

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

### **21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS**

#### **DOCKET NO. 21-0107-1101 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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

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

The Veterans Education Program was transferred to the Division of Veterans Services in 2009. The rules governing the program remained, however, in the rules of the State Board of Education. The changes are necessary to correct this oversight. The changes revise and transfer rules governing the Division of Veterans Services' administration of federal requirements for Veterans Education Programs.

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

The rule changes are necessary to comply with prior changes made to the current law regarding veterans education and training programs.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**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 provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated by reference into this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 26<sup>th</sup> day of August, 2011.

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT  
FOR DOCKET NO. 21-0107-1101**

**IDAPA 21  
TITLE 01  
CHAPTER 07**

**21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS**

**000. LEGAL AUTHORITY.**

The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing programs offered by the United States Department of Veterans Affairs for the certification and supervision of educational and training opportunities for veterans pursuant to Sections 65-202 and 65-204, Idaho Code. (8-1-11)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 21.01.07, "Rules for Education and Training Programs for Veterans." (8-1-11)T

**02. Scope.** These rules contain the administrative provisions and state of Idaho requirements applicable to the Division of Veterans Services' approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. The federal substantive provisions governing the approval of education and training programs and licensing and certification tests are contained in United States Department of Veterans Affairs regulations. (8-1-11)T

**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 Idaho Division of Veterans Services office. (8-1-11)T

**003. ADMINISTRATIVE APPEALS.**

Contested case appeals shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General." (8-1-11)T

**004. INCORPORATION BY REFERENCE.**

Except as set forth herein, the provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education

and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated herein and will have the same force and effect as if fully set forth. Copies of the referenced federal regulations may be obtained from the USDVA, the Division of Veterans Services, or the Idaho State Law Library. In the event USDVA regulations are re-designated, it is the intent of the Division of Veterans Services that the references herein incorporate such re-designation. (8-1-11)T

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

The mailing address and the street address of the office of the Division of Veterans Services is 351 Collins Road, Boise, Idaho 83702. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Division is (208) 577-2310. The Division's facsimile number is (208) 577-2311. (8-1-11)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-1-11)T

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX).**

Documents in contested cases shall be filed with the Administrator of the Division of Veterans Services. Unless additional copies are specifically requested by the Administrator, parties may file one (1) copy of any document with the Administrator. Documents, not exceeding ten (10) pages in length and documents requiring urgent or immediate action by the Administrator may be filed with the Administrator by facsimile transmission (FAX). Whenever a document is filed by FAX, originals must be delivered to the Administrator by overnight mail or by hand delivery on the next business day. (8-1-11)T

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The following words and phrases will have the meanings set forth in Section 010. (8-1-11)T

**01. Course.** An instructional program, class, on-the-job training activity or similar training or activity subject to approval by the Program under Federal Law. (8-1-11)T

**02. Federal Law.** The provisions of the United States Code and the Code of Federal Regulations governing Courses and Tests qualified for the application of Veterans Education Benefits. At the time of publication of these rules, such provisions are located at 38 U.S.C. chapter 36 and 38 CFR part 21. (8-1-11)T

**03. Program.** The Veterans Education Program within the Division of Veterans Services. (8-1-11)T

**04. Provider.** An organization or entity offering a Test or offering a Course. (8-1-11)T

**05. Test.** A licensing or certification test subject to approval by the Program under Federal Law. (8-1-11)T

**06. USDVA.** The United States Department of Veterans' Affairs. (8-1-11)T

**07. Veterans Education Benefits.** Those benefits provided to veterans and other eligible persons for education and training under Federal Law. (8-1-11)T

**011. -- 019. (RESERVED)**

**020. DIVISION OF VETERANS SERVICES DESIGNATED STATE APPROVAL AGENCY.**

As set forth in Section 65-202, Idaho Code, the Division of Veterans Services is the approval agency in the state of Idaho for the purpose of approving Courses and Tests pursuant to Federal Law. The Program is delegated the authority to act on behalf of the Administrator of the Division of Veterans Services as the state approval agency. (8-1-11)T

**030. PROGRAM RESPONSIBILITIES.**

The Program is responsible for carrying out the duties of a state approval agency concerning Veterans Education Benefits, including the following: (8-1-11)T

**01. Additional Requirements.** Establishing criteria additional to requirements set forth in Federal Law for approving Courses and Tests. (8-1-11)T

**02. Approving Courses and Tests.** Approving courses and tests following the criteria set forth in Federal Law or established by the Division of Veterans Services. (8-1-11)T

**03. Visiting and Supervising Providers.** Regularly visiting and supervising those Providers offering approved Courses and Tests. (8-1-11)T

