 300  
 Material Stabilization 300  
 Methods of Anxiety & Pain Control 281  
 Mine Panel 288, 300  
 Mined Area 300  
 Mineral 288, 300  
 Mineral Stockpile 301  
 Motorized Earth-Moving Equipment 288, 301  
 Mulch 289  
 Natural Watercourse 289  
 Neutralization 301  
 Operator 301  
 Overburden 289, 301  
 Overburden Disposal Area 289, 301  
 Oversight Review 485  
 Peak 301  
 Permanent Cessation 289  
 Permanent Closure 301  
 Permanent Closure Plan 301  
 Permit 301  
 Permit Area 289  
 Permittee 289  
 Person 68, 289  
 Pilot Facility 301  
 Pit 289, 301  
 Placer Deposit 289  
 Placer or Dredge Exploration Operation 289  
 Placer or Dredge Mining Operation 289  
 Placer or Dredge Mining or Dredge or Other Placer Mining 289  
 Placer Stockpile 289  
 Pollutant 302  
 Post Closure 302  
 Process Waters 302  
 Public Defense Roster 485  
 Reclamation 289, 302  
 Reporter 485  
 Revegetation 289, 302  
 Ridge 302  
 Road 290, 302  
 Routes of Administration 282  
 Scholarship 486  
 Sedation Terms 281  
 Settling Pond 290  
 Small Cyanidation Processing Facility 302  
 Soft Digging 103  
 Staff 486  
 Submission Date 486  
 Surface Mine 302  
 Surface Mining Operations 302  
 Surface Waters 290, 302  
 Tailings Pond 302  
 Topsoil 290  
 Training Funds 486  
 Training Program 486  
 Treatment 302  
 Vertical Representation 486  
 Water Balance 303  
 Water Management Plan 303  
 Waters of the State 303  
 Weak Acid Dissociable Cyanide 303  
 Workload 486  
 Definitions & Abbreviations 471, 477  
 A Through K 196  
 Administrator 196  
 Adult 196  
 Applicant 196  
 ASAM 196  
 Board 196  
 Certificate of Approval 196  
 Change of Ownership 196  
 Chemical Restraint 196  
 Chief Executive Officer (CEO) 196  
 Client 196  
 Department 196  
 Director 196  
 Governing Body 196  
 Governmental Unit 197  
 L Through Z 197  
 Director of Nursing 197  
 Licensed Clinical Social Worker (LCSW) 197  
 Licensed Marriage and Family Therapist (LMFT) 197  
 Licensed Master’s Level Social Worker (LMSW) 197  
 Licensed Practical Nurse (L.P.N.) 197  
 Licensed Professional Counselor (LPC) 197  
 Licensed Professional Nurse (R.N. or Registered Nurse) 197  
 Mechanical Restraint 197  
 Medical Director 197  
 Medical Staff 197  
 Mental Health Clinical Staff 198  
 Mental Health Program Director 198  
 Nonhospital, Medically Monitored Detoxification/Mental Health Diversion Unit 198  
 On-Call 198  
 On-Duty 198  
 Owner 198  
 Physical Restraint 198  
 Physician 198  
 Provisional Certificate of Approval 198  
 Psychiatrist 198  
 Psychologist 198  
 Serious & Persistent Mental Illness (SPMI) 199  
 Serious Mental Illness (SMI) 199  
 Social Worker 200  
 Substantial Compliance 200  
 Definitions & Abbreviations -- A Through M 165  
 Anesthesiologist 165  
 Anesthetist 165  
 Approved Drugs & Biologicals 165  
 Board 165  
 Chief Executive Officer or Administrator 165  
 Clinical Privileges 165  
 Dentist 166  
 Department 166  
 Dietetic Service Supervisor 166

- Dietitian 166  
 Director of Nursing Service 166  
 Director of Psychiatric Nursing Service 166  
 Drug Administration 166  
 Governmental Unit 166  
 Grievance 166  
 Hospital for the Treatment of Alcohol & Drug Abuse 167  
 Hospital Licensing Act 167  
 Infectious Wastes 167  
 Licensed Independent Practitioner (L.I.P.) 167  
 Licensed Practical Nurse (L.P.N.) 168  
 Licensee 168  
 Licensing Agency 168  
 Maternity Hospital 168  
 Medical Record Practitioner (Qualified Consultant) 168  
 Medical Staff Members 168  
 Definitions & Abbreviations -- N Through Z 168  
 New Construction or New Hospitals 168  
 Nuclear Medicine Physician 168  
 Nurse Practitioner 168  
 Nursing Graduate 168  
 Nursing Unit 169  
 Occupational Therapist 169  
 Occupational Therapist Assistant 169  
 Operating Room Technician 169  
 Patient 169  
 Person 169  
 Pharmacist 169  
 Psychiatrist 169  
 Physical Therapist 169  
 Physical Therapist Assistant 169  
 Physician 169  
 Physician's Assistant 169  
 Podiatrist 170  
 Provisional License 170  
 Psychiatric Hospital 170  
 Psychiatric Nurse 170  
 Psychiatric Unit 170  
 Psychiatrist 170  
 Radiologic Service Director 170  
 Radiologic Technologist (Diagnostic) 170  
 Radiologist 170  
 Radiotherapist 171  
 Registered Nurse (R.N.) 171  
 Rehabilitation Hospital 171  
 Respiratory Therapist 171  
 Respiratory Therapy Technician 171  
 Restraints 171  
 Seclusion 171  
 Skilled Nursing Facility 172  
 Social Worker 172  
 Special Hospital 172  
 Speech Pathologist or Audiologist 172  
 Substantial Compliance 172  
 Supervision 172  
 Temporary License 172  
 Tuberculosis Hospital 172  
 Video and/or Audio Recording 172  
 Video Monitoring 172  
 Waiver or Variance 172  
 Definitions, IDAPA 02.04.09, Rules  
 Governing Milk & Cream Procurement & Testing 40  
 Abnormal Test 40  
 Accuracy Check 40  
 Approved Testing Methods 40  
 Calibration 40  
 Clearance Test 40  
 Component Testing 40  
 Control Samples 40  
 Department 40  
 Detailed Pricing Description 40  
 Director 40  
 Milk Component or Component 40  
 Official Laboratory 40  
 Outlier 40  
 Pay Records 40  
 Performance Error 40  
 Person 41  
 Processor 41  
 Producer 41  
 Quality Parameter 41  
 Rolling Group of Thirteen (13) 41  
 Sample Set 41  
 Testing Device 41  
 Tolerance 41  
 Definitions, IDAPA 07.01.01, Rules  
 Governing Electrical Inspection Tags 63  
 Associated Buildings 63  
 Person 63  
 Definitions, IDAPA 16.03.14, Rules & Minimum Standards For Hospitals In Idaho  
 Hospital 166  
 Definitions, IDAPA 38.04.09 396, 403  
 Camping 396, 403  
 Chinden Office Complex 396, 403  
 Commemorative Installation 396, 403  
 Common Space 397, 403  
 Department 397, 404  
 Director 397, 404  
 Private Event or Private Exhibit 397, 404  
 Public Use 397, 404  
 Recreational Facilities 397, 404  
 Recreational Use 397, 404  
 Security Personnel 397, 404  
 State Business Day 397, 404  
 State Events & Exhibits 397, 404  
 State Maintenance & Improvements 397, 404  
 Tenant 397, 404  
 Tenant Space 397, 404  
 Definitions, IDAPA 40.01.01 417  
 Applicant 417  
 Apprentice 417  
 Art 417  
 Artist 417  
 Arts 417  
 Capital Expenditures 417  
 Commission 417  
 Discipline 417  
 Fiscal Year 418  
 Master 418  
 Matching Contributions 417  
 Program 418  
 Program Guidelines 418  
 Recipient 418  
 Denial Of Certificate Of Approval 205  
 Denial of a Certificate of Approval for an Act Adversely Affecting Welfare of Client, Employee, Contractor, or Volunteer 206  
 Denial of a Certificate of Approval for Lack of Substantial Compliance 205  
 Denial of a Certificate of Approval Related to Key Individuals 205  
 Denial Of Payment 188  
 Contrary to Rules or Provider Agreement 188  
 Failure to Provide Immediate Access to Records 188  
 Paying for Attendance 188  
 Services Not Documented 188  
 Services Not Provided 188  
 Deny 204  
 Design Requirements 246  
 Conformance to Standards 246  
 Corrected Plans 246  
 Detail 246  
 Exemption 246  
 Prior Approval of Plans 246  
 Scale 246  
 Submission of Plans 246  
 Tests 246  
 Detox/Mental Health Diversion Unit - Deeming 203  
 Additional & Supplemental Information 204  
 National Accreditation 203  
 Proof of Accreditation 204  
 Disposal 315  
 Dock Reconfiguration 328  
 Documentation Of Services & Access To Records 188  
 Copying Records 189  
 Documentation of Services 188  
 Immediate Access to Records 189  
 Removal of Records From Provider's Premises 189  
**E**  
 Electrical Installations Requiring A Limited Electrical Installer License 80  
 Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical 80  
 Irrigation Sprinkler Electrical 81

- Limited Energy Electrical 81
  - Manufacturing or Assembling Equipment 80
  - Outside Wireman 82
  - Refrigeration, Heating, & Air-Conditioning Electrical Installer 82
  - Sign Electrical 80
  - Solar Photovoltaic 82
  - Well Driller & Water Pump Installer 81
  - Electrical Permit & Inspection Requirements For Facility Accounts 65
  - Electrical Permits 63
    - Completion of Electrical Installation 64
    - Power Supply Company 64
    - Purchase of Electrical Permit 64
  - Electrical Permitting & Inspection Requirements for Persons Exempt from Licensing 64
    - Electrical Permit 65
    - Notice to Power Supplier 65
  - Eligibility Determination 191
    - Court-Ordered Assessment, Treatment, & Services 191
    - Eligibility Requirements 191
    - Ineligible Conditions 191
    - The Department Determines Eligibility for Mental Health Services 191
  - Emergency Feeding Criteria 122
    - Additional Guidelines 123
    - Declaration of Feeding Emergency 122
  - Employee Health 211
    - Documentation in Personnel File 212
    - Policy for Communicable Disease Precautions 212
    - Report Symptoms 212
    - Tuberculin Skin Test 212
  - Encroachment Standards 321
    - ATONs 325
    - Boat Garage 323
    - Breakwaters 324
    - Commercial Marina 322
    - Community Docks 322
    - Covered Slip 323
    - Excavated or Dredged Channel 325
    - Float Homes 324
    - Floating Toys 327
    - General Encroachment Standards 325
    - Lake Specific Encroachment Permit Terms 327
    - Mooring Buoys 324
    - Riprap 324
    - Seawalls 324
    - Single-Family & Two-Family Docks 321
  - Enforcement Action For Suspension Or Revocation Of A Certificate And
    - Limit On Admissions With Notice 206
    - Act Adversely Affecting Welfare of Client 206
    - Acts of Key Individuals 207
    - Endangerment to Health & Safety 206
    - Lack of Adequate Staffing 207
    - Lack of Sound Judgment in Operation or Management 207
    - Misrepresentation or Omission on Application 206
    - Substantiated Deficiencies 207
    - Violation of Client Confidentiality 207
  - Enforcement Of Immunization Requirement 132
    - Exempted Students 132
    - Length of Exclusion 132
    - Noncompliance 132
  - Enhanced Hospital Services 161
  - Entry Track Grants 427
    - Application Deadline 427
    - Application Requirements 427
    - Evaluation Criteria 427
    - Funding Limitations & Requirements 427
    - Grant Amounts & Matching Contributions 427
  - Equipment & Supplies 405
  - Establishment & Maintenance Of Records 479
    - Copies 479
    - Costs of Services Records 479
    - Costs of Subcontract and Personal Service Contract Records 479
    - Duration of Record Keeping 479
  - Establishment Of Perimeters 405
  - Establishment Of Remediation Standards 462
    - Generic Health Standards 462
    - Other 462
    - Risk Based Levels 462
    - Screening Levels 462
  - Evaluation Criteria, Arts in Education Directory of Teaching Artists 428
  - Evidence Of Immunization Status 130
    - Immunization Record 130
    - Schedule of Intended Immunizations Form 130
    - Students Admitted to School & Failing to Continue the Schedule of Intended Immunizations 131
  - Examinations 85
    - Failed Examinations 85
    - Frequency of Conducting of Examinations 85
    - Professional Testing Services 85
    - Required Scores 85
  - Exceptions To Immunization Requirement 131
    - Disease Diagnosis 131
    - Laboratory Proof 131
    - Suspension of Requirement 131
  - Exceptions, Extensions, & Exemptions 35
    - Exceptions & Extensions 35
    - Exemptions for Inactive or Retired 35
  - Exempt Vehicles 411
    - Recreational Vehicles 411
    - Special Make Equipment 411
    - Trailers 411
  - Exemption From Attorney General's Administrative Procedure Rules For Contested Cases 97
  - Exemptions To Immunization Requirement 131
    - Life or Health Endangering Circumstances 131
    - Religious or Other Objections 131
  - Existing State Highway System 415
  - Expiration & Renewal Of Certificate Of Approval 203
    - Existing Certificate of Approval 203
    - Renewal Fee 203
    - Renewal of Certificate of Approval 203
  - Explanation Of Data Not Tracked 474
  - Exploration Operations & Required Reclamation 303
    - Additional Reclamation 304
    - Confidentiality 304
    - Contents of Notification 303
    - Diligence 303
    - Exploration Reclamation (Less Than Two Acres) 304
    - Exploration Reclamation (More Than Two Acres) 304
    - Notification 303
    - When Exploration is Surface Mining 303
  - Extraordinary Dividends & Other Distributions 241
    - Other Dividends 241
    - Request for Approval 241
- F**
- Failure To Submit An Annual Report 474
  - Fees For Copies, Searches, & Other Services 125
    - Certified Copies 125
    - Fees for Other Services 125
    - Searches 125
    - Statistical, Research, or Public Health Services 125
    - Verifications 125
    - Waiver of Fee Requirement 126
  - Fees For Electrical Inspections Expiration of Permits 71
    - Fees for Temporary Amusement/ Industry Electrical Inspections 71
    - No Permit 71
    - Plan Check Fee 71
  - Fees For Electrical Permits & Inspections 68
    - Additional Fees & Reinspection