**04. Disapproving Approved Course or Test.** Disapproving any approved Course or Test that fails to meet requirements set forth in Federal Law or criteria established by the Division of Veterans Services and notifying the affected Provider and the USDVA of this disapproval. (8-1-11)T

**05. Applicable Approval.** Providing applicable approval information to Providers and the USDVA. (8-1-11)T

**040. APPLICATIONS FOR APPROVAL OF COURSES.**

Application for approval. providers desiring to enroll veterans or eligible persons in Courses or conduct Tests to which Veterans Education Benefits may be applied must apply to the Program for approval of such Courses or Tests. Unless otherwise provided in Federal Law, Tests offered by a state or political subdivision are not required to submit an application for approval. (8-1-11)T

**01. Application Required For Each Course.** The Program grants approval on a Course-by-Course and Test-by-Test basis. The Provider must include in the initial application all Courses or Tests for which it seeks approval by the Program. The Provider must submit an additional application for new or additional Courses or Tests. (8-1-11)T

**02. Written Application.** All applications for approval must be in writing and on a form or in a format approved by the Program. Applications must contain all information required for the Program to determine if the Course or Test satisfies Federal Law and these rules. (8-1-11)T

**03. Applicant and Provider Site Visits.** The Program may conduct an on-site visit prior to approval of an application or periodically following approval. Failure to consent to or cooperate with a site visit is a basis for denial of an application or disapproval of a Course or a Test. (8-1-11)T

**04. Compliance With Equal Opportunity Laws.** Applicants shall provide a signed assurance of compliance with equal opportunity laws satisfying the requirements of Federal Law. (8-1-11)T

**050. COURSE AND TEST STANDARDS.**

**01. General Standards.** The Program may deny any Course or Test not in conformance with Federal Law. (8-1-11)T

**02. Additional Standards.** The Program applies the following standards to Courses and Tests in addition to those set forth in Federal Law: (8-1-11)T

**a.** Flight training courses. In addition to the requirements in Federal Law, the Program requires that students complete a minimum of thirty (30) hours of instruction per quarter for a flight training course to obtain and maintain approval. (8-1-11)T

**03. Precluded Courses and Tests.** The Program may deny applications for approval of any Course or Test where the USDVA may deny the enrollment of a veteran under Federal Law or deny the application of Veterans Education Benefits under Federal Law. (8-1-11)T

**060. APPROVAL AND DENIAL OF COURSES AND TESTS.**

**01. Notices of Approval or Denial.** (8-1-11)T

**a.** Notice of approval. Upon determining that a Provider has complied with all the requirements for approval of a Course or Test, the Program will notify the Provider and the USDVA by correspondence complying with Federal Law. (8-1-11)T

**b.** Notice of denial. Upon determining that a Provider has not complied with all the requirements for approval of a Course or Test, the Program will notify the Provider by correspondence setting forth the Courses and Tests that have not been approved, the legal and factual bases for the decision not to approve, and the applicable appeal rights of the Provider. The Program will furnish the USDVA with an official copy of the letter, attachments and any subsequent amendments. (8-1-11)T

**02. Length of Time of Approval.** Unless otherwise specified in the notice of approval, approval of a Course or Test is for an indefinite period of time. Continuing approval of a Course or Test is contingent upon the Provider maintaining compliance with Federal Law, these rules, and any conditions of approval specified in the notice of approval. The Program may require that requests for continued approval be submitted on an annual basis and accompanied by documentation supporting continued compliance with Federal Law and these rules. Providers must submit a new application to the Program for an approved Course or Test that is substantively revised or changed from the Course or Test approved by the Program. (8-1-11)T

**061. -- 100. (RESERVED)**

**101. SUSPENSION OR WITHDRAWAL OF APPROVAL.**

**01. Suspension.** If a Course or Test fails to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval, the Program may suspend approval of the Course or Test. The Program will comply with the requirements for suspension set forth in Federal Law. (8-1-11)T

**02. Withdrawal of Approval.** The Program will withdraw approval of a Course or Test if a failure to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval: (8-1-11)T

**a.** Has not been corrected at the time of the expiration date of a suspension period; or (8-1-11)T

**b.** Substantially deprives a student of the protection afforded by the approval process or is of such a nature that it cannot be corrected within a period of sixty (60) days. (8-1-11)T

**03. Notices of Suspension or Withdrawal of Approval.** Prior to the effective date of the suspension or withdrawal of approval, the Program will provide notice to the Provider of the suspension and its length or the withdrawal of approval, the legal and factual bases for the suspension or withdraw approval, and the applicable appeal rights of the provider. (8-1-11)T

**102. -- 999. (RESERVED)**