Fees 70  
 Domestic Water Pump Permit 69  
 Electric Signs & Outline Lighting Permit 70  
 Electrically-Driven Irrigation Machine Permit 70  
 Mobile/Manufactured Home Permit 69  
 New Residential 69  
 Other Installations (Including Industrial & Commercial) Permit 69  
 Pumps (Water/Domestic Water/Irrigation, Sewage) Each Motor Permit 70  
 Refunds of Permits 71  
 Requested Inspection Permit 70  
 Residential Electric Space Heating & Air Conditioning 69  
 Temporary Construction Service (Temporary Power) Permit 69  
 Transferring a Permit 71  
 Fellowships 421  
 Application Deadline 421  
 Application Requirements 421  
 Coordination with the Writer in Residence Program 421  
 Discipline Rotation 421  
 Evaluation Criteria 421  
 Limitations on Award 421  
 Filing & Approval Of Policies & Certificates & Premium Rates 266  
 Attained Age Rating Prohibited 268  
 Availability of Policy Form or Certificate 267  
 Experience of Policy Forms 267  
 Filing of Policy Forms 266  
 Filing of Premium Rates 266  
 Other Rating Requirements 268  
 Rating by Area & Gender Prohibited 268  
 Filing Requirements For Advertising 272  
 Final Reports 420  
 Fires, Candles, & Flames 407  
 Food & Beverages 407  
 Alcohol 407  
 Consumption May Be Prohibited 407  
 Food & Nutritional Care Policies & Procedures 218  
 On-Site Food Service 218  
 Reports for Sanitation & Food Service 218  
 Third-Party Food Service 218  
 Three Nutritious Meals Per Day 218  
 Fraudulent Information 474  
 Free From Abuse, Neglect, & Harassment 174  
 Funding Of Board Activities 103  
 Fee Assessed 103  
 Notices Issued 104  
 Payment Submission 103

**G**

Guaranteed Issue For Eligible Persons 260  
 Discrimination in Pricing 263  
 Eligible Persons 260  
 Extended Medigap Access for Interrupted Trial Periods 262  
 Guaranteed Issue 260  
 Guaranteed Issue Time Periods 262  
 Notification Provisions 263  
 Products to Which Eligible Persons are Entitled 263

**H**

Health, Safety, & Maintenance Of  
 Chinden Office Complex 400, 409  
 Clean Condition After Use 400, 409  
 Fireworks 400, 409  
 Items Return to Proper Location 400, 409  
 Public Health 400, 409  
 Use of Waterways 400, 409  
 Hours Of Use 398, 405  
 Hours for Use by the Public 398, 405  
 Public Parking Hours 398, 405

**I**

Immunization Requirements 128  
 Seventh Grade Immunization Requirements 129  
 Student Born on or Before September 1, 1999 128  
 Summary of Immunization Requirements 129  
 Twelfth Grade Immunization Requirements 129  
 Incorporation By Reference 38, 46, 50, 56, 58, 60, 63, 68, 79, 107, 110, 112, 164, 194, 248, 287, 321, 471, 477, 482  
 Availability of Documents 108, 110, 112  
 Credit Repair Organizations Act 107  
 Credit Reporting Agencies Act or "Fair Credit Reporting Act." 107  
 Debt Collection Practices Act or "Fair Debt Collection Practices Act." 107  
 Electronic Funds Transfer Act 107  
 Equal Credit Opportunity Act 107  
 NMLS Policy Guidebook 110  
 Regulation B 107  
 Regulation E 107  
 Regulation V 107  
 Regulation X 110  
 Regulation Z 107, 110  
 Restrictions on Garnishment Act 107  
 The Association of American Feed Control Officials (AAFCO) Official Publication 56

The Association of American Plant Food Control Officials (AAPFCO) Official Publication 58, 60  
 The Association of Official Agricultural Chemists (AOAC) International 58, 60  
 The Merck Index 56, 58, 60  
 The Real Estate Settlement Procedures Act 110, 112  
 The Truth in Lending Act 107, 110  
 Incorporation by Reference 76, 85, 88, 92, 97, 402  
 Ineligible Vehicles - County Assessor Or Department Issuance 411  
 Commercial, Farm & Non-Commercial Trailers 411  
 Commercial, Farm & Non-Commercial Vehicles 411  
 Infection Control 217  
 Infection Control & Prevention Procedures 217  
 Infection Control Program 217  
 Report for Monitoring Infections 217  
 Information Returns 344  
 Due Date of Information Returns 344  
 In General 344  
 Submitting Returns 344  
 Voluntary Withholding 344  
 Inspections, Investigations, & Consultations 209  
 Access & Authority to Enter 209  
 Authority to Interview 209  
 Consultations 210  
 Initial Inspection 209  
 Inspections or Investigations 209  
 Intervals of Inspection Following Initial Inspection 209  
 Services of Others for Inspections & Investigations 209  
 Unannounced Inspections 209  
 Intent, Emergency Feeding Of Antelope, Elk, Deer 122  
 Internal Audit Function Requirements 278  
 Additional Requirements 278  
 Exemption 278  
 Function 278  
 Independence 278  
 Reporting 278  
 Issuance By Idaho Vehicle Dealers 411  
 Dealer Issuance to Commercial, Farm and Non-Commercial Vehicles & Trailers 411  
 Dealer Issuance to Out-of-State Retail Purchasers 411  
 Issuance Of Certificate Of Approval By Department 204  
 Deny Certificate 204  
 Issue Certificate of Approval 204  
 Issue Provisional Certificate 204  
 Items Subject To Search 408

- Items 408
- Packages & Bags 408
- L**
- Landscaping 407
  - Climbing 407
  - Grass 407
  - Irrigation Equipment 407
  - Landscaping Materials 407
  - Plants 407
- Law Enforcement & Facility
  - Exigency 409
- Law Enforcement Restraints 175
  - Law Enforcement Maintains Custody & Direct Supervision 175
  - Law Enforcement Use of Restraint Devices 175
- Legal Authority 97, 112, 194, 402, 471, 477
- Liability 409
  - No Endorsement 409
  - State Liability 409
- License Application Forms/Apprentice
  - Registration Forms 76
  - Application Fee 76
  - Application Submission 76
  - Examination 76
  - License 76
  - License Period 76
- License Suspension & Revocation
  - Based On Regulatory Samples 43
  - License Reinstatement 43
  - License Revocation for Repeated Out of Tolerance Test Results 44
  - License Suspension 43
  - Two (2) Out of Four (4) Violation 43
- Licensure History 76
- Licensure Of Dental Specialists 284
  - Application 284
  - Examination 284
  - Limitation of Practice 284
  - Requirements for Specialty Licensure 284
- Licensure Period & Fees 83
- Limited Electrical Contractor
  - License 83
  - Modification to Qualifications 83
  - Qualifications for Specialty Electrical Contractor 83
- Limited Experience Requirement 79
  - Limited Electrical Installer 79
  - Limited Electrical Installer Trainee 80
- List Of Species Approved For
  - Importation Into Idaho 115
  - All Other Species 116
  - Approved License Required 115
  - Fur Farms, Fish Farms, Domestic Cervidae/Bona Fide Pet Stores 115
  - Species Allowed for Importation 115
- Loss Ratio Standards & Refund Or
  - Credit Of Premium 264
  - Annual Filing of Premium Rates 266
  - Loss Ratio Standards 264
  - Public Hearings 266
  - Refund or Credit Calculation 265
- M**
- Maintenance & Improvements 406
- Medical Director 222
- Medical Staff 179
  - Authority to Admit Patients 179
  - Dating of Bylaws 181
  - Dentists & Podiatrists 181
  - Documentary Evidence of Medical Staff Activities 180
  - Medical Orders 181
  - Medical Staff Appointments & Reappointments 179
  - Medical Staff Bylaws, Rules, & Regulations 180
  - Medical Staff Qualifications & Privileges 179
  - Required Hospital Functions 180
  - Review of Policies & Procedures 181
- Medicare Select Policies &
  - Certificates 255
  - Authorization to Issue Medicare Select Policy or Certificate 256
  - Comparable or Lesser Benefits 258
  - Continuation of Coverage 258
  - Definitions 255
  - Filing Requirements 256
  - Full & Fair Disclosure 257
  - Initial Purchase 258
  - Medicare Select Policy or Certificate 258
  - Payment for Full Coverage 257
  - Proposed Changes to the Plan of Operation 257
  - Proposed Plan of Operation 256
  - Requests for Data 259
  - Restrictions 257
- Medication Policies & Procedures 215
  - Administration of Medication 215
  - Disposal of Unused, Outdated, or Recalled Drugs 216
  - Medication Policies & Procedures for Staff Response 216
  - Physician's Order 215
  - Storage & Distribution of Medication 215
  - Written Medication Record 216
  - Written Records of Disposals 216
- Minimal Sedation 282
- Patient Safety 282
  - Personnel 282
- Minimum Criteria 315
- Minimum Experience Requirements 79
- Minimum Requirements For Admission
  - Criteria Applicable To Mental Health Diversion Units 231
  - Admission to Mental Health Diversion Unit 231
  - Mental Health Diversion Unit Able to Provide Services 232
  - Monitoring Clients in Mental Health Diversion Unit 232
  - Minimum Requirements For Individualized Detoxification Treatment Plan For Clients Of Detoxification Units 227
  - Client Records for Detoxification Treatment 228
  - Detoxification Treatment Plan Review 228
  - Develop Detoxification Treatment Plan 227
  - Written Detoxification Treatment Plan 227
- Minimum Staffing Policies &
  - Procedures 220
  - Clinical Supervision 220
  - Direct Care Staff 220
  - Monthly Staffing Pattern 220
  - Staff Supervision 220
  - Staff Trained for Emergencies 220
  - Staff Trained in Substance Abuse Withdrawal 221
- Motorized Vehicles 398, 406
- N**
- Notification & Payment
  - Requirements 239
- Notification & Payment Requirements
  - Notification & Payment 239
- Notification By The Department For Proposed Changes Submitted By The Facility 205
  - Notification of Changes in Operations 205
  - Notification on Submitted Applications for Proposed Changes 205
- Numeric Criteria For Toxic Substances
  - For Waters Designated For Aquatic Life, Recreation, Or Domestic Water Supply Use 434
  - Applicability 446
  - Criteria for Toxic Substances 434
  - Development of Toxic Substance Criteria 449
  - Factors for Calculating Hardness Dependent Metals Criteria 445
  - National Pollutant Discharge Elimination System Permitting 448
- Nursing Facility
  - Special Rates 157
  - Determination 158
  - Determination of Payment for Qualifying Residents 158
  - Effective Date 158
  - Limitation 158
  - Prospective Rate Treatment Reporting 158

- Special Rate for Providers that  
Change Ownership or  
Close 159  
Treatment of the Special Rate Cost  
for Future Rate Setting  
Periods 159
- O**
- Office – Office Hours – Mailing &  
Street Address 403  
Office – Office Hours – Mailing &  
Street Address – Telephone – Internet  
Website 482  
Office – Office Hours – Mailing &  
Street Addresses – Telephone –  
Internet Website 477  
Office – Office Hours – Mailing  
Address – Street Address –  
Telephone Number – Internet  
Website 164  
Office – Office Hours – Mailing  
Address – Street Address – Web  
Address 287, 298  
Office – Office Hours – Mailing  
Address & Street Address 63, 68,  
76, 79, 85, 88, 92, 97  
Office Hours – Mailing Address – Street  
Address – Telephone – & Internet  
Website 195  
Office—Office Hours—Mailing &  
Street Address—Telephone—  
Internet Website 471  
Ongoing Training 179  
Open Enrollment 259  
Discrimination in Pricing 260  
Offer Of Coverage 259  
Treatment of Preexisting  
Conditions 259  
Organ Transplants 161  
Coverage & Limitations 161  
Coverage Limitations 161  
Living Donor Costs 161  
Provider Reimbursement 162  
Orientation & Continuing  
Education 212  
Content for Orientation & Continuing  
Education Program 212  
Continuing Education for Direct Care  
Staff 213  
Documentation of Education  
Program 212
- P**
- Parental Financial Support For Children  
In Alternate Care 191  
Financial Arrangements with  
Parent(s) 191  
Notice of Parental  
Responsibility 191  
Partial Year Assessment Of Real &  
Personal Property 347  
Change of Status 347  
Cross Reference 347  
Effective Date 347
- Quarterly Assessment 347  
Patient Grievances 175  
Grievance by Patient or Patient’s  
Representative 175  
Grievance Process 175  
Written Notice of Decision 175  
Patient Rights 173  
Access to Patient’s Own  
Records 174  
Confidentiality 174  
Formulate Advance Directives 173  
Identify Who Is Responsible for  
Medical Decisions 173  
Informed & Involved in Care  
Plan 173  
Informed in Advance of Patient  
Care 173  
Informed in Format Understandable  
to Patient/Patient’s  
Representative 173  
Make Informed Decisions 173  
Personal Privacy 174  
Privacy 173  
Safe Setting 174  
Specify Procedures to Inform Patient  
of Patient Rights 173  
State Agency Contact  
Information 174  
Video Monitoring of Common  
Areas 174  
Performance Bond Requirements For  
Surface Mining 310  
Annual Bond Review 311  
Bond Provided to the Federal  
Government 311  
Bond Reduction 311  
Bond Release 311  
Bonding Rate 312  
Cooperative Agreements 312  
Liabilities for Unbonded Reclamation  
Costs 312  
Mining Operation Conducted by  
Public or Government 311  
Submittal of Bond Before  
Mining 310  
Permitted Compensation  
Arrangements 268  
Commissions 268  
Compensation 269  
Compensation in Subsequent  
Years 269  
Renewal Compensation 269  
Personnel Policies & Procedures 210  
Age Limitations 211  
Applicable Idaho & Federal  
Laws 211  
Daily Work Schedules 210  
Job Descriptions 211  
Organizational Chart 211  
Payroll Records 211  
Personnel Files 211  
Written Policies & Procedures for  
Personnel 210  
Persons Exempted By Board 336
- Employer Application 337  
Family Members & Others 336  
Non-Resident Nurses 336  
Nurse Apprentice 336  
Technicians & Technologists 336  
Physician Approved Admissions Policy,  
Intake Procedures, & Discharge  
Planning 213  
Admissions Policy 213  
Criteria for Admissions 213  
Criteria for Assuring Clients Remain  
in Program 215  
Criteria for Rejecting  
Admissions 214  
Discharge Criteria & Planning 215  
Initial Client Assessments  
Procedures 214  
Intake Procedures 214  
Medical Orders 214  
Referrals For Individuals Not  
Admitted 214  
Services Orientation Procedures for  
Clients Admitted to a  
Detoxification Unit or Mental  
Health Diversion Unit 214  
Placer Or Dredge Exploration  
Operations 291  
Confidentiality 292  
Notice 291  
One-Half Acre Limit 292  
Reclamation Required 292  
Point Source Wastewater Treatment  
Requirements 454  
Temperature 454  
Turbidity 455  
Policies & Procedures Applicable To  
All Detoxification Units & Mental  
Health Diversion Units 213  
Policy Definitions & Terms 248  
Accident, Accidental Injury, or  
Accidental Means 248  
Benefit Period or Medicare Benefit  
Period 249  
Convalescent Nursing Home,  
Extended Care Facility, or Skilled  
Nursing Facility 249  
Health Care Expenses 249  
Hospital 249  
Medicare 249  
Medicare Eligible Expenses 249  
Physician 249  
Sickness 249  
Posters, Placards, Banners, Signs,  
Equipment, Tables, Materials, &  
Displays 399, 407  
Attaching, Affixing, Leaning, or  
Propping Materials 399, 408  
Distribution of Literature & Printed  
Material 400, 408  
Electrical Cords 399, 408  
Ingress or Egress 399, 408  
Materials Causing Damage to  
Exterior Surface 400, 408  
Railings & Stairways 399, 408

- Removal of Items 400, 408
- Surface Markings 400, 408
- Tossing or Dropping Items 399, 408
- Powers & Duties Of The State Fire Marshal 245
  - Assistants, Inspectors & Other Employees 245
  - Fees 245
  - Licensing Procedures 245
  - Records 245
  - Suspension or Revocation of License 245
- Prescriptive & Dispensing
  - Authorization For Advanced Practice Registered Nurses 340
  - Expiration of Temporary Prescriptive Authorization 341
  - Initial Authorization 340
  - Prescribing & Dispensing Authorization 341
  - Temporary Authorization 341
- Procedures For Review & Decision Upon An Application 295
  - Adverse Weather 296
  - Amended Applications 296
  - Decision on Application 295
  - Interagency Comment 296
  - Permit Conditions 296
  - Permit Denial Authority 296
  - Permit Offering 296
  - Public Hearings 296
  - Reclamation Obligations 296
  - Stream Alteration Permits 296
  - Water Clarification 296
- Programs Supporting
  - Organizations 423
  - Acquisition or Commission of Works 424
  - College & University Applicants 424
  - General Evaluation Criteria 423
  - Significant Changes 423
- Prohibited Items 408
- Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods & Probationary Periods In Replacement Policies Or Certificates 273
  - Replacing Policy 273
  - Waiving of Time Periods 273
- Prohibition Against Use Of Genetic Information & Requests For Genetic Testing 274
  - Allowed Genetic Testing 274
  - Definitions 275
  - Denial of Coverage 274
  - Genetic Testing 274
  - Information 274
  - Payment 274
  - Prohibited Provisions 274
- Prohibition On Private Feeding Of Deer & Elk Within Designated CWD Management Zone 123
  - Incidental Feeding 123
- Incidental Grazing 123
  - Prohibition 123
- Property Exempt From Taxation 388
  - Burden of Proof 388
  - Confidentiality 388
  - Notice of Decision 388
- Property Exempt From Taxation -- Residential Improvements -- Special Situations 348
  - Apportionment of Homeowner's Exemption by Dual Residency Couples 349
  - Definitions 348
  - Determining the Qualifying Portion of a Multidwelling or Multipurpose Building & the Related Land 350
  - Dual Residency Couples 348
  - Dual Residency Couples-- General Principles 348
  - Example -- Both Residences are Community Property 348
  - Example -- Both Residences Are Separate Property 349
  - Example -- One Residence is Community Property, The Other is Separate Property 349
  - Multidwelling or Multipurpose Building 348
  - Multiple Ownerships Including Community Interests as Partial Owners 349
  - Related Land 348
  - Scope 348
- Property Exempt From Taxation-- Speculative Portion Of Value Of Agricultural Land 350
  - Calculation of Net Income from Cash Rent 351
  - Calculation of Net Income From Crop Share Rent 352
  - Calculation of Rent Attributable to Exempt Irrigation Equipment 351
  - Cross Reference 354
  - Definitions 350
  - Determination of Five Year Average Crop Prices 352
  - Farm Credit System Interest Rate 352
  - Notification 354
- Property Tax Relief ("Circuit Breaker") Program -- Special Situations 361
  - Apportionment of Property Tax Reduction by Dual Residency Couples 362
  - Dual Residency Couples 362
  - General Principles 362
  - Multiple Ownerships Including Community Interests as Partial Owners, Example 362
  - Scope 361
- Psychiatric Service 181
  - Construction of Psychiatric Hospitals 184
  - Discharge Planning 183
  - Examination to Assess Mental Status 182
  - Nursing Service 183
  - Patient Treatment Plan 181
  - Physical Therapy Service 183
  - Physician Services 183
  - Policies & Procedures 181
  - Psychiatric Unit Space 184
  - Psychological Services 183
  - Records 182
  - Social Services 183
  - Special Medical Record Requirements for Psychiatric Hospitals or Services 182
  - Staffing 181
  - Therapeutic Activities 183
- Public Programs In The Arts
  - Grants 426
  - Application Deadlines 427
  - Application Requirements 427
  - Evaluation Criteria 426
  - Funding Limitations & Requirements 426
  - Matching Contributions 426
  - Three (3) Year Rotation 426
- Public Records Act Compliance 63, 68, 76, 79, 85, 88, 92, 97, 100, 112, 288, 298, 403, 471, 477
  - Purpose & General Provisions 290
  - Compliance with Other Law 290
  - General Provisions 290
  - Policy 290
  - Purpose 290

**Q**

- Qualifications & Responsibilities For
  - CEO Or Administrator 221
  - CEO or Administrator 221
  - CEO's or Administrator's Responsibilities 221
- Qualifications & Responsibilities For
  - Director Of Nursing 223
  - Availability of Lead Nurse 223
  - Director of Nursing 223
  - Director of Nursing's Responsibilities 223
- Qualifications & Responsibilities For
  - Lead Nurse
  - Required Experience & Abilities 223
  - Required License 223
- Qualifications & Responsibilities For
  - Medical Director 222
  - Availability of Medical Director 223
  - Medical Director's Responsibilities 222
  - Required Experience & Abilities 222
  - Required License 222
- Qualified Substance Use Disorders Professional 198
- Quick Funds 420
  - Application Requirements 421



- Evaluation Criteria 421
- Matching Contributions 421
- Professional Development 420
- Quick Projects 420
- Quick Funds For Arts Education 428
  - Application Deadlines 429
  - Application Requirements 429
  - Evaluation Criteria 429
  - Matching Contributions 429
  - Professional Development for Educators 429
  - Quick Projects for Education 429
  - Teacher Incentive Grants 429
- Quick Funds For Organizations 424
  - Application Deadlines 425
  - Application Requirements 424
  - Evaluation Criteria 424
  - Matching Contributions 424
  - Quick Projects 424
  - Technical Assistance 424
- Quickfund\$
  - Application Deadlines 421
- R**
- Raw Milk Permits
  - Inspection Frequency 47
  - Obtaining a Raw Milk Permit 47
  - Requirements 47
  - Sanitation Requirements 47
- Reasons For Exemption From Attorney General's Administrative Procedure Rules 97
- Reciprocal Licensure 34
  - International Reciprocity 34
  - Interstate Reciprocity 34
  - Transfer of Grades 34
- Redetermination Of Eligibility For Child Care Benefits 188
  - Graduated Phase Out 188
  - Redetermination 188
- Redredging 328
- Re-Examination Of Value--Complaint
  - By Assessor 347
  - Complaint 347
  - Information to be Provided by the State Tax Commission 347
  - Meeting to Examine Valuation & Allocation 347
  - Request for Reexamination of Value 347
- Refinancing Of Balloon Payments 108
  - Collateral Return 108
  - Collateral Sale 108
  - Payment 108
  - Refinance 108
- Regulatory Samples 42
  - Outliers 42
  - Regulatory Sample Results 42
  - Regulatory Sample Tolerances 42
  - Sample Set 42
- Remedies For Failure To Comply 30
  - Corrective Actions 30
  - Solicitation and Review of Other Sources 31
- Reporting Cycle 473
  - Due Date 473
  - Form Availability 473
  - Purpose 473
  - Reporting Period 473
- Reporting Of Multiple Policies 273
  - Grouping by Individual Policyholder 273
  - Reporting 273
- Reporting Requirements 472
  - Attorney Experience 473
  - Case Information 472
  - Continuing Legal Education Information 472
  - Expenditure Information 472
  - Method of Data Collection 473
  - Support Staff 473
- Reporting To The Board 30
  - Firm Registration Form 30
  - Peer Review Documentation 30
- Reports & Inspections 479
  - Annual Report 479
  - Expenditure Report 479
  - Materials 479
  - Name 479
  - Position 479
  - Salary 479
  - Written Notification 479
- Reports By School Authorities 132
  - Form & Content of Report 132
  - Responsibility & Timeliness 132
- Required Disclosure Provisions 269
  - General Rules 269
  - Medicare Prescription Drug, Improvement, & Modernization Act of 2003 Notice Requirements 270
  - Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies 270
  - Notice Requirements 270
  - Outline of Coverage Requirements for Medicare Supplement Policies 270
- Required Minimum Admission Criteria To Detoxification Units 226
  - Admission to Detoxification Unit 226
  - Detoxification Unit Able to Provide Services 226
  - Monitoring Clients in Detoxification Unit 226
- Required Minimum Discharge Planning For Clients Of Detoxification Unit 228
  - Client Referral 228
  - Discharge Summary Content 229
- Required Minimum Intake Criteria Applicable To Sobering Stations 230
- Required Minimum Policy Standards Applicable To Behavioral Health Diversion Units 231
- Required Minimum Services Applicable To Sobering Stations 229
- Required Minimum Staffing Standards Applicable To Detoxification Units 225
  - Direct Care Staff 225
  - Nurse 225
  - Physician Supervision 226
- Required Minimum Staffing Standards Applicable To Sobering Stations 229
- Required Minimum Treatment Needs Assessment For Clients Of Detoxification Units 227
  - Client Treatment Needs Assessment 227
  - Treatment Needs Assessment Content 227
- Requirements Applicable to All Detoxification Units & Mental Health Diversion Units 210
- Requirements For Application Forms & Replacement Coverage 271
  - Agents 272
  - Application Forms 271
  - Direct Response Issuer 272
  - Notice Regarding Replacement of Medicare Supplement Coverage 272
  - Questions 272
  - SHIBA & Consumer Assistance Link 272
  - Statements 271
- Restraint & Seclusion 175
  - Investigation of Injuries 176
  - Patient's Right to be Free From Restraint & Seclusion 175
  - Policy & Procedures 176
  - Use of Restraint or Seclusion 176
- Restraint & Seclusion
  - Documentation 178
  - Assessments 178
  - Interventions Used Prior to Restraint or Seclusion 178
  - Monitoring Activities 178
  - Patient's Behavior 178
  - Patient's Response 178
  - Restraint & Seclusion Log 178
  - Type of Intervention 178
- Restraint & Seclusion Implementation & Monitoring 177
  - Face-to-Face by Physician or Other Licensed Independent Practitioner 177
  - Management of Violent or Self-Destructive Behavior 177
  - Observation of Patients Who Are Not Violent or Self-Destructive 177
  - Written System 177
- Restraint & Seclusion Orders 176
  - Attending Physician 177
  - Orders 177
  - Time Limits on Orders 177
  - Restraint & Seclusion Training 178

Hospital's Policy Training 179  
 Training Related to Job Responsibilities 179  
 Training Requirements 178  
 Restrictions & Limitations On Use 406  
 Retail Raw Milk, Table 1 46  
 Retake & Granting Of Credit 33  
 Credit for Subjects After  
     Computerization of the CPA Examination 33  
 Extending the Term of Credit 34  
 Risk Evaluation Process 459  
     Department Review & Approval of Risk Evaluation or Corrective Action Plan 460  
     Development & Implementation of Corrective Action Plan 460  
     Results of Risk Evaluation 459  
     Screening Evaluation 459

**S**

Sample Integrity 41  
 Service Evidence 245  
     Conformance to Standards 246  
     Submission of Plans 246  
 Service Testing Fees - Miscellaneous Fees 54  
 Service Testing Fees - Special Tests 53  
 Severability 276  
 Severability In Chinden Office Complex 403  
 Site Specific Risk Evaluation Requirements 460  
     General Requirements 460  
     Specific Requirements 461  
 Skates, Skateboards, Scooters, & Other Non-Motorized Transportation 399, 406  
 Small Herd Raw Milk Permits  
     Exemption from Pasteurized Milk Ordinance 48  
     Obtaining a Small Herd Raw Milk Permit 47  
     Product Quality 48  
     Test Results Made Available 48  
     Testing Frequency 48  
 Smoking 407  
 Specialty Advertising 284  
     Disclaimer 285  
     Recognized Specialty License 284  
     Unrecognized Specialty 285  
 Speculative Portion Of Value Of Agricultural Land - Examples 354  
     Average Property Tax Rate Calculation Example 354  
     Capitalization Rate Calculation Example 355  
     Cash Rent Analysis Examples 355  
     Combination of Cash Rent & Crop Share Analysis Example 357  
     Crop Share Analysis Example 356  
     Cross Reference 358  
 Stamps-Source, Amount, & Limitations 392

Filing & Paying Timely 392  
 Obtaining Stamps 392  
 Physical Security 392  
 Unused Stamp Inventory 392  
 Standard Medicare Supplement Benefit Plans For 1990 Standardized Medicare Supplement Benefit Plan Policies Or Certificates Issued For Delivery On Or After July 1, 1992 & With An Effective Date For Coverage Prior To June 1, 2010 249  
 Benefit Plans 249  
     Make-Up of Benefit Plans 250  
     Make-Up of two Medicare Supplement Plans Mandated by the Medicare Prescription Drug, Improvement, & Modernization Act of 2003 (MMA) 251  
 Medicare Supplement Benefits 249  
     New or Innovative Benefits 251  
     Other Designations 250  
     Policy Form or Certificate Form 249  
 Standard Medicare Supplement Benefit Plans For 2010 Standardized Medicare Supplement Benefit Plan Policies Or Certificates With An Effective Date For Coverage On Or After June 1, 2010 251  
 General Standards 251  
 Make-up of 2010 Standardized Benefit Plans 252  
     New or Innovative Benefits 254  
 Standard Medicare Supplement Benefit Plans For 2020 Standardized Medicare Supplement Benefit Plan Policies Or Certificates Issued For Delivery To Individuals Newly Eligible For Medicare On Or After January 1, 2020 254  
 Applicability to Certain Individuals 255  
 Benefit Requirements 255  
 Guaranteed Issue for Eligible Persons 255  
 Offer of Redesignated Plans to Individuals Other Than Newly Eligible 255  
 Standards for Claims Payment 263  
     Certification 264  
     Compliance 264  
 Standards For Marketing 272  
     Issuer 272  
     Prohibited Acts & Practices 273  
     Prohibited Terms 273  
 Standards For Raw Milk & Raw Milk Products 46  
     Chemical, Bacteriological, & Temperature Standards 46  
     Commingled Milk 46  
     Requirements 46  
 Support For Arts Education 428  
 Surface Water Quality Criteria For Recreation Use Designations 450  
 E. Coli Bacteria 450

Fecal Indicators 450  
 Toxics Criteria 450  
 Surface Water Use Designations 433  
     Aesthetics 434  
     Aquatic Life 433  
     Recreation 433  
     Water Supply 434  
     Wildlife Habitats 434

**T**

Table 462  
 Tables 458  
     Chemicals of Interest for Various Petroleum Products 458  
     Default Toxicity Values for Risk Evaluation 458  
 Tax Exemption For New Capital Investments 359  
     Continuation of Tax Exemption Following the End of the Qualifying Period – Centrally Assessed Operating Property 361  
     Continuation of Tax Exemption Following the End of the Qualifying Period – Locally Assessed Property 361  
     Cross Reference 361  
     Failure to Make the Qualifying New Capital Investment 360  
     New Construction 360  
     Notification of New Capital Investment – Centrally Assessed Operating Property 359  
     Notification of New Capital Investment – Locally Assessed Property 359  
     Notification of New Capital Investment – Taxpayers Applying on Behalf of both Locally and Centrally Assessed Property 360  
     Property of the Taxpayer 360  
 Tax Levy - Certification - Urban Renewal Districts 375  
     Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes 381  
     Cross Reference 382  
     Definitions 375  
     Establishing & Adjusting Base & Increment Values 376  
     Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts 379  
     Modification of an Urban Renewal Plan 379  
     Setting Levies When There is a De-annexation From an RAA 382  
     Setting Levies When There is a Refinancing of Bonded Indebtedness 382  
 Taxation Of Designated

Forestlands 382  
Alternate Method to Establish  
Productivity Classification 384  
Classification of Forestlands 382  
Deficient Areas 383  
Forest Valuation Zones 382  
Forestland Valuation Process 382  
Reclassification of Forestlands 383  
Temporary Installations Connected  
Prior To Inspection 66  
Title & Scope 112, 248, 287, 402, 477,  
481  
Title And Scope 97, 471  
Traditional Arts Apprenticeships 422  
Application Deadlines 423  
Application Requirements 423  
Evaluation Criteria 423  
Funding Limitations &  
Requirements 422  
Instructional Fees 423  
Length of Apprenticeships 423  
Work Plan 423  
Transition Management 145  
Provider Qualifications 145  
Service Description 145  
Service Limitations 146  
TumbleWords 427  
Application Deadlines 428  
Application Requirements 428  
Eligibility & Funding  
Requirements 428  
Funding & Community Match 428

## U

Use Of Bait For Hunting 119  
Containers 119  
Establishment of Bait Sites 119  
Location 119  
Time 119  
Types 119  
Use Of Chinden Office Complex  
Authorized Uses by the Public 404  
Priority of Uses 405  
Prohibited Uses 405  
Use Of Recreational Facilities 398,  
405  
Use Of The Chinden Office  
Complex 404  
Public Access to Interior 405  
Uses Interfering With Access Or Use Of  
Facility 406  
Interference with Access 406  
Interference with Primary Use of  
Facility or Real Property 406  
Utility Service 400, 409

## V

Ventilation 237  
Veteran's Benefit – Continued  
Eligibility After Death Of  
Claimant 386  
Application By Surviving  
Spouse 386  
Surviving Spouse 386

Violations - Penalties 330  
Cease & Desist Order 330  
Injunctions, Damages 331  
Mitigation, Restoration 331  
Noncompliance Resolution 330  
Notice of Noncompliance/Proposed  
Permit Revocation 330  
Revocation of Lake Encroachment  
Permits 331  
Violations 331

## W

Writer In Residence 422  
Writer in Residence  
Application Deadline 422  
Application Requirements 422  
Award & Term 422  
Coordination with Fellowships 422  
Evaluation Criteria 422  
Limitations on Award 422  
Recipient Obligations 422  
Written Interpretations 97, 164, 287,  
402, 471, 477  
Written Interpretations ?Agency  
Access Filings 